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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 667.

THE FLORIDA CENTRAL RAILROAD COMPANY, APPELLANT,

VS.

J. FRED. SCHUTTE ET AL.

No. 668.

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY, APPELLANT,

VS.

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No. 669.

THE WESTERN NORTH CAROLINA RAILROAD COMPANY, APPELLANT,

VS.

GEORGE F. DREW, GOVERNOR &c., THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY, ET AL.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

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1 *Original bill.—Filed Feb. 9th,* 1877. *Philip Walter, clerk.*

Circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant,

vs.

GEORGE F. DREW, GOVERNOR OF THE STATE of Florida; The Florida Central Railroad Company; The Jacksonville, Pensacola & Mobile Railroad Company, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddocks, Adrian Stoop, Frank R. Sherwin, claiming to be the authorized agent of the four parties last named, John Collinson, Milton S. Littlefield, Walter Gwynn, and Thomas B. Coddington, defendants.

To the judges of the circuit court of the United States, for the northern district of Florida:

Your orator, the Western Division of the Western Railroad of North Carolina, being a corporation and body politic created by and under the laws of the State of North Carolina and a citizen of the State of North Carolina, brings this its bill of complaint against George F. Drew, governor of the State of Florida, the Florida Central Railroad Company; the Jacksonville, Pensacola & Mobile Railroad Company, corporations and bodies politic created by and under the laws of the State of 2 Florida, and citizens of the State of Florida, and Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddocks, and Adrian Stoops, aliens, and citizens of Amsterdam, and subjects of the Kingdom of Holland, and Frank R. Sherwin, a citizen of State of New York, who claims to be the authorized agent of the four parties last named, John Collinson a citizen of London, England, and subject of the Queen of Great Britain, and Thomas B. Codrington, a citizen of New York, and Milton S. Littlefield, and Walter Gwynn, treasurer of the State of Florida, citizens of the State of Florida, and such other and further parties as may be made defendants hereto upon leave in that behalf hereinafter prayed.

And complaining, your orator says:

1st. That it is a body politic and corporate created under and by virtue of the laws of the State of North Carolina, as will better appear by the acts of the legislature of said State in that behalf, passed and approved, to which reference is prayed to be made when necessary for the purposes of this suit.

2d. That for the purpose of constructing its railroad, your orator in the year 1868 was the lawful owner of six millions ($6,000,000) dollars of bonds of the State of North Carolina, which were for its use and benefit placed in the hands of one George W. Swepson, who was the president, agent, and fiduciary of your orator, but who, being a citizen of North Carolina, cannot be made a party defendant to this bill.

3d. That said Swepson, as such president, agent, and fiduciary of your orator, took said six millions ($6,000,000) dollars of bonds to the city of New York, under pretense of selling the same, and procuring capital from the proceeds and avails thereof, for the purpose of aiding in

3 the construction of your orator's said railroad, and then and there raised large sums of money by the use and sale of said bonds, whereby he received and became possessed of moneys as such president, agent, and fiduciary of your orator, to the amount of about three million dollars ($3,000,000), as your orator, upon information, believes to be true.

4th. That said Swepson, in disregard of his duty as the president, agent, and fiduciary of your orator, falsely and fraudulently diverted and appropriated the money so belonging to your orator, and placed a large amount thereof, and, as your orator is advised and believes, the sum of one million dollars ($1,000,000) in the hands of one Edward Houstoun, a citizen of Georgia, but now deceased, who, as the agent of said Swepson, and at his request, and with a full knowledge that he, said Swepson, was the president, agent, and fiduciary of your orator, and that the said large sum of money so placed in the hands of said Houstoun was money owned by and belonging to your orator, but notwithstanding such knowledge, he, the said Houston, conspired and united with said Swepson, and as his agent, as aforesaid, invested the money of your orator so derived from the sale and use of its said bonds, in the purchase, among other things, of about four thousand three hundred and seventy shares, (being nearly the entire capital stock) of the corporation defendant, the Florida Central Railroad Company, a corporation created by the laws of and residing in the State of Florida and wholly beyond the limits of the State of North Carolina; he, the said Swepson, and his agent, the said Houstoun, thereby committing a fraudulent and illegal appropriation of the moneys, capital, and estate of your orator to a very large amount, but made no record thereof in the books or archives of your orator.

4 5th. That after the purchase of said Florida Central Railroad stock by said Swepson and Houstoun, and about the month of October, 1869, the said Swepson vacated the office of president and agent of your orator, and the defendant, Milton S. Littlefield, was elected and installed in the same office, when the said Swepson informed the said Littlefield that said Florida Central Railroad stock was the property of your orator, and, as such, transferred it over to said Littlefield, as the incoming president, agent, and fiduciary of your orator, and who received the said stock together with certain other assets as the property of your orator.

6th. That subsequent thereto, and about the summer of 1870, your orator was informed of the fact of the false and fraudulent use and appropriation of your orator's money, as aforesaid, and the fact that the same was so invested in said stock and certain bonds, called the Pensacola and Georgia Railroad bonds, and also learned for the first time that said stock had been pledged by the said Swepson and Littlefield with said Houstoun to pay a large indebtedness of said Littlefield to said Houstoun, and was about being sold under a mere stipulation, without any authority of law, but pursuant to an illegal agreement between said Littlefield, Swepson, and Houston, when your orator, as soon as it could take advice, instituted suit in the supreme court of New York against said Houstoun and Littlefield, enjoining and restraining the sale of said stock, and prayed the delivery thereof to your orator, as being its property and estate.

7th. That it was, in truth, not until about the time of the institution of said suit, that your orator was correctly advised of the facts as to the illegal and fraudulent use and appropriation of its property by the
5 said Swepson, Houstoun, and Littlefield, and was so advised by the sworn deposition of the said Swepson in the said suit, which,

together with all and singular the allegations contained therein, is prayed to be taken as part of this complaint, marked Schedule A.

8th. That said Houstoun, being by some means advised of the bringing of said suit by your orator, fled with the said stock from New York to New Jersey, and from there to Pennsylvania, and from there to Georgia, in order to avoid the law and keep fraudulent possession of your orator's said stock and property; but your orator, after much and vexatious delay, has at a late date succeeded in getting its just and equitable title to said stock fully admitted by the said Littlefield and parties interested therein, and is only obstructed by the said Sherwin and his associates, whose object is to cheat and defraud your orator out of its just and legal rights, as will be hereinafter stated.

9th. That the corporation defended, called The Florida Central Railroad Company, is a body corporate and politic, created under authority of the laws of Florida, as aforesaid, and owns and operates a railroad from Jacksonville to Lake City, in the State of Florida, a distance of about sixty (60) miles; and that the corporation defendant, The Jacksonville, Pensacola & Mobile Railroad Company, is also a body corporate and politic, created under authority of the laws of Florida, and owns and operates a railroad from said Lake City westward, a distance of about one hundred and fifty-five (155) miles.

10th. That by an act of the legislature of Florida, passed on or about the 24th day of June, 1869, and certain acts amendatory thereof, the said Jacksonville, Pensacola & Mobile Railroad Company was
6 authorized to issue its bonds to the amount of sixteen (16) bonds
of one thousand ($1,000) dollars each per mile, to be exchanged for bonds of the State of Florida of like amount per mile, and which the said State was authorized to so issue in exchange for the bonds of said Jacksonville, Pensacola & Mobile Railroad Company, which said bonds were specially directed and required by said law to be applied to the exclusive purpose of building and completing the said Jacksonville, Pensacola & Mobile Railroad, and to no other purpose; and the said act also secured to the State of Florida and the holders of said bonds a statutory lien on said railroad, but the name of the Florida Central Railroad Company was not even mentioned in said act, and was in no manner a party to said legislation or in any manner bound by the same.

11th. That in the year 1870 the said George W. Swepson was president of said Florida Central Railroad Company, and of his own motion, without any authority from the board of directors of said company, he caused to be printed or engraved bonds of the said Florida Central Railroad Company to the extent of about one million ($1,000,000) dollars; that after the printing of said bonds, the said Swepson, still acting without authority, signed the same as president, in the city of Washington, D. C., and, in order to confer upon said bonds the forms of execution required by law, caused the same to be signed by one "H. H. Thompson" as its treasurer, when in point of fact the said signature was false, fraudulent, and fabricated, as there never was a person named "Thompson" who was treasurer of said Florida Central Railroad Co., or had any authority or lawful right to sign his name as such; that F. H. Flagg was the duly elected and lawfully qualified treasurer of
7 said Florida Central Railroad Company in the year 1870 and
during the whole of said year, and was residing in the State of Florida, at the habitat and office of said company, and was alone authorized to sign the bonds of said company as its treasurer, had such signing been authorized, lawful, or proper; and that the said bonds, so

unauthorized and falsely and fraudulently signed, were not and are not the act and deed or the obligations and bonds of the said Florida Railroad Company; a copy of which said bond is made part hereof, marked Schedule B.

12th. Your orator, further complaining, states that when said Swepson, Houstoun, and Littlefield were so dealing with the said Florida Central Railroad stock, so purchased by the money of your orator, as aforesaid, and well known to each of said parties to be the property of and belonging to your orator, the said Swepson, Houstoun, and Littlefield had what they called a final settlement of the dealings between them, which was reduced to writing on or about the 13th day of May, 1870, a copy of which is made part hereof, marked Schedule C, and that, as part of said settlement, the said Littlefield gave his note of acceptance to the said Houstoun for about one hundred and sixty-three thousand dollars ($163,000), and deposited as collateral security for the payment thereof, at the expiration of sixty days, the said four thousand three hundred and seventy (4,370) shares of stock, and one hundred and three (103) Pensacola and Georgia Railroad bonds, making in all about five hundred and thirty-seven thousand dollars ($537,000) security for said one hundred and sixty-three thousand dollars ($163,000); and that just seventeen days thereafter, to wit, on the 30th day
of May, 1870, and before the maturity of said draft, by a further
8 manouvre and agreement between the said Houstoun and Littlefield, dated on the said 30th day of May, 1870, which is made part hereof, marked Schedule D, they, of their own motion, and without the authority of the directors of said company, agreed to issue bonds of the said Florida Central Railroad Company to the amount of one million ($1,000,000) dollars, not for the benefit of the Jacksonville, Pensacola & Mobile Railroad Company, as will be hereinafter stated, but for the alleged benefit of the stockholders of the Florida Central Railroad Company, which were likewise to be placed and were placed in the hands of said Houstoun, as further security for said draft of said Littlefield, making in all about $1,537,000 held as security for $163,000, as will appear by said last named agreement.

13th. That just eight days after this last named agreement, to wit, on the 7th day of June, 1870, and still before the maturity of the said draft, the said Houstoun and Littlefield entered into another written agreement, made part hereof, marked Schedule E. That by the terms of said last named agreement, the said $1,000,000 of bonds so signed by said Swepson and Thompson were to be returned to the company, and regular coupon bonds, payable to bearer, were to be issued; and by the third article of said last named agreement the proceeds of said bonds, all except $340,000, were to be applied to the payment of certain private debts and obligations, as will better appear by reference thereto, but was in no respect intended to be given to the Jacksonville, Pensacola & Mobile Railroad Company, as your orator will more specifically hereinafter state.

14th. That when the project of issuing the said $1,000,000 bonds, to
be secured by a mortgage on the railroad and property of said
9 company, came to the knowledge of the board of directors, the same was refused, and two of the stockholders of said company, to wit, R. H. Gamble and James D. Westcott, jr., filed bills enjoining the issue of said bonds, as will be hereafter stated.

15th. That under the provisions of the said act of June 24th, 1869, authorizing the State of Florida to issue and exchange its bonds for the bonds of the said Jacksonville, Pensacola & Mobile Railroad Company, the said State did, on or about the first day of June, 1870, issue, countersign, and place in the hands of Harrison Reed, its governor, 4,000 bonds of $1,000 each, and numbered from 1 to 4,000 inclusive, for the specified purpose of being exchanged for the said bonds of the Jacksonville, Pensacola & Mobile Railroad Company, and were so registered in a book kept for that purpose in the office of the treasurer of the State of Florida, the name of the Florida Central Railroad Company not being even mentioned in connection with said bond issue; and that of the bonds so issued the said Governor Reed handed over, on the part of the State of Florida, to the said Jacksonville, Pensacola & Mobile Railroad Company 3,000 of said bonds, numbered from 1 to 3,000 inclusive.

16th. That subsequently, and in the year 1871, the said Littlefield paid, or caused to be paid, to the said Houstoun the said $163,000, with the accrued interest thereon, and thereby released said stock and bonds; and subsequent thereto, the defendant, Thomas B. Codrington, visited the State of Florida, and for a consideration induced the said Houstoun to consent that he, the said Codrington, might take the said $1,000,000 of false and fraudulent bonds of the said Florida Central Railroad Company and procure the surrender to him, Codrington, of $1,000,000
10 of bonds of the State of Florida, issued under said act of the 24th of June, 1869, & Jan. 28th, 1870, as aforesaid, as will better appear by the receipt of said Codrington, executed to said Houstoun for said bonds, dated January 11, 1871, made part hereof, marked Schedule F.

17th. That at this time the said Houstoun had deposited the said Florida Central Railroad bonds with R. H. Gamble, esq., the comptroller of the State of Florida, where they were held subject to the said injunction at the suit of the said Gamble and Westcott, which was agreed to be waived or dismissed upon the payment of certain considerations to said Houstoun, J. P. Sanderson, M. D. Papy, F. H. Flagg, R. H. Gamble, and J. D. Westcott, jr., and J. P. Sanderson, president, various sums of money, amounting, as your orator is advised and believes, to about $650,000; and under and pursuant to said special contract and agreement between the said Houstoun, Codrington, and Littlefield, the said Codrington was authorized and empowered to obtain from the governor of Florida (the said Harrison Reed) the said additional 1,000 bonds so designed for and issued in the name of the said Jacksonville, Pensacola & Mobile Railroad Company, as aforesaid, but to which proceeding the said Florida Central Railroad Company was and is a total stranger and had no connection whatever.

18th. Your orator, upon information based upon the records in certain judicial proceedings and upon the sworn deposition of said Houstoun, further states, that the consideration agreed to be paid by said Codrington as a condition for getting possession of said bonds of the Florida Central Railroad Company, and with which he then proceeded and got possession from said Harrison Reed, governor, of the said 1,000 bonds of the State of Florida, which had been previously issued to and
11 for account of the said Jacksonville, Pensacola & Mobile Railroad Company, was, to J. P. Sanderson, $57,500; M. D. Papy, $16,000; T. W. Brevard, $40,000, and J. P. Sanderson, president, $360,000; James D. Westcott, jr., $4,000, and to F. H. Flagg, $5,000; that by such special agreement, for such illegal and unauthorized consideration, the said Codrington got possession of the Florida Central Railroad Company's bonds, and then immediately exchanged them for the State bonds, as aforesaid.

19th. That said Florida Central Railroad bonds never were for one moment delivered to or in the possession of the said Jacksonville, Pensacola & Mobile Railroad Company, and never were by the said company received, treated, or handled as its property or estate, but, on the contrary, the said Florida Central Railroad Company's bonds were received by said Codrington, under an individual agreement between him, the said Codrington, and R. H. Gamble, J. D. Westcott, jr., J. P. Sanderson, F. H. Flagg, and others, including the said Harrison Reed, governor of Florida, who then and there, and pursuant to said illegal agreement and transaction, delivered the bonds of the State of Florida to said Codrington personally, who made haste to depart from the State of Florida in a private and secret conveyance to avoid further injunctions on the part of other stockholders of said Florida Central Railroad Company, who believed themselves defrauded by and on account of the said bonds, and who denied that the same were the lawful debts and obligations of said company.

20th. Your orator further states that the said alleged bonds of the Florida Central Railroad Company were made payable to the State of Florida and vested a special right of property in said State; 12 and, besides the signature of said Swepson, as president, and the signature and falsely assumed position of treasurer by said "H. H. Thompson, treasurer," there was a further signature necessary to make the said bond complete in form and execution; that is, the signature of the governor of Florida, stating that said bonds were issued under and pursuant to the laws and for the purposes specified on the face of said bond, but that said signatures were never affixed thereto, as shown by the face of said pretended bond, and that the same was not and is not a complete or executed instrument, but is to all intents and purposes a blank paper, and is not and never was obligatory on said company, and that because of the same not being a complete and executed bond, the same was cancelled by a resolution of the board of directors of said Florida Central Railroad Company, and for that purpose was returned to said Houstoun by the governor of Florida, who duly endorsed said bonds to said Houstoun, thereby divesting the State of Florida of rights, title, and interest in or to said bonds, if any it ever had, that was contemplated by their proposed execution, and vested all right and title thereto in the said Houstoun, who applied for the issuing of new bonds by the said company in the place of said bonds, which never was done, as aforesaid, and that said bond was, so unexecuted, assigned by the State of Florida and ordered to be cancelled when so fraudulently returned by said Houstoun and Codrington to said Governor Reed, as aforesaid, who unlawfully delivered to said Codrington said State bonds numbered from 3001 to 4000, inclusive.

21st. Your orator, upon information, further states that the said bonds of the said Florida Central Railroad Company, so signed by the 13 said Swepson, as president, and said "H. H. Thompson," as pretended treasurer, were thereafter brought by said Houstoun to the State of Florida, but not to the office of or to be delivered to said company, but for the purpose of procuring the corporate seal to be affixed thereto, which was caused to be done, not by any direction or authority of said company, but by some person or persons who without authority procured the possession of the seal of said company, and took the same to some place out of the office of said company and affixed the same to said false, fabricated, and pretended bonds, contrary to law and in violation of the rights of said company and your orator in the premises.

22d. That the said pretended bonds, so fraudulently created and used, were thereafter in the manner aforesaid placed in the custody of the treasurer of the State of Florida, and are now in the personal custody of the defendant, Walter Gwynn, the treasurer of said State, who, your orator is advised and charges, holds the same for no good or lawful consideration, and of right should surrender and return the same to the said Florida Central Railroad Company, to be treated as worthless and held for naught. But your orator is informed, and verily believes, that said Walter Gwynn, as such treasurer, and said George F. Drew, as such governor, in some way pretend or assume that they have some right to hold and use and threaten to hold and use the said false, fabricated, and pretended bonds of the said Florida Central Railroad Company, so unlawfully placed in the hands of and possessed by the said Gwynn, and who, your orator believes, intend by some means to seek to enforce the said pretended bonds against the franchises and property of the said Florida Central Railroad Company, unless the said bonds are adjudged to be null and void, and ordered to be surrendered to said company, as hereinafter prayed.

14 *23th.* That after said Codington had, in the manner and by the corrupt agreement aforesaid, got possession of said bonds and escaped from the State of Florida, he took them to New York, and then proceeded to London, the time being then in the year 1871; and the said State bonds, numbered from 3001 to 4000, were still in New York, where they were attached in court and remained until the year 1872, at which time one Converse L. Chase was deputised to London as the agent of the Jacksonville, Pensacola & Mobile Railroad Company, and Milton S. Littlefield, with ample powers of attorney, for the purpose of arranging to retire the said State bonds, and to bring out a railroad bond secured by a first mortgage on the property of the Jacksonville, Pensacola & Mobile Railroad Company; but had no power or authority to act for, or in any manner bind, the Florida Central Railroad Company.

24th. That at the date last named, viz, A. D. 1872, the bond issue of the State of Florida to the Jacksonville, Pensacola & Mobile Railroad Company, and the sale of the bonds so issued, to the best of your orator's information and belief, stood as follows; that is to say:

Of the State bonds issued to the J. P. & M. R. R. Co.			3,000
(Numbered from 1 to 3000.)			
Of these, were sold		2,800	
Leaving of the first issue in New York		200	
Making the		3,000 bonds	
Of the first issue.			
Of the 1,000 State bonds of the second issue		1,000 bonds	
Issued to the J. P. & M. R. R. Co., when the said Central bonds were delivered by Codington (numbered from 3001 to 4000) 200 got to England	200		
And 800 bonds were attached in New York	800		
15 Which		1,000 bonds	
With the		200	
Of the first issue, made on hand in August, 1872, unsold, in London and New York.		1,200 bonds	

At this date John Collinson addressed to C. L. Chase the following letter:

50 OLD BROAD STREET, LONDON, *July* 26, 1872.

C. L. CHASE, ESQ.:

DEAR SIR: I beg to inform you that the following are the numbers of the Florida State bonds deposited with the London and County Bank:

No. 3001 to 3178.
No. 1727 to 1735.
No. 1737 to
No. 3179 to 3200.

Yours, faithfully,
(Signed) JOHN COLLINSON.

And your orator submits that this letter fixes the fact that no part of the said second and fraudulent issue in the alleged exchange for the Florida Central bonds numbered from 3001 to 4000 were sold previous to July, 1872.

25th. Your orator, upon information, further states the fact to be that long previous to this date full notice had been given to the said defendants, and to all other persons, of the false and fraudulent character of said 1,000 bonds, so pretended to be exchanged for said Florida Central Railroad bonds, not only by means of the suits prosecuted by said Robert H. Gamble and James D. Westcott, jr., and the fact that the agents of said Hopkins & Co. and said Collinson were privy to, and hence had knowledge of, said fraudulent agreements by and between said Houstoun, Codington, and others, but also by reason of the notorious fact that the said State of Florida had proclaimed the fraud-
16 ulent character of said bonds to the world by the presenting of articles of impeachment against the said Harrison Reed, governor, for the false and fraudulent issue of said $1,000,000 of bonds, and caused said Governor Reed to be solemnly arraigned at the bar of the senate of the State of Florida for trial upon said several articles of impeachment, as will more fully appear by inspection of said proceedings of the legislature of Florida on and subsequent to the 7th day of February, 1872, and that the 2d of said articles of impeachment against said Governor Reed had special reference to and was based upon the said $1,000,000 of bonds pretended to be issued for said Florida Central Railroad bonds, and which said second article was in the words and figures following:

"ARTICLE II. That in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, said Harrison Reed, governor of Florida, unmindful of the high duties of his office, of his oath of office, and in violation of the constitution of the State of Florida, and contrary to the provisions of an act entitled 'An act to alter and amend an act entitled "An act to perfect the public works of the State," approved June 24th, A. D. 1869,' approved January 28th, 1870, did then and there, with intent to violate the constitution of the State and the act aforesaid, and without authority of law, fraudulently conspire to issue State bonds to the amount of one million of dollars ($1,000,000), for the purpose of purchasing the stock of the Florida, Atlantic and Gulf Central Railroad Company, for the use and benefit of persons and parties, and with full knowledge of and consent to said purpose, and in collusion with such persons and parties, for his and their pecuniary benefit, whereby said Harrison Reed, governor of Florida, did then and there commit, and was guilty of, a high crime in office, and of incompetency and malfeasance."

17 26th. And your orator submits that said proceedings of impeachment by the legislature of Florida were of such solemn and public character, and of such general notoriety and proclamation to the world, as to be a lawful notice to each and all of the defendants, and all persons dealing in or handling said bonds.

27th. That in consequence of which proceedings and notice no more of said bonds were sold or used except as authorized by the said decree in chancery in England, as stated in this bill, and that said Chase was required to arrange to retire the whole of said bonds, and so advised the said defendants, as your orator is advised and believes to be true. And your orator further states that the said Jacksonville, Pensacola & Mobile Railroad Company also by a resolution passed by its directory on the 10th day of December, 1870, declared the whole of said bond issue fraudulent, and ordered the same to be immediately returned to the said company, and sent said resolution to the defendants and their agents in London, as will better be seen by a copy of said resolution and notice made part hereof, marked Schedule G.

28th. And your orator upon information states and charges the fact to be that the governor of Florida, the said Harrison Reed, had knowledge of the illegal and corrupt bargain made by and between said Codington, Houstoun, and others for the getting possession of the said bonds of the said Florida Central Railroad Company by the said Codington and the exchange of the bonds of the State of Florida therefor, and was corruptly interested therein, and deriving profit therefrom, and that by reason of such corrupt knowledge the said State of Florida had notice of and is bound by the facts above stated, and by the issu-
18 ing of said State bonds, with such guilty knowledge, for said company's bonds in no manner bound, or acquired any rights whatever against, said company, its franchise or estate, in law or in equity.

29th. That at this period, as stated, a fierce litigation was pending both in England and New York, involving the whole of said last-named bonds, but to which the Florida Central Railroad Company was not a party, and as the result of such litigation a consent decree was entered on the 29th day of August, 1872, in the court of chancery in England, signed by John Collinson and all other parties to the said suit, a copy of which is made part hereof, marked Schedule H.

30th. That by the terms of said decree 166 of the bonds were ordered to be sold and were sold by John Collinson, which increased the previous sale from 2,800 to 2,966; still leaving 34 of the first issue of bonds on hand in London; and the said consent decree also permitted the said Chase to donate 40 of the bonds to said Collinson for no good or valuable consideration to either the said railroad company or the State of Florida, but to compensate for a breach of contract on the part of S. W. Hopkins & Co., as your orator is informed and believes to be true; that the 40 bonds so given to Collinson consumed the 34 bonds of the first or 3,000 issue (numbered from 1 to 3000) to the Jacksonville, Pensacola & Mobile Railroad Company, and took 6 bonds of the second or 1,000 issue (numbered from 3001 to 4000,) leaving 194 bonds of the said second issue in London subject to immediate use, and, 2 of said bonds having been lost, left in hand just 192 bonds of the second issue, which were at the same time, by the said consent decree, ordered to be delivered to said Collinson to secure the payment of the interest on
19 the whole of the State bonds due in January, 1873, which dis-

posed of all the bonds in England on the said 29th day of August, 1872, leaving just 800 bonds (numbered between 3001 and 4000) in New York to be delivered to Collinson pursuant to said decree.

31st. That by the further terms of said decree 224 bonds of the said second issue were ordered to be returned to the State of Florida and cancelled, which was done accordingly, commencing at the highest number (4000) and cancelled back to 3776, leaving just 576 of the said second issue, and ranging from 3201 up to 3776, to be sent to England, according to said decree.

32d. That said decree in the court of chancery in England also required certain suits to be disposed of in the supreme court of New York, which was done by a judicial proceeding on the 6th day of December, 1872, as will better appear by a copy thereof, made part hereof, marked Schedule I; that by said schedule it is shown that said Collinson receipted for said bonds on the 6th day of December, 1872, and took the same to England.

33d. That the said Collinson did not purchase said 576 bonds nor the 192 bonds within the said seven months, or at any other time, so far as your orator is advised or can learn, and that the same are still remaining, or should be according to the terms of said decree, as follows; that is to say: 200 pledged to said Collinson, 576 held subject to the order of the State of Florida, or the said Jacksonville, Pensacola & Mobile Railroad Company; and the 224 cancelled accounts for all of the 1,000 bonds delivered by the said Harrison Reed, governor of Florida, to the said Thomas B. Codington, under and pursuant to said illegal and corrupt agreement aforesaid. But your orator states the fact to be that
not one of said bonds of the Florida Central Railroad Company
20 was issued by its authority or for its benefit to the said Codington, and that said Codington had no right or authority to exchange the same for or with the said Harrison Reed, governor, for the bonds of the State of Florida, and that the whole proceeding was fraudulent, null, and void as against the franchise, estate, and property of the said Florida Central Railroad Company.

34th. Your orator, further complaining, states that before and during the time the frauds aforesaid were being consummated, the said Houstoun, Codington, and the said Harrison Reed, governor, were all fully advised of the rights of your orator in the premises, and knew that your orator then had suits pending, and which are still pending, against the said Houstoun and others, for the purpose of protecting the rights of your orator, as herein alleged, and which your orator has never ceased to assert by all lawful means, as the rightful and equitable owner of the said 4,370 shares of the capital stock of the Florida Central Railroad, being more than four fifths of the whole amount of said stock.

35th. But your orator states the fact to be that, notwithstanding the matters and things as truly alleged in the premises, the defendants, Gideon Maria Boissevain, Joseph Zaddocks, Adrian J. Mildeus, and Adrian Stoop, pretend and allege that they have in some way acquired title to some of said bonds of the State of Florida, issued and delivered by Harrison Reed, governor, to said Codington, under said corrupt and illegal agreement aforesaid, on account of the said Jacksonville, Pensacola & Mobile Railroad Company, but for what consideration, or in what manner, your orator is not advised, except so far as advised by the matters hereinafter stated; but that said parties, of their own knowl-
21 edge, have never alleged or claimed to have received or held any of said bonds whatever, for or on account of the said Florida Central Railroad, but, on the contrary, distinctly averred that the whole and

every part of the bonds of the State of Florida received or held by them were issued by and in aid of, and received by them for the use of, the Jacksonville, Pensacola & Mobile Railroad Company, and not otherwise; and also distinctly state and show that by a proclamation of, the said Harrison Reed, governor, as aforesaid, dated the 2d day of December, 1872, the name of the Florida Central Railroad Company or its corporate liability was in no manner involved or mentioned in said proceedings, as a ground or basis of credit or charge for the payment of any of said bonds, as will better appear by the said memorandum and certain other papers attached thereto, made part of this complaint, marked Schedule I.

36th. That upon no other facts or information exhibited the defendant, Frank R. Sherwin, a person having no interest whatever in the bonds or securities involved in this suit, and a total stranger to the proceedings that created them, but seeking to intermeddle for the benefit of himself and others associating with him for the purpose of gain and profit to themselves, did on or about the 30th day of December, 1876, file in the office of the governor of Florida a petition sworn to on the 26th day of September, 1876, wherein he states that he is an agent in this country for the defendants, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddocks, and Adrian Stoop, whom he, the said Sherwin, claims the right and authority to bind by his action, and assumed to state for said parties what they did not and do not state for
22 themselves, that is, that the said parties claimed to be the holders of 206 State bonds issued for and on account of the Florida Central Railroad Company, when in fact the memorandum dated August 6th, 1876 (Schedule F), sworn to by said Boissevain on the 6th of October, 1876, in no manner sustains any such allegations, but expressly contradicts the petition of said Sherwin, who, in fact, exhibits no general power of attorney or other authority for his action, or that could bind the said parties he pretends to represent.

37th. That upon no other authority than as above stated, and in the absence of any proof of the truth thereof, and without any notice to or demand upon the said Florida Central Railroad Company, Marcellus L. Stearns, late the governor of Florida, did, on the 30th day of December, 1876, seize and advertise the said Florida Central Railroad for sale on the 2d day of April, 1877, at public auction, as will appear by a public notice then and still being published by the said governor in several newspapers, to the great damage and injury of the said Florida Central Railroad Company and its stockholders and creditors, a copy of which order of seizure and advertisement of sale of said Florida Central Railroad is made part hereof, marked schedule K.

38th. Your orator states that upon seeing said advertisement the said Florida Central Railroad Company, through counsel, appeared before the present governor of Florida, Hon. George F. Drew, as also did your orator, by its solicitor, and protesting against such seizure and advertisement and denying that the petition of said Sherwin was sufficient evidence either in law or in justice to warrant the exercise of such arbitrary power of seizure and sale, and denying that the said Florida Central Railroad Company ever issued any bonds or authorized the
23 delivery of any such bonds as pretended in said advertisement, and denying that any of the bonds of the said company ever were authorized to be delivered to the said Jacksonville, Pensacola and Mobile Railroad Company, and denying that any bonds of said Florida Central Railroad Company ever were, in fact, issued and delivered to the said Jacksonville, Pensacola & Mobile Railroad Company or to the

State of Florida, in exchange for the bonds of said State, and declaring its willingness to pay the interest on any bonds that should appear to be a just and legal charge against said company, insisted that said governor should require the said Sherwin or his constituents to bring their suit in the proper courts of justice and sustain their said demand upon proof, where the said company and the lawful owners of its stock could have a chance to interpose their defence, according to the rules and usages of courts of law and equity; but that notwithstanding the facts so stated and tender and request made, the said governor has not annulled said seizure and revoked said advertisement of sale, whereby the said Florida Central Railroad Company and your orator, the owner of a large majority of its capital stock, together with all other stockholders, are suffering great and irreparable injury on account of said illegal, arbitrary, and unwarranted seizure.

39th. Your orator is advised, and so charges, that neither the act of the legislature of Florida of the 24th of June, 1869, nor the act amendatory thereof of January 28, 1870, had or was intended to have any application whatever to the said Florida Central Railroad Company, any more than to any other corporation or body politic not mentioned therein; that the acts and proceedings whereby said bonds of the Florida 24 Central Railroad Company passed into the hands of the State of Florida, besides being illegal, fraudulent, and corrupt as aforesaid, were not in conformity with the requirements of said laws; that among other things your orator is advised that said State bonds were only to be issued to any railroad company "when the president thereof shall certify upon oath that the road or parts of road for which he asks for an exchange of bonds is completed and in good running order," and that no such "certification upon oath" was ever made or filed with the governor of the State of Florida by the president of said Florida Central Railroad Company as a ground to justify the issuing of said bonds; and that there was no law authorizing the said Florida Central Railroad Company to execute its bonds to the Jacksonville, Pensacola & Mobile Railroad Company or that authorized the latter company to accept such bonds for any purpose whatever; and that said Florida Central Railroad Company never issued a first mortgage bond or a bond secured by a mortgage of any kind, according to the meaning of said act of January 28, 1870; and that there was no law or authority conferred by said statute authorizing said Florida Central Railroad Company to make a bond payable to the State of Florida or that could authorize or require the State of Florida to transfer or assign said bond by endorsement to any other holder thereof; and that the constitution of the State of Florida conferred upon the legislature no authority to create or make any such contract, and that the said act is therefore null and void and not binding upon the said Florida Central Railroad Company.

40th. That your orator is also advised, and so charges, that the constitution of the State of Florida conferred and could confer no power 25 whatever authorizing the Florida Central Railroad Company (had the passage of such law been attempted) to impose a debt of one million (1,000,000) dollars on the property of its stockholders, and double the par value of the said capital stock, which was only $555,000, and thereby rendering the same valueless as a property, as aforesaid, for the use and benefit of the Jacksonville, Pensacola and Mobile Railroad Company, and that no such agreement or contract was ever proposed, made, or entered into by and between said companies, which, besides being ultra vires and void, the records and archives of neither of said companies exhibit any written agreement or resolution to that effect; and that a contract binding said corporations cannot be created by mere assertion or implication or by any other authority than by express power conferred by law, and must exist before any stock is acquired, taken, or paid for; and that the stock owned by your orator previous to October, 1869, could not be impaired in value by such legislation, had in truth such a law been passed, which your orator is advised is not the case.

41st. Your orator is further advised, and upon information and belief states, that said Florida Central Railroad Company was duly chartered by the legislature of the State of Florida by an act passed and approved on the 29th day of July, 1868, as will better appear by said law made part hereof, marked Schedule L; that said charter has never since been altered or amended, and that the said act of the 28th day of January, 1870, altering and amending the said act incorporating the said Jacksonville, Pensacola & Mobile Railroad Company in no manner altered or amended the charter of the said Florida Central Railroad Company; and that said Florida Central Company never by any
26 resolution of its board of directors or stockholders in any meeting
convened, accepted or adopted the said act of the 28th January, 1870, or any of the provisions of said act, and is in no manner bound or affected thereby, but is to all intents and purposes a total stranger to the same.

42d. Your orator is further advised, and so states and charges, that acts of the legislature of Florida of the 24th of June, 1869, and the 28th of January, 1870, did not in terms, nor by implication, confer upon the State obligation or responsibility of assuming or discharging the duties of a trustee in the seizing and selling the railroads mentioned in said acts or of handling and disbursing the proceeds or avails thereof; that there is no power granted by the constitution of the State of Florida authorizing its legislature to pass a law imposing such duties on said State or its executive, had such a law in express terms been enacted; that the relations of trustees and cestui qui trust cannot exist between the State and its citizens or individuals; that there must be a relation of contract and mutual responsibility, with a legal remedy, to create such relation, affording legal redress against the State for breach of trust; and the State cannot have imposed upon it the responsibility resulting from the consequences of a breach of trust; and that no relief could be obtained except through an act of the legislature, which would be a mere matter of discretion, and not one of obligation—a discretion resting with the very source authorizing the injury, and hence doubtful, if not denied—an injury which no legislative body can impose upon any citizen of the United States, or upon any body corporate or politic existing therein.

43d. And your orator is further advised, and so states and
27 charges, that if there was such extraordinary authority conferred by the constitution of the State of Florida upon its legislature, and that said act had been passed pursuant thereto; that the same could not be executed according to its letter and absolute requirement in the present case, because the third section of the act of January 28, A. D. 1870, positively directs that "all moneys arising from said sale and paid into the treasury of the State, as before prescribed, shall be promptly and exclusively applied to the payment and satisfaction of the bonds issued by the State of Florida under this act," etc., and can be applied to no other purpose and in no other way, and that there was no "bonds issued by the State of Florida under this act, and hence no application can be lawfully made of the proceeds of said railroad, if sold, and certainly not till further legislation could be procured,

thus exposing the rights of your orator and all other parties interested in said Florida Central Railroad to oppressive and intolerable delays and injury without any adequate redress.

44th. Your orator, further complaining, states that the only consideration provided by said acts of the legislature of Florida, aforesaid, for the delivery of the bonds of the said Florida Central Railroad Company, if any such act or agreement ever existed, was the delivery in exchange therefor of bonds of the State of Florida, which could be used as capital, and which could pass as a good and valid security in the market; but that no such bond of the State of Florida was ever created or paid over to the said Florida Central Railroad Company or the said Jacksonville, Pensacola & Mobile Railroad Company, but, on the contrary, the bonds pretended to be exchanged were utterly worthless, null and void, and were attempted to be created in violation of the
28 powers conferred by the constitution of Florida, and therefore
never had any legal existence or validity or value more than any other piece of blank paper, and could not, and did not, constitute a good or lawful consideration for the receipt of said Florida Central Railroad bonds from said Codington, or create or vest any rights whatever.

45th. Your orator further states that the said Florida Central Railroad Company, in consequence of controversies over its management during the past four years, is claimed to be under the control of three or four different boards of direction and local management, and in consequence thereof has for several years past been deprived of the use, benefit, and enjoyment of its own earnings, though amounting annually to a large sum of money, and because of such controversies and litigations has been unjustly forced into the hands of a multitude of receivers, and is so held at the present time, and is not under the control of its board of directors or lawful officers, so as to be able to institute this suit in defence of its franchise and property; that your orator has called on the persons ostensibly in charge of the said road and such of the officers of said company as could be ascertained, and urged the bringing of this suit, but was advised that none of said persons were in a condition to do so; that your orator having the largest interest in the stock of said company, which would be greatly impaired in value, if not rendered wholly worthless, if said seizure and sale is not restrained, is compelled to institute this suit to protect its just, lawful, and equitable rights in the premises.

46th. Your orator further states that no place was ever designated or pointed out for the payment of any interest to any person or
29 to any amount; that no demand was ever made upon or notice
given to the said Florida Central Railroad Company that any State bonds had been sold on its account, or that were a charge against it, either for $1,000 or for $1,000,000, or whether it had to pay $70,000 a year interest, or any defined or definable portion of that amount, nor was it in any other way advised what amount of interest it had to pay to protect its property and franchise, nor was it so notified before said seizure and advertisement; nor does the said order of seizure and advertisement of sale inform said company, or those interested in its stock, what is the extent of the demand against it, or what amount of interest it is bound to pay, but its property is seized without notice and offered for sale for an indefinite amount; all of which your orator charges is oppressive and unjust, and in violation of law.

47th. Your orator, in seeking equity, tenders to pay or cause to be paid the interest on the said 206 bonds, whenever the same is shown to be the act and deed, and debt, bond or obligation of the said Florida Central Railroad Company, and offers, as the equitable owner of said stock, to provide for and pay any and all just demands in favor of the said Sherwin, or the said Boissevain, Mildeus, Zaddocks and Stoop, for and on account of the said 206 bonds, in such manner as this honorable court may direct, upon the final hearing and determination of this cause.

Wherefore, the premises considered, and inasmuch as your orator is wholly without remedy at law, and can have no redress except by the interposition of this honorable court, your orator prays that the United States writ of subpœna may issue to require the said defendants, each
and all of them, to wit, George F. Drew, governor of the State
30 of Florida, Walter Gwynn, treasurer of the State of Florida, the
Florida Central Railroad Company, the Jacksonville, Pensacola & Mobile Railroad Company, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddocks, Adrian Stoop, Frank R. Sherwin, John Collinson, Thomas B. Codington and Milton S. Littlefield, to appear at a day named, under a suitable penalty, and each upon his or their separate corporate oaths, and the said corporations defendants under the oaths of their proper officers, attested by the respective corporate seals, true and perfect answer make to all and singular the allegations of this bill of complaint.

And your orator further prays that in the meantime and to protect your orator and said Florida Central Railroad from irreparable injury, that the said George F. Drew, governor aforesaid, and all and singular his servants, agents or attorneys, together with all other persons whomsoever in that behalf intermeddling, be restrained and enjoined from the further seizing, holding or advertising for sale the said Florida Central Railroad, or in any manner molesting or interfering with the same until the final hearing of this cause or the further order of this honorable court.

And your orator further prays that said defendants, the said John Collinson, Thomas B. Codington, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddocks, and Adrian Stoop, shall each specifically answer as to when, how and in what manner, and for what consideration, they or either of them, severally or jointly, for themselves or for others, got possession of or held any bonds of the Florida Central Railroad Company or the bonds of the State of Florida received in exchange
for such Florida Central Railroad Company's bonds; and especially
31 what dealings they or either of them had with Edward Houstoun,
R. H. Gamble, James D. Westcott, jr., Harrison Reed, governor, or any other person whomsoever, in getting possession of the said Florida Central Railroad Company's said bonds, and the exchange thereof with said R. H. Gamble or said Harrison Reed, governor, for State bonds, and what consideration was paid or agreed to be paid therefor, and by what means and out of what money said consideration, if any, was paid, and to and by whom, giving in full the details and particulars thereof.

And your orator prays that said John Collinson may show and exhibit in full his dealings in and with the said bonds of the State of Florida, if any he received that were exchanged for Florida Central Railroad bonds, and what amount of such bonds he sold, if any, and to whom and for what price, and what amount of said bonds he purchased, if any, and of whom and for what price, and what amount of interest he advanced or paid on the said bonds of the State of Florida, if any, and upon what security, if any, and that he render and file a full and exact account thereof, and especially as to the said 166 bonds and the said 200 bonds, and the said 40 bonds, and the said 224 bonds, and the said 576 bonds, and all other bonds mentioned in the said consent decree in the court of chancery of England in the bill of complaint mentioned.

Your orator further prays that the defendant Thos. B. Codington may personally full, true and perfect answer make as to when, how and for what object and in what manner he became connected with the said Florida Central Railroad bonds, and by what means he secured the exchange therefor of the said bonds of the State of Florida, from whom he got the company's bonds, from whom he got the bonds of the
32 State of Florida; what he paid or agreed to pay Robert H. Gamble, comptroller of the State of Florida, if anything; what he paid or agreed to pay, or caused to be paid to Harrison Reed, governor, if anything; what he paid or agreed to pay James D. Westcott, jr., if anything; what he paid or agreed to pay J. P. Sanderson, if anything; what he paid or agreed to pay F. H. Flagg, treasurer of the Florida Central Railroad Company, if anything; what he paid or agreed to pay to P. J. Sanderson, president of said company, if anything, and what induced such payments or agreements to pay, and whether said sums or any of them were paid, and if so, when and out of what funds, and whether there was any suit or suits pending restraining the delivery or use of said bonds of the Florida Central Railroad Company on the grounds the same were not the bonds of the company, and were fraudulent; and if not upon those, state upon what grounds, and that said Codington may state in what manner and by what means of conveyance he departed from the State of Florida with said bonds, and if by private conveyance, was such mode adopted to avoid and prevent other suits and injunctions on the part of other stockholders of said Florida Central Railroad Company, and if in his dealings with said bonds he acted as agent for anybody, and if so, whom; and what interest, if any, he has or claims now in the stock or bonds of the Florida Central Railroad Company, and if so, what amount and how claimed or acquired.

And your orator prays that said Frank R. Sherwin may state, set forth and file, as part of his answer, an exact copy of the power of attorney or authority received from the said Boissevain, Mildens, Zadocks, Stoop, or either of them, under and by virtue of which he peti-
33 tioned and prayed for the seizure and sale of the said Florida Central Railroad, so as to enable your orator and said company to know who is responsible for said proceedings, and to whom to look for costs or legal redress for damages.

And your orator prays that the said corporations defendants, the said Jacksonville, Pensacola & Mobile Railroad Company and the said Florida Central Railroad Company, may set forth under their corporate seals what, if any, order or ordinance, resolution, agreement or stipulation they, or either of them, entered into with the State of Florida, or with each other, for the purpose of issuing and delivering the bonds of the said Florida Central Railroad Company to the Jacksonville, Pensacola & Mobile Railroad Company, with the agreement and understanding that the last named company was authorized to exchange said bonds for bonds of the State of Florida, and that said companies set forth a copy of any certification upon oath of the presidents of said roads, or either of them, asking for such exchange of bonds, together with the dates and particulars thereof, and that they set forth, under their respective corporate seals, copies of any and all resolutions of the directors or stockholders, with their respective names, authorizing or directing such bonds to be issued, exchanged, or received.

Your orator further prays that the defendant, Walter Gwynn, treasurer of the State of Florida, be ordered and directed to deliver and return said pretended bonds of the Florida Central Railroad Company to the custody and possession of the said company, and that the same be decreed null and void and held for naught.

And upon final hearing your orator prays that the said bonds so used
and appropriated by the said Houstoun, Swepson, Gamble, Cod-
34 ington, and said Harrison Reed, governor of Florida, and pur-
porting to be signed by George W. Swepson as president, and "H.
H. Thompson, treasurer," dated January 1st, 1870, may be adjudged, ordered and decreed not to be the act and deed or the bond and obligation of the said Florida Central Railroad Company; that said Thompson never was the treasurer of said company, and had no authority to sign said bond as such officer; and that said bonds were issued and uttered contrary to law, and are held for no good or valuable consideration, and that the same are held contrary to law and are not binding on said company, and that they may be decreed void and held for naught.

And your orator prays that said John Collinson, Thomas B. Codington, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zadocks, Adrian Stoop, and their joint and several agent or agents, attorney or attorneys, and especially their alleged agent, the said Frank R. Sherwin, if such he be, be forever and perpetually enjoined from further handling, using, or uttering said bonds, and from further demanding of, suing, harassing or annoying the said Florida Central Railroad Company for or on account of said bonds or any of them in the premises alleged.

And your orator prays that it may have such other, further and general relief as to this honorable court may seem just and equitable in the premises, and a decree for the costs of your orator in this behalf expended.

JOS. B. STEWART,
Solicitor for the W. D. W. N. C. R. R. Co.

R. M. SMITH,
Of Counsel.

35 UNITED STATES OF AMERICA,
Northern District of Florida:

Joseph B. Stewart, being duly sworn, says that he is the attorney in fact of the western division of the Western North Carolina Railroad Company; that said company is a citizen of the State of North Carolina, having its business office and corporate seal at Ashville in said State; and that neither its president nor any of its officers are within this district, and therefore cannot subscribe to, or certify to, this bill of complaint.

That deponent has read the foregoing bill of complaint, and knows the contents thereof, and the matter therein alleged; that his knowledge is derived from the inspection of records, and from information from intelligent and well-advised sources known to the deponent; that the matters stated within deponent's own knowledge are true, and that the matters stated upon information he believes to be true.

JOS. B. STEWART,
Attorney in fact for the W. D. W. N. C. R. R. Co.

Sworn to and subscribed before me, this 9th day of Feb., A. D. 1877.
[L. S.] PHILIP , *Clerk.*

36 SCHEDULE A.

Summons for relief.

New York supreme court, city and county of Yew York.

THE WESTERN NORTH CAROLINA RAILROAD
Company, for the Western Division of said
Road, plaintiff,
against
E. HOUSTOUN AND MILTON S. LITTLEFIELD,
defendants.

To the defendants above named:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county of New York, and to serve a copy of your answer to the said complaint on the subscriber at his office, No. 29 Wall street, New York City, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated New York, October 3d, 1870.

ALGERNON S. SULLIVAN,
Plaintiff's Attorney, 29 *Wall Street, New York City.*

STATE AND COUNTY OF NEW YORK,
Supreme Court:

THE WESTERN NORTH CAROLINA RAILROAD
Company, for the Western Division,
against
E. HOUSTOUN AND MILTON S. LITTLEFIELD.

CITY AND COUNTY OF NEW YORK, *ss:*

George W. Swepson, of Alamance County, in the State of North Carolina, being duly sworn, makes oath and says:

From October, 1868, to October, 1869, I was president of the Western North Carolina Railroad Company for the Western Division. As president and for said company, I received possession of over six millions of the bonds of said State. I hypothecated said bonds in the city of New York, and out of the proceeds I purchased and paid for about three thousand shares of stock of the Florida Central Railroad Company. I did this through my agent, Mr. Edward Houstoun, who is defendant in this action. He knew from my telling him that I obtained the funds for said purchase, as above stated, and that in fact and in equity said western division of said Western North Carolina Railroad Company were the owners of said stock. About October, 1869, I ceased to be president of said company and Milton S. Littlefield became the president as my successor.

In negotiating and making settlements as retiring president with said Littlefield as incoming president for said railroad company, I passed over as assets for said company said three thousand shares of Florida Central Railroad Company stock; said Littlefield said he would receive it and account to said company, he being the president thereof. At his
37 request I transferred said stock to him in his individual name,

but it was for said Western Division North Carolina Railroad Company, and it was so received by said Littlefield, president of said company.

This settlement was in November, 1869. About May, 1870, said Houstoun had negotiations with said Littlefield, individually, to sell to said Littlefield his (Houstoun's) stock in the Florida Central Railroad, and also some bonds of the Tallahassee Railroad Company, and the Pensacola and Georgia Railroad Company.

On that transaction there remained due to Houstoun about $160,000, and an agreement was made that Houstoun should take as collateral security a pledge from Littlefield of said three thousand shares of Florida Central Railroad stock. Subsequently said Florida Central Railroad Company issued one million dollars of their bonds, and agreed with Harrison Reed, then governor of the State of Florida, to make, as the loan allowed, an exchange of said railroad bonds for an equal amount of the bonds of the State of Florida.

But said Governor Reed refused to deliver said State bonds, unless as an additional security they should with said three thousand shares of stock be placed in the hands of said Houstoun to secure payment of said debt due by said Littlefield to said Houstoun as well as some other private debts of said Littlefield. That in accordance with said requirement of said governor and the agreement to that effect between said governor and said Houstoun, said one million dollars of state bonds were so placed in the hands of said Houstoun. Affiant says he is informed by said Littlefield, and verily believes, that said arrangement to that effect between said Houstoun and said Governor Reed.

Affiant further says that he was informed by said Governor Reed that he, the said governor, was personally and pecuniarily interested with said Houstoun in a portion of the profits which Houstoun might make on the purchase and sale of a portion of the stock of the Florida Central Railroad Company, which Houstoun had bought at twenty cents on the dollar, and that under the agreement and sale to Littlefield of the said stock Littlefield was, as I learned, to pay par.

Affiant further says that previous to this delivery of stock and State bonds to said Houstoun by said Littlefield, he, said Littlefield, both in his individual capacity and as president of the Jacksonville, Pensacola & Mobile Railroad Company, pledged the whole interest and portions held by him, said Littlefield, of every kind and nature, in said railroad in Florida, or in any or all of them, to secure to said Western North Carolina Railroad Company all moneys due to said company from this affiant as aforesaid, and that pledge covered the very securities pledged subsequently, as above stated, by said Littlefield to said Houstoun.

Affiant further says that throughout all said transactions said Houstoun knew and was fully notified that all of said interest purchased by affiant in said Florida Railroad were purchased with funds raised in the city of New York by the hypothecation of the bonds which belonged to the Western North Carolina Railroad Company.

Affiant further says he is informed and believes that said Houstoun intends to sell said three thousand shares of stock in New York City on the 4th of October, instant, at No. 111 Broadway, at 10½ o'clock a. m., and affiant has received from said Houstoun a written notice to that effect, of which a copy is hereto annexed, marked Exhibit No. 1.

Affiant further says he is informed and believes that the intention of the said Houstoun is to sell said stock separately subject to said mortgage bonds, and afterwards to sell said State bonds. And he is by law as owner of said State bonds, entitled to exchange them for said railroad mortgage bonds, so he can become by said sale owner of the majority of the stock of said company and also owner of its mortgage debt.

38 Affiant further says that a knowledge of said facts, above stated, has become public to a great extent, and that has produced doubts and clouds upon the title and value of said stock and securities, and if allowed to be sold as proposed, they will yield scarcely anything, and said Western North Carolina Railroad Company will be defrauded and lose their entire claim, or nearly so; that it will be irreparably injurious to said Western North Carolina Railroad Company and to their just rights, and affiant knows that all of said securities represent the money and funds of said Western North Carolina Railroad Company.

Affiant further says neither said Littlefield nor said Houston resided in the State of New York, but they reside in Florida, as affiant is informed and believes; but affiant is informed that said Houstoun is now in New York City.

Affiant says he is informed and believes that said Houstoun had said State bonds and said certificates of stock in the city of New York a few weeks ago; but affiant does not know where they are.

GEORGE W. SWEPSON.

Subscribed and sworn to before me this 3d day of October, A. D. 1870.

W. E. CARPENTER,
Notary Public, New York City.

EXHIBIT 1.

NEW YORK, N. Y., *September* 23, 1870.

To GEORGE W. SWEPSON,
Hawes River, North Carolina :

SIR: On the 4th day of October next, at 10½ (ten and a half) a. m., I will cause to be sold at the Exchange salesroom, Trinity Buildings, No. 111 Broadway, in this city, at public auction, to the highest bidder, 3,110 (three thousand one hundred and ten) shares of the capital stock of Florida Central Railroad Company held by me, and agreement heretofore entered into between Milton S. Littlefield and myself. This notice is given in compliance with aforesaid referred-to agreements.

Respectfully,

E. HOUSTOUN.

New York supreme court, county of New York.

THE WESTERN NORTH CAROLINA RAILROAD Company, for the Western Division of said road,
against
E. HOUSTOUN AND MILTON S. LITTLEFIELD.

At chambers, held at the court-house, in the city of New York, October 4th, A. D. 1870. Present, Hon. George G. Barnard, justice.

On motion of Algernon S. Sullivan, attorney for said plaintiffs, and on reading and filing the affidavit of George W. Swepson, and it appearing to me that sufficient grounds thereof exist, I do hereby order that 39 the said defendants and each of them above named, and their agents, employees, and representatives, do all and each of them, until the further order of this court, refrain from selling or offering to sell, assigning, transferring, concealing, removing from this State, or in any way transacting business about certain certificates of stock (about three thousand shares) in the Florida Central Railroad Company, and one million dollars in bonds of the State of Florida, all which stock and bonds were placed in the hands of said Houstoun by or through the agency of said defendant, Littlefield, as collateral security.

GEORGE G. BARNARD, *J. S. C.*

40 SCHEDULE B.

No. 501] UNITED STATES OF AMERICA. [$1,000.

STATE OF [Florida coat of arms] FLORIDA.

Bond of the Florida Central Railroad Company.

Cut of train of cars.] [Cut of steamship·

Know all men by these presents, that the Florida Central Railroad Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars, for value received, which sum the said Florida Central Railroad Company promises and agrees to pay to the State of Florida on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon at the rate of eight per centum per annum, payable semi-annually on the first days of July and January in each year on the presentation and delivery of the proper coupons hereto attached.

This bond is one of a series of like tenor, limited to sixteen thousand dollars per mile, issued in accordance with an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled, "An act to alter and amend 'An act entitled an act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine, and given in exchange for bonds issued by the State of Florida to aid the Jacksonville, Pensacola & Mobile Railroad Co. to complete, equip and maintain its road for an equal amount in accordance with said act.

In witness whereof the said company has caused this bond to be signed and attested in its behalf by its president and its common seal affixed at its office in this first day of January in the year 1870.

[FLORIDA CENTRAL RAILROAD COMPANY, 1868.]
GEO. W. SWEPSON, *President.*
H. H. THOMPSON, *Treasurer.*

Issued in accordance with the provisions of an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "an Act to alter and amend an act entitled An act to perfect the public works of the State," approved June 24th, eighteen hundred and sixty-nine.

January 1st, 1870.

Governor's Certificate.

EXECUTIVE OFFICE,
Tallahassee, January 31, 1877.

I, George F. Drew, governor of Florida, hereby certify that the within is a true and correct copy of original bond No. 501 now on file in the office of State treasurer.

GEO. F. DREW,
Governor.

41 SCHEDULE C.

This memorandum of contract and agreement, made and entered into this day between Edward Houstoun, party of the first part, and Milton S. Littlefield, party of the second part, witnesseth:

That Edward Houstoun has this day sold to Milton S. Littlefield four drafts drawn by George W. Swepson on Milton S. Littlefield, dated August 2d, 1869, and accepted by said Littlefield, one for twenty-six thousand five hundred and twenty dollars ($26,520), due at six months; one for twenty-seven thousand and thirty dollars ($27,030), due at nine months; one for twenty-seven thousand five hundred and forty dollars ($27,540), due at twelve months; one for twenty-eight thousand and fifty dollars ($28,050), due at fifteen months, and that said Houstoun has this day sold to said Littlefield one thousand three hundred shares of stock in the Florida Central Railroad Company. In payment for said drafts and said stock said Littlefield has paid said Houstoun ten thousand dollars in cash and the drafts of said Littlefield, of this date, on S. W. Hopkins & Co., of 71 Broadway, N. Y., for one hundred and sixty-three thousand and seventy and twenty-hundredths dollars, due sixty days from date. To secure the payment of said draft of $163,070 20-100, it is agreed that said Houstoun shall retain possession of said four drafts by George W. Swepson on said Littlefield, and also the one hundred and ten bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, now in his possession as collateral, and in addition thereto said Littlefield hereby obligates himself immediately to deposit with F. H. Porter, of the banking house of Soutter & Co., 53 William street, New York, certificate of stock for 3,110 shares of the stock of the Florida Central Railroad Cumpany, with directions to said Porter to hold said certificate till said draft of $163,070 20-100 shall fall due, and then, if said draft is not promptly paid within ten days after it falls due, to deliver said certificate to said Houstoun, or his order, and in the event said certificate shall be so delivered to said Houstoun he is hereby authorized to sell the said three thousand one hundred and ten shares of the stock of the Florida Central Railroad Company at public auction, to the highest bidder, on mailing to the address of M. S. Littlefield, Tallahassee, Florida, and to the address of George W. Swepson, Haw River, North Carolina, and to the address of S. W. Hopkins & Co., No. 71 Broadway, New York, notice of the time and place of such sale in the city of New York, ten days previously to day of sale, and said Houstoun may become a purchaser at said sale.

On the payment of said drafts, said Houstoun hereby obligates himself to transfer the said shares of stock hereby sold, to deliver to said Littlefield the said 1,300 shares of stock sold, and also the one hundred and ten bonds of the Tallahassee Railroad Company, which Houstoun now holds as collateral security for the payment of said four drafts, together with all the coupons on said bonds falling due from and after the 20th of March, 1869.

This is understood and intended to be a full, complete, and final settlement of all matters between either George W. Swepson or M. S. Littlefield and Edward Houstoun.

In testimony of all which, the parties aforesaid have hereunto set their hands and seals, at Tallahassee, Florida, the thirteenth day of May, A. D. 1870.

(Signed) E. HOUSTOUN. [SEAL.]
M. S. LITTLEFIELD. [SEAL.]

Signed, sealed, and delivered in presence of—
ROLLIN STEWARD.
D. J. WALKER.

42 SCHEDULE D.

STATE OF FLORIDA,
Leon County:

This agreement, made and entered into at the city of Tallahassee, in the county and State aforesaid, between Milton S. Littlefield, party of the first part, and Edward Houstoun, party of the second part, witnesseth:

That whereas the said Edward Houstoun owns and holds a certain draft, which is in the words and figures following, to wit:

$163,026 70-100.] TALLAHASSEE, *May* 13, 1870.

Sixty days after date, pay to the order of Edward Houstoun, one hundred and sixty-three thousand and twenty-six 70-100 dollars, value received, and charge the same to account of

Acceptance waived. M. S. LITTLEFIELD,
President J., P. & M. R. R. Co.

To Messrs. S. W. HOPKINS & Co.,
71 *Broadway, New York.*

For the payment of which said, the said Edward Houstoun has and holds as security the following securities: 103 first mortgage bonds of the Pensacola and Georgia Railroad Company and of the Tallahassee Railroad Company, amounting to one hundred and three thousand dollars of said bonds; one thousand three hundred shares of the capital stock of the Florida Central Railroad; four (4) drafts of George W. Swepson on M. S. Littlefield—accepted by said Littlefield—one draft for $26,520, due at six months; one draft for $27,030, due at nine months; one draft for $27,540, due at twelve months; one draft for $28,050, due at fifteen months; all of said drafts being dated August 2d, 1869, and amounting in the aggregate to the sum of one hundred and nine thousand one hundred and forty dollars, exclusive of interest thereon; and whereas the said draft of $163,026 70-100 was given to the said Houstoun for value received in the various transactions between the parties, relative to the Jacksonville, Pensacola & Mobile Railroad Company and the Florida Central Railroad Company, growing out of the late Pensacola and Georgia Railroad Company and said Florida Central Railroad Company and the Tallahassee Railroad Company.

And whereas, it is to the great interest of parties of the first and second parts, that money should be raised to promote the interests of said Florida Central Railroad Company to extend and provide for the business of said company and to pay said draft when due.

And whereas, the said parties of the first and second parts are owners and proprietors of more than a majority of the capital stock of said Florida Central Railroad.

Therefore, know all men by these presents, that the said parties of the first and second parts do hereby covenant and mutually agree, each with the other, that they do cause to be issued one million dollars of the first mortgage bonds of the Florida Central Railroad Company of like denomination and effect and condition as the first mortgage bonds of the Jacksonville, Pensacola & Mobile Railroad Company, which said one million of dollars of said bonds are to be placed in the hands of the said Edward Houstoun, as additional security for the payment of said draft for one hundred and sixty-three thousand and twenty-six dollars and seventy cents, to be held by the said Houstoun, in addition to the securieties aforesaid, for the faithful payment of said draft at maturity, and it is further agreed that if the said draft is not paid at maturity then and in that event the said Edward Houstoun is hereby authorized and fully empowered to cause said one million of dollars of the bonds of said Florida Central Railroad Company, placed in his hands as security for said draft as aforesaid, to be sold at public outcry in the city of New York, after default of payment of said draft, upon giving ten days' notice of said sale of said bonds, and of the time and place of said
43 sale, to Milton S. Littlefield, by mail to his residence at Tallahassee, Florida, and by giving like notice to Messrs. S. W. Hopkins & Co., No. 71 Broadway, New York City, by delivering said notice at their office, and by giving ten days' notice of said sale in the New York Herald, by advertisement, at which sale of said bonds the said Edward Houstoun may become the purchaser; and in the event of the sale being made as aforesaid, the said Edward Houstoun, after first paying said draft and the expenses of said sale of bonds, shall pay over all the other moneys arising from said sale and all the securities now in his hands and heretofore set forth and enumerated to the said Milton S. Littlefield, and the said Houstoun shall only retain of or from said sale of bonds and securities aforesaid sufficient to pay said draft and expenses of selling said bonds.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals this 30th day of May, A. D. 1870.

(Signed) MILTON S. LITTLEFIELD.
(Signed) EDWARD HOUSTOUN.

44

SCHEDULE E.

The agreement made between Milton S. Littlefield and Edward Houstoun, dated 30th May, 1870, is hereby modified, changed, and altered, as follows, to wit:

First. In lieu of one million dollars of first-mortgage bonds of the Florida Central Railroad Company, which, by said agreement, were to be placed in the hands of said Houstoun as security for the payment of the draft in said agreement mentioned, there shall be placed in the hands of said Houston, as security for the payment of the draft in said agreement mentioned, the same amount of bonds of the State of Florida to be exchanged for the said bonds of the Florida Central Railroad Company.

Second. If said draft be not paid at maturity, the said Houston is authorized and empowered to sell said bonds of the State of Florida at public outcry, giving the notice of sale as provided for in said agreement, and said Houston may become a purchaser at said sale.

Third. After first paying said draft and expenses of sale, said Houstoun shall, out of the balance of the proceeds arising from the sale of said bonds, if sufficient for this purpose, pay to John P. Sanderson the sum of fifty-seven thousand five hundred and sixty dollars; to M. D. Papy sixteen thousand dollars; to T. M. Brevard, attorney of certain holders of bonds of the Pensacola & Georgia Railroad Company, if certain negotiations now pending for their purchase be consummated, the sum of fifty thousand dollars; to John P. Sanderson, president of the Florida Central Railroad Company, three hundred and forty thousand dollars. After these payments, the balance, if any, to be paid to said Littlefield.

Fourth. When said draft shall mature, said Houstoun, instead of selling said bonds of the State, shall have the option and choice of returning the same to the State, and receiving, in lieu thereof, the one million dollars of first-mortgage bonds of the Florida Central Railroad exchanged for the State bonds aforesaid.

Fifth. If, under the option and choice given the said Houstoun, he returns the bonds of the State of Florida aforesaid to said State and receives in lieu thereof the bonds of the Florida Central Railroad Company as aforesaid, provided said Houstoun, upon delivering said bonds of the Florida Central Railroad Company received from the State as aforesaid, to the president of said company, shall receive and have executed and delivered to him in lieu thereof other first-mortgage bonds of said company, which said bonds shall be made payable to bearer, and shall be good, effectual, and first lien on said road.

Sixth. Upon receiving said first-mortgage bonds of the Florida Central Railroad Company from the president thereof, as above provided for, the said Houstoun shall hold the same as security for the payment of said draft, and is authorized and has the power, at any time after giving thirty days' previous notice to the president of said company, to sell the said bonds so received from the president of said company at public outcry in the city of New York, at which said Houstoun may become a purchaser; and said Houstoun, after paying said draft and the expenses of said sale, dispose of and pay over the rest and residue of the proceeds of the sale of said bonds, if any, to the persons named and for the amounts named, as provided in the third clause hereof.

Seventh. If said Littlefield shall pay said draft at or before its maturity, said Houstoun shall deposit said bonds of the State of Florida placed in his hands under the first clause hereof with S. W. Hopkins & Company, No. 71 Broadway, New York, with the stipulation and agreement that they, the said Hopkins & Company, shall, in disposing of said bonds, hold the proceeds of said sale subject to the claims and for the amounts mentioned in the third clause hereof, to wit, John P.
45 Sanderson, the sum of fifty-seven thousand five hundred and
sixty dollars; M. D. Papy, sixteen thousand dollars; T. M. Brevard, attorney for certain holders of Pensacola and Georgia Railroad bonds, if negotiations now pending for their purchase shall be consummated, the sum of forty thousand dollars; John P. Sanderson, president of the Florida Central Railroad Company, the sum of three hundred and forty thousand dollars, said Hopkins & Co., after first paying the amounts above named to the parties above named out of the proceeds of the sale of said bonds, shall pay the rest and residue, if any, of the proceeds of the sale of said bonds to said Littlefield.

Witness our hand and seal this the seventh day of June, A. D. 1870, at Tallahassee, Florida.

(Signed) M. S. LITTLEFIELD. [L. S.]
(Signed) E. HOUSTOUN. [L. S.]

Signed, sealed, and executed in our presence:
(Signed) CHAS. H. COLLINS.
(Signed) J. P. SANDERSON.

46 SCHEDULE F.

TALLAHASSEE, FLA., *January* 11, 1871.

Received from Edward Houstoun, esq., in trust and for his account, one thousand Florida Central Railroad Company first mortgage bonds, payable to the State of Florida, for one thousand dollars each, with which I hereby undertake to arrange with General M. S. Littlefield and other parties interested, and collect from him or them the amount which it is admitted is now due to said Houstoun, viz: One hundred and sixty-three thousand and twenty-six 70 100 dollars, with interest thereon at seven per cent. from the time M. S. Littlefield's draft on S. W. Hopkins & Co. for said amount fell due, and in addition thereto the sum of five thousand dollars for costs and expenses incurred by said Houstoun in suits brought by parties against said Houstoun in relation to those bonds or other bonds and the stock of the Florida Central Railroad Company, it being understood that all proceedings at law or otherwise are to be discontinued, or, if that be impossible, he is to be indemnified by responsible parties against all damages or costs arising out of said proceedings, it being further understood that said Houstoun shall, when paid, transfer and assign to said Littlefield all the stock of the Florida Central Railroad Company, or other securities which he holds or which were given him as collateral security to secure the above amounts due to said Houstoun.

And it is further understood and agreed that said Coddington is to collect the further sums of money and pay to said Houstoun for account of the parties named below, which it is understood are a lien subsequent and inferior to said Houstoun's lien on these bonds, viz:

M. D. Papy, esq., the sum of sixteen thousand dollars.

Col. R. H. Gamble, the sum of fifteen thousand dollars; who is to surrender to said Littlefield three hundred shares of stock in the Florida Central Railroad Company, and seventeen hundred dollars in the bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, at par.

J. P. Sanderson, esq., the sum of fifty-seven thousand five hundred and sixty dollars, and said J. P. Sanderson is to surrender to said Littlefield seventy shares of stock in the Florida Central Railroad Company, and comply with his agreements with said Littlefield, for which a part of said sum is in consideration.

F. H. Flagg, esq., the sum of four thousand dollars; for which he is to surrender the Central Railroad Company stock and the Pensacola and Georgia Railroad bonds which he holds, to said Littlefield.

And also to pay for seventy shares of stock now or lately held by J. D. Wescott, jr., esq., the sum of thirty-eight hundred and forty-five 33-100 dollars, when said stock is to be delivered to said Littlefield.

This arrangement is based on the assumption that the money will be paid from the proceeds of bonds negotiated by S. W. Hopkins & Co., of New York; the remainder of said proceeds is to be disposed of as directed by the parties interested.

(Signed) T. B. CODDINGTON.

I approve and assent to the same.

(Signed) M. S. LITTLEFIELD,
Pres. J., P. and M. R. R. Co.

47

SCHEDULE G.

TALLAHASSEE, *December* 10, 1870.

At a meeting of the directors, convened this day at the call of the vice-president, were present Col. J. P. Sanderson, vice-president; Messrs. Hawkins, Cheney, Stearns, and Purman, directors.

After a conversation as to the objects of the meeting, the following preamble and resolutions were offered and adopted:

"Whereas bonds of the Jacksonville, Pensacola, and Mobile Railroad Company have been issued, according to the provisions of the act incorporating this company and the amendments thereto, which bonds have been exchanged for bonds of the State of Florida, according to the provisions of said act; and whereas said bonds of the State of Florida were delivered by the governor to the president of the company; and whereas, though previous to the consolidation of the Tallahassee Railroad Company with this company, authority was granted by the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company to its president to issue, negotiate, dispose of, and apply the bonds for the purpose authorized by the act of incorporation, no action was had thereon, after such consolidation, either by the stockholders or directors, then newly elected, authorizing the issue or disposing of bonds; and whereas, though no such action was formally taken, yet the stockholders and directors were advised that bonds had been issued and exchanged for an equal amount of State bonds, and were in the hands of the president, to be disposed of and applied, as they supposed, according to the law authorizing their issue, and they were satisfied therewith, if a proper application was to be made thereof; and whereas the directors are now advised that a contract was made by the president and George W. Swepson, as president of the Florida Central Railroad Company, and certain persons as commissioners, appointed by an act of the legislature of North Carolina, which contract was executed in April last, by which the bonds of the State of Florida, taken in exchange for the bonds of this company, were to be disposed of and the proceeds to be divided according to the terms of said contract between the abovenamed Florida railroads and the commissioners aforesaid, dollar for dollar, until an amount of over one million of dollars, with interest, should be paid to said commissioners.

"And whereas said contract was unknown to the directors, and is in violation of the law of this State authorizing the issue of said bonds, and is a misapplication of said bonds or their proceeds; therefore,

"Be it resolved, that all authority in the president of this company to dispose of or negotiate said bonds is hereby withdrawn.

"Resolved further, that a demand be made upon the president, or whomsoever else may have possession, control, or custody of said bonds, to return the same to the treasurer of this company forthwith.

"Resolved further, that a copy of the foregoing preamble and these resolutions be communicated by the secretary to S. W. Hopkins & Co., 71 Broadway, New York, and 58 Broad street, London, and to the president of this company, and whomsoever else may have said bonds, or any part thereof, in their hands or control."

Adjourned, subject to the call of the vice-president.

F. H. FLAGG,
Secretary.

48 SCHEDULE H.

In chancery. Vice-Chancellor Wickens.

COLLINSON
vs.
COLLINS.

JACKSONVILLE, &C., COMPANY,
vs.
COLLINSON.

Upon hearing counsel for all parties, except the defendants F. H. Kleinwort, Edward Cohen, L. Lewis Spring, and the Western Division of the Western North Carolina Railroad Company (against whom respectively the bills in both suits have been dismissed), and upon reading a power of attorney under the seal of the plaintiff company in favor of the defendant, Converse L. Chase, enabling him to compromise suits on behalf of the company, and an affidavit of the said Converse L. Chase verifying the same, and upon reading an affidavit of the said Convere L. Chase that the National Trust Company of New York have been duly appointed and have accepted the office of fiscal agents of the State of Florida and of the Jacksonville, Pensacola & Mobile Railroad Company, and it being alleged by counsel that the said company by the said Converse L. Chase, as their attorney, and the plaintiff John Collinson, and the defendants Collins, Hopkins and Carpenter, have agreed to compromise all litigations or questions between them or any of them, and to determine all existing contracts between them or any of them relating to any of the bonds hereinafter mentioned, on the terms embodied in this order: It is, by consent of counsel for all parties, ordered that 224 of the 1,200 Florida State bonds in the pleadings mentioned be delivered to the National Trust Company of New York, to be by them delivered up to the State of Florida to be cancelled against the delivery by the said State to the said National Trust Company of New York of 224 bonds of the said railroad company to be also cancelled, the same having been over-issued by them in respect of deficiency in the length of the line constructed by the company, and it being alleged that two others of the bonds have been lost.

It is by consent, as aforesaid, ordered that the remaining 974 of the said 1,200 bonds be dealt with as follows; that is to say, 166 of said 974 bonds be sold and delivered to the said John Collinson, at the rate of £120 and accrued interest per bond, and the remaining 808 of such 974 bonds be deposited as hereinafter mentioned, and the defendant, Converse L. Chase, by his counsel, consenting to receive the purchase money for such 166 bonds and apply the same as hereinafter directed on behalf of the said company, and also of himself and the defendant, Francis H. Flagg, as the trustees of the indenture of the 2d of October, 1871, in the pleadings mentioned.

It is by consent, as aforesaid, ordered that on such payment being made, as hereinafter mentioned, by the said John Collinson to the said

Converse L. Chase, Thomas Pix Cobb and George Gunnell Newman do deliver the 210 bonds, part of such 1,200 bonds, which 210 bonds are deposited in their joint names, as in the pleadings mentioned, to the said John Collinson to be held by him on the terms hereinafter mentioned.

And it is by consent, as aforesaid, ordered that the said defendant Converse L. Chase, upon such payment being made to him by the said John Collinson, as hereinafter mentioned, do deliver to the said John Collinson 166 bonds so purchased by him, and 22 bonds, making with such 210 bonds, 232 of such bonds to be held by the said John Collinson on the terms hereinafter mentioned, and that on such payment being made, the said defendant, Converse L. Chase, do remit to the said John Collinson, to be held on the terms hereinafter mentioned, the remaining 576 of such 1,200 bonds by the first mail leaving New York, on or after the 1st of October, 1872.

49 And it is ordered that on such delivery to him of such 166 and 232 bonds, as aforesaid, the said John Collinson do pay the amount of the purchase for such 166 bonds, at the rate aforesaid, to the said defendant, Converse L. Chase, to be applied by him, in accordance with such of the trusts of the indenture of the 2d of October, 1871, on the pleadings mentioned, as are applicable thereto. And it is by consent aforesaid ordered that the said Converse L. Chase do apply the same accordingly.

And it is by consent, as aforesaid, ordered that the said John Collinson do, out of the said 232 bonds to be deposited with him, as aforesaid, retain 40 bonds for his own use, in satisfaction for the losses sustained by him by breach of the contracts entered into with him by the defendants Collins and Hopkins & Co., on behalf of the company in relation to the said bonds, or any of them.

And it is by consent, as aforesaid, ordered that the said John Collinson do retain the remaining 192 of such 232 bonds, and also the said 576 bonds (being the balance of the 800 bonds in America after the delivery of the 224 bonds) when so delivered by him as aforesaid, subject to an option to him, the said John Collinson, to purchase the same or any part thereof at any time within seven months from the date of this order at the price of £130 and accrued interest per bond, such price to be paid (subject to the retention thereout by the said John Collinson of any sums of money which he may pay for costs, charges, and expenses to any defendants in the suit of Collinson vs. Collins, and to any defendants in any proceedings instituted in America by the said John Collinson in respect of the said bonds or any of them) to the agents in London of the National Trust Company against their receipt for the same as fiscal agents of the company, and for and on behalf of the company, and to be applied by them in manner following: The first moneys coming to their hands up to £31,800 shall be specially set apart as a fund for and applied by them in payment of the January coupons on all the said bonds already negotiated, or which shall hereafter be negotiated, in accordance with the foregoing provision, such interest being for this purpose calculated on 3,974 bonds at the exchange of 108 and a commission of 1 per cent. thereon, and any balance over and above the said sum of £31,800 shall be applied by the said National Trust Company as such fiscal agents for the purpose of the railroad company; and it is by consent, as aforesaid, ordered that they do pay and apply the same accordingly, the said Converse L. Chase, by his counsel, undertaking that the said National Trust Company shall be legally and fully confirmed in

their appointment as fiscal agents of the said company, and also of the State of Florida.

And it is by consent, as aforesaid, ordered that the said John Collinson do, at the expiration of such period of seven months, deliver the 192 and the 576 bonds, or such of them, if any, as he shall not purchase, to the said agents of the National Trust Company as such fiscal agents of the company, and for and on behalf of the said company.

And it is by consent, as aforesaid, ordered that all bonds hereinbefore ordered to be delivered, be delivered with all coupons subsequent to those due July, 1872, attached thereto.

And it is by consent, as aforesaid, ordered that the bill in the first mentioned suit be dismissed without costs as against all remaining defendants thereto other than Kleinwort and Cohen, and with costs as against Kleinwort and Cohen, but it is ordered that what the plaintiff John Collinson shall pay on account of the costs of Kleinwort and Cohen be refunded to him by the company.

And it is by consent, as aforesaid, ordered that the bill in the secondly mentioned suits be dismissed without costs as against the remaining defendants, except as against Kleinwort and Cohen, and with costs as against them.

**And it is by consent, as aforesaid, ordered that the company do forthwith dismiss their suit now pending in New York without costs, and
that the said John Collinson do also dismiss his suit now pending
50 in New York, the said Converse L. Chase undertaking that the
several defendants in the same suit shall consent to such dismissal without claiming costs against the said John Collinson. And it is ordered that the said company do indemnify the said John Collinson against any costs either of himself or of any person or company of his suit in New York, which he may have to pay.**

We severally agree that a decree in the terms of the above minutes shall, as soon as practicable, be drawn up and entered, and meanwhile that we will severally be bound as if the decree had actually been drawn up and entered.

JOHN COLLINSON,
JANSON, COBB & PEARSON,
His Solicitors.
J., P. & M. R. R. CO.,
By C. L. CHASE,
Attorney in fact.
C. L. CHASE,
F. H. FLAGG,
SIDNEY W. HOPKINS,
ROBERT J. CARPENTER,
By C. L. CHASE,
Attorney in fact.
J., P. & M. R. R. CO.,
By W. G. M. DAVIS,
FRANK H. COLLINS,
NEWMAN, DALE & STRETTON,
His Solicitors.
A. SCOTT LAWSON.

51 SCHEDULE I.

At a special term of the supreme court of the State of New York, held at the court house in the city and county of New York, on the

sixth day of December, A. D. 1872. Present, the Hon. William H. Leonard, justice.

JOHN COLLINSON, PLAINTIFF,
Against
SIDNEY W. HOPKINS, ROBERT J. CARPENTER, and Frank H. Collins, composing the firm of S. W. Hopkins & Co., the Jacksonville, Pensacola & Mobile Railroad Company, the Western Division of the Western North Carolina Railroad Company, Samuel D. Babcock, Joseph Stuart, D. G. Ambler, Francis H. Flagg, and Converse L. Chase, defendants.

JOHN L. REQUA, PLAINTIFF,
Against
AARON BARNETT, THE JACKSONVILLE, PENSAcola & Mobile Railroad Company, Lawrence P. Bayne, Henry J. Rogers, Milton S. Littlefield, James G. Gibbs, Calvin Littlefield, John Doe, Richard Roe, Edward Houstoun, George W. Swepson, Robert R. Swepson, the first National Bank of Knoxville, Tennessee, John F. Dervees, David J. Pruyn, the Western Division of the Western North Carolina Railroad Company, Nicholas W. Woodfin, W. G. Candler, W. P. Welch, Wm. H. Rollins, James L. Henry, commissioners appointed by an act of the legislature of North Carolina; E. C. Burras, John B. Clark, D. G. Ambler, F. H. Flagg, C. L. Chase, Sidney W. Hopkins, Robert J. Carpenter, Frank H. Collins, forming firm of S. W. Hopkins & Co., John Collinson, George G. Haven, receiver (leave of the court having been obtained to sue said receiver), defendants.

An application having been made on the part of the plaintiff in the first above entitled action, upon an order to show cause, made herein and bearing date the 14th day of November, instant, for leave to file a supplemental complaint and for an order directing the receiver in this action to deliver the bonds in said supplemental complaint mentioned, now in the hands of the said receiver, to the plaintiff, upon the footing of the agreement set forth in said complaint.

And an application having been made in the said first above entitled action on the part of the plaintiff in the second above entitled action upon a petition accompanied by an order to show cause, made the twenty-first day of November, 1872, for an order requiring the plaintiff in the first above entitled action and the receiver not to part with the possession of the said bonds until the determination of the said second above entitled action.

Now, on reading and filing the said orders to show cause, respectively, and the affidavits and papers thereto annexed, and on reading and filing consent to the entry of this order, signed by the attorneys for all 52 the parties who have appeared in the first above entitled action, and by the attorneys for the plaintiff in the second above entitled action, it is now ordered:

First. That the plaintiff have leave, and leave is hereby given him, to file and serve the supplemental complaint, of which a copy is annexed to the said order to show cause, of November 14th, 1872.

Second. It is further ordered, that George H. Haven, the receiver in the first above entitled action, forthwith deliver or cause to be delivered to the said plaintiff, the eight hundred bonds of the State of Florida issued in aid of the Jacksonville, Pensacola & Mobile Railroad Company, now in his hands, to be dealt with by the said plaintiff upon the footing of the agreement between Converse L. Chase, of the first part, the said Converse L. Chase and Francis H. Flagg, of the second part, and John Collinson of the third part, dated the twenty-ninth day of August, one thousand eight hundred and seventy-two, and the decree of the court of chancery, Great Britain, made in the suits of Collinson vs. Collins, and the Jacksonville, Pensacola & Mobile Railroad Company vs. Collinson, copies of which agreement and decree are set out in said supplemental complaint, the plaintiff's option to purchase said bonds under said decree to be extended to six months after the date of actual shipment, this modification of the provisions of said decree, or the receipt by said plaintiff of said bonds under this order, in no way or manner to effect the rights or obligations of either of the parties to said agreement and decree thereunder, or to operate as a waiver of any default thereunder (this order as to the receiver to take effect upon the payment to him of one thousand dollars on account of his fees as such receiver, and also the legel fees of the New York Guaranty and Indemnity Company, the depositories of the said receiver in respect of said bonds for the custody thereof, the amount of the said receiver's compensation to be adjusted hereafter), and that said plaintiff, after the cancellation of the bonds to be cancelled under said agreement and decree, and the deduction of the amounts which under the said agreement and decree the said Collinson is authorized to make, including provision for future interest on the bonds of the issue to which said eight hundred bonds belong, as provided for in said agreement and decree, deposit the surplus moneys resulting from the sale of said bonds in the National Trust Company in the city of New York, to be held and disposed of subject to the further order of this court, to be made in the said first above entitled action, upon notice to the attorneys for all the parties who have appeared therein, and to the plaintiff in the said second above entitled action, and that the said proceeds, so deposited, stand in the place of the bonds themselves, subject to the same rights and liens, if any, on the part of either or any of the parties to either of said actions, now existing as against said bonds.

(Endorsed:) Filed December 6, 1872.)

A copy. CHAS. E. LOEW, *Clerk*.

Received of George G. Haven, esq., the receiver in the above entitled action, eight hundred eight per cent. bonds of the State of Florida, issued in aid of the Jacksonville, Pensacola & Mobile Railroad Company, numbered as per schedule below, under and pursuant to the foregoing order.

December 6th, 1872.

JOHN COLLINSON.

Schedule of bonds referred to in foregoing receipt:
Bonds numbered 3201 to 4000, both inclusive.

JOHN COLLINSON.

53 **SCHEDULE J.**

Be it known unto all whom it may concern, I, Edwin Augustus Binevash, notary public by royal authority, duly admitted and sworn, residing and practising in the city of London, England, do hereby certify and attest that the paper writing hereunto annexed, marked with the letter A, is a true, faithful, and literal copy of the original certificate, with which I have carefully collated the same and found them to agree in every respect.

In witness whereof, I, the said notary, have hereunto set my hand and affixed my notarial seal, in London, this twenty-seventh day of December, in the year of our Lord, one thousand eight hundred and seventy-two.

[SEAL.] Quod attestor. EDWIN BINEVASH,
Notary Public, Gerien.

(Attestation in German, signed by the German vice-consul, dated December 27, 1872.)

A.

To all to whom these presents shall come or may in any way concern:

I, Harrison Reed, governor of the State of Florida, do hereby declare and make known, that of the 4,000 eight per cent. bonds of the State of Florida, issued in aid of the Jacksonville, Pensacola & Mobile Railroad Company, and numbered 1 to 4000 inclusive, 224, being the bonds number 3777 to 4000 inclusive, have been returned to the State of Florida and duly cancelled, and that the balance of said issue of bonds, over and above the 2,800 bonds heretofore sold and the said 224 bonds so cancelled, belong to and may be dealt with by the Jacksonville, Pensacola & Mobile Railroad Company and its assigns for the purposes of the company, the said bonds being legally and properly issued and forming with the 2,800 bonds heretofore sold an equal obligation on the State of Florida.

In witness whereof I have hereunto affixed my name and caused the great seal of the State to be attached, this 2d of December, A. D. 1872.

{ THE GREAT SEAL.
STATE OF FLORIDA.
IN GOD WE TRUST. }

HARRISON REED,
Governor.

Attest:
JONATHAN C. GIBBS,
Secretary of State.

Attestation of the consul-general for the Netherlands (in German writing), dated New York, 10th December, 1872.

{ SEAL OF THE CONSULATE
GENERAL OF THE NETHERLANDS FOR U. S. }

(Signed) REED C. BURLAGE.

Attest as to true copy (also in German).
(Signed) G. M. BRISERAIN.

54 B.

50 OLD BROAD STREET, LONDON,
September 15, 1873.

G. M. BOISSEVAIN, Esq.:

DEAR SIR: I regret that I have been unable to send you sooner a complete list of the Florida bonds issued, as requested by your favor of the 10th inst., but I enclose herewith a paper giving the information I understand that you require.

I remain yours, truly,

D. G. BRUCE GARDYNE,
Secretaries von J. Collinson.

FLORIDA STATE EIGHT PER CENT. LOAN.

Distinctive numbers of bonds issued.

Nos.			
Nos.	1 to 441	441	bonds.
"	443 to 1735	1,293	"
"	1737 to 3200	1,464	"
"	3769 to 3776	8	"
	Total bonds issued	3,206	

50 OLD BROAD STREET, LONDON,
September 23d, 1873.

G. M. BOISSEVAIN, Esq.:

DEAR SIR: In reply to your favor of the 20th instant regarding the numbers of the Florida bonds issued, I beg to inform you that the statement forwarded to you, detailing the numbers of 3,206 (not 3,204 as in your letter) bonds issued was perfectly correct.

I remain yours, faithfully,

[s.] JOHN COLLINSON.

Voor copie conform.
G. M. BOISSEVAIN.

Memorandum.

In answer to the queries made, I beg to state in reply to the question whether the last Florida bonds received by me and friends from John Collinson were received under any notice or apprehension that they were in any way different from the former large amounts and under any injunction or liability of it, &c, that such is not the case.

The original sales amounted to 2,800 bonds. Sales were then stopped, but resumed about December, 1872, or January, 1873; and so far from any notice of the kind, as described above, being given to us at that time, we, on the contrary, received communication of a statement of the Florida government, dated the 2d December, 1872, and purporting that 224 bonds, numbered from 3777 to 4000, had been returned to the State of Florida and had been duly cancelled, but that the entire balance of the issue of 4,000 bonds, namely, of said issue of bonds over and above 2,800 bonds sold before, and the 224 bonds so cancelled, had been legally and properly issued, and formed, with the 2,800 bonds sold before, an equal obligation on the State of Florida. (Copy of this statement goes herewith, marked A.)

Sales were at that time resumed by me and other people here by order and for account of John Collinson, a part of the bonds being taken firm by a combination, part being sold on commission, the total amount of these sales up to September, 1873, being 406 bonds, as appears from a statement given to me at that time by Mr. Collinson, purporting that the entire amount of bonds then issued was 3,206 bonds, being numbered 1 to 441, 443 to 1735, 1737 to 3200, 3769 to 3776. (Copy of Mr. 55 Collinson's letter relative to this statement goes herewith, marked B.) This statement was given to me at my request, as some sales had been made by other bankers than my firm.

In addition to the statement of the government above mentioned, Mr. Collinson gave us also communication of judicial dicisions relating to some litigation which, as it appears, had existed regarding said balance of bonds—decisions according to which the entire balance of bonds, viz, 974 (2 bonds having been lost), was to be for some time at Mr. Collinson's disposal; period including the time when the sales were made.

In perfect accordance with these statements, the coupons due 1st of January, 1873, were advertised by the New York State Loan and Trust Company, as "fiscal agents of the State of Florida," on the Florida 8 per cent. bond numbered 1 to 3776, inclusive, (excepting the coupons on bonds numbered 442 and 1736, which have been lost, unnegotiated.)

I know of no further sales than those of the 3,206 bonds having been made since September, 1873, being the time of Mr. Collinson's above-mentioned statement, and I don't think that any were made. The sales of the last lot of these 3,206 were made in the early part of 1873. (It may be that Mr. Collinson kept some bonds privately and parted only afterward with same, as I remember that he considered the market price at that time being about 60 per cent. too low, but this of course is immaterial.)

The entire amount of these 3,206 bonds have been purchased by myself and friends and resold here, or sold by us on commission in good faith and bona fide, and so they are held here, no matter whether under No. 2800 or these above, to which I may add that amongst the bonds deposited with the committee, all of which have been deposited by bona fide holders, there are several of the bonds numbered above 3000.

In further reply to your queries I beg to state that never any deference was made here, nor was it known here to exist, not more by one than by the public at large between the numbers 1 to 3000 and those above 3000.

G. M. BOISEVAIN.

AMSTERDAM, *6th October*, 1876.

CONSULATE OF THE UNITED STATES OF AMERICA
AT AMSTERDAM.

Annexed "memorandum" dated October 6th, 1876, and signed G. M. Boiserain, sworn and subscribed to before me this 6th day of October, A. D. 1876.

[SEAL.]

CHARLES MUELLER,
United States Consul.

UNITED STATES OF AMERICA,
DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that Charles Mueller, whose name is subscribed to the paper hereunto annexed, is now, and was at the time of subscribing the same, consul of the United States at Amsterdam, Netherlands, duly commissioned, and that full faith and confidence are due to his acts as such.

In testimony whereof I, Hamilton Fish, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to affixed. Done at the city of Washington, this 16th day of January, A. D. 1877, and of the Independence of the United States of America the one hundred and first.

[SEAL.] (Signed) HAMILTON FISH.

56 SCHEDULE K.

Sale of the Florida Central Railroad.

STATE OF FLORIDA:

Whereas the Florida Central Railroad Company has failed for more than twelve months to pay the interest due on the bonds issued by said company in exchange for bonds of the State of Florida, under and by virtue of an act of the legislature of the State, entitled "An act to perfect the public works of the State," approved June 24th, 1869, and the several acts amendatory thereof; and

Whereas demand has been made by bona fide holders of the State bonds so exchanged upon the governor of the State for the enforcement of the lien on said railroad:

Now, therefore, I, Marcellus L. Stearns, governor of the State of Florida, under and by virtue of the authority vested in the governor by the said act, have entered upon and taken possession of all and singular the railroad and property of the Florida Central Railroad Company lying between Lake City and Jacksonville, and hereby give public notice that I will cause the same to be sold at public auction, for lawful money of the United States, at the railroad depot at Tallahassee, on Monday, 2d day of April, A. D. 1877, at twelve o'clock m.

Given at Tallahassee this thirtieth day of December, A. D. 1876.

MARCELLUS L. STEARNS,
Governor.

57 SCHEDULE L.

A BILL to be entitled an act for the relief of William E. Jackson, Edward Thomas, William Spear, John Craig, James B. Walker, and their associates, now owning and operating the railroad from Jacksonville to Lake City.

Whereas at a sale of the Florida, Atlantic & Gulf Central Railroad and all its property and franchise, on the fourth day of March, 1868, by the trustees of the internal improvement fund, under and by virtue of the provisions of the internal improvement law, William E. Jackson and his associates became the purchasers thereof; and

Whereas it is essential for the interests of the people of the State that these parties should be invested with such corporate powers as are necessary for the operation of the road, as well as more accurately to define the duties of the said road; therefore—

SECTION I. The people of the State of Florida, represented in senate and assembly, do enact as follows: That the said William E. Jackson and his associates be, and they are hereby, vested with the powers and franchise granted to the Florida, Atlantic & Gulf Central Railroad in and by an act entitled "An act to amend an act to incorporate the Florida, Atlantic & Gulf Central Railroad Company," approved January 7th, 1853, and they and their successors and assigns are hereby authorized and empowered to exercise the said powers and franchise so far as they appertain to the railroad constructed from the city of Jacksonville, in Duval County, to Lake City, in Columbia County, in this State, and that the said William E. Jackson and his associates are hereby made a body politic and corporate under the name of the Florida Central Railroad Company, and by that name they and their successors shall be capable to enjoy and hold the said railroad from Jacksonville to Lake City, and all the benefits thereof, subject only to the condition annexed to the sale thereof by the trustees of the internal improvement fund, and as such body politic and corporate shall be entitled as aforesaid to exercise all the powers and franchise granted in said above-referred to act to the Florida, Atlantic & Gulf Central Railroad Company, and by and in the name of the Florida Central Railroad Company, they, their successors and assigns, may purchase, receive, and hold lands and tenements, goods and chattels, of whatsoever character the same may be, that shall be necessary or useful for the purposes of said railroad, and the same to grant, sell, mortgage, or dispose of, to sue and be sued, to plead and be impleaded, to make a common seal, and at pleasure to break or alter the same, and to establish and put in execution such by-laws and regulations as may be deemed necessary and expedient.

SECTION II. Be it further enacted, That the provisions of said act to amend an act to incorporate the Florida, Atlantic & Gulf Central Railroad Company for the protection of said railroad from trespass, injury, or intrusion, and providing for the punishment of persons who shall trespass upon or injure the same, be, and they are hereb', extended to said Florida Central Railroad Company, which company shall be entitled to all the benefits thereof.

SECTION III. Be it further enacted, That the said William E. Jackson and his associates shall be entitled to declare the amount of which the stock in said Central Railroad Company shall consist, and to divide the same into shares, which shares, however, shall not be less than one hundred dollars each.

SECTION IV. Be it further enacted, That the said Florida Central Railroad Company may, when they shall see fit, rent, lease, or 58 farm out all or any part of the privileges with which they are invested, or the railroad itself, to any person or persons, corporation or corporations, for such term as may be agreed upon.

SECTION V. Be it further enacted, That the said Florida Central Railroad Company shall not be dissolved for failure to elect officers so long as the said railroad shall be kept running and in operation.

SECTION VI. Be it further enacted, That nothing in this act shall be so construed, nor shall it be so operative as to divest the State of the right to make the Florida Central Railroad and all its property of every sort, character, and description, the subject matter of taxation on the part of the State.

SECTION VII. Be it further enacted, That nothing in this act shall be so construed, nor shall it so operate as to give any additional validity to the bonds issued under the provisions of an "act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, 1855, or as a recognition to any extent that they are contracts which it is within the power of the State to make.

Passed the senate July 24, 1868.
Passed the assembly July 27, 1868.
Approved July 29, 1868.

59 SCHEDULE M.

APPENDIX.

At a meeting of the directors of the Florida Central Railroad Company, held November 21, 1870, upon motion of Mr. Papy, a committee was appointed to take in consideration the past issue of bonds, and also to report upon the policy of issuing bonds of the company, and the amount. The president appointed Messrs. Papy, Baker, and Huling, said committee.

The board then adjourned to 4 p. m.

4 p. m.—The directors convened pursuant to adjournment, Colonel Sanderson, president, in the chair.

Mr. Papy presented the following report:

The committee finding that the bonds signed by G. W. Swepson, president, and countersigned by H. H. Thompson, treasurer, are in such form as that they cannot be used to carry out the intention of their issue when they were adopted, report the following resolution in respect thereto:

"Resolved, That the resolution adopting the bonds to be issued by the company, signed by George W. Swepson, president, and H. H. Thompson, treasurer, at a meeting of the board of directors held on the 2d day of June, A. D. 1870, be, and the same is hereby, rescinded, and that said bonds be destroyed.

"M. D. PAPY, *Chairman.*"

On motion, the report was received and adopted.

On motion of Mr. Foster, the resolution was unanimously adopted.

Mr. Papy made the following report:

The committee report the following resolutions in reference to the issues of bonds of the company and the securing the same:

"Resolved, That the president cause bonds payable to bearer to be prepared, signed, and executed in due form, which shall be issued for purposes of the company, not exceeding seven hundred thousand dollars in amount, with interest at 7 per centum per annum, not having more than thirty years to run, with coupons for interest attached, payable in New York semi-annually.

"Resolved, That said bonds and the interest thereon shall be a first lien or mortgage on the Florida Central Railroad, its equipments, workshops, depots, franchises, and property of every kind, and that the president cause to be prepared and executed such deed of trust or other necessary instrument of writing under the seal of this company as may be needful to make the first lien or mortgage in favor of said bonds and the interest thereon effectual to all intents.

"M. D. PAPY, *Chairman.*"

On motion, the report was received and adopted.

On motion of Mr. Huling, the resolution was unanimously adopted.

Adjournment to 4 o'clock next day, at which time the following resolution was adopted:

"Resolved, That this board approve of the form of the trust deed read to the directors, to secure the first lien or mortgage of the
60 bonds and interest thereon authorized to be issued, and that the president of the company is authorized to select the trustees to whom the said deed is to be made, not to exceed three in number."

Adopted.

I hereby certify that the foregoing is a true and correct copy from the records of the board of directors.

[FLORIDA CENTRAL RAILROAD CO., 1868.] F. H. FLAGG,
Secretary.

STATE OF FLORIDA,
County of Duval:

I, Thos. E. Buckman, clerk for the circuit court for this fourth judicial circuit for Duval County, State of Florida, do hereby certify that the foregoing is a true copy of an original paper as offered in evidence and proved in certain judicial proceedings lately pending in this court, and as filed in my office.

Witness my hand and seal of office this 8th day of February, 1877.

[SEAL.] T. E. BUCKMAN, *Clerk.*

61 U. S. MARSHAL'S OFFICE, NORTHERN DISTRICT OF FLA.,
Jacksonville, Fla., March 8th, 1877.

On this above-written date I have served a true copy of the within bill in equity upon M. S. Littlefield, and upon M. S. Littlefield, president of the J., P. and M. R. R. Co.; and upon H. Bisbee, jr., esq., as att'y for Frank R. Sherwin, agent at Jacksonville, Fla.

S. CONANT,
U. S. Marshal.

Service, nine def'ts, $18.00.

Filed this 8th day of March, A. D. 1877.

PHILIP WALTER, *Clerk.*

Circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant,

vs.

THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad; George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer, &c., and others.

J. M. Baker, of counsel.

Jos. B. Stewart, Matt H. Carpenter, E. M. Thompson, solicitors for complainant.

62 Circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant,

vs.

GEO. F. DREW, GOVERNOR OF THE STATE OF Florida, and George F. Drew, governor; Columbus Drew, comptroller; Walter Gwynn, treasurer; George P. Rainey, attorney-general; Hugh A. Corley, commissioner of lands and immigration of the State of Florida, and who constitute the trustees of the internal improvement fund of the State of Florida; the Jacksonville, Pensacola and Mobile Railroad Company; Milton S. Littlefield, James G. Gibbes, T. C. Spooner, and Walter Gwynn, treasurer of the State of Florida; and Charles H. Foster, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, John Collinson, and Thos. B. Codington, defendants.

To the honorable, the judges of the circuit court of the United States for the northern district of Florida:

Your orator, the Western Division of the Western North Carolina Railroad Company, a body corporate and politic, authorized, organized, and created under and by virtue of the laws of North Carolina, and a citizen of the State of North Carolina, brings this its bill of complaint against George F. Drew, governor of the State of Florida, and George F. Drew, governor; Columbus Drew, comptroller of the State of Florida; 63 Walter Gwynn, treasurer of the State of Florida; Geo. P. Raney, attorney-general of the State of Florida; and Hugh A. Corley, commissioner of lands and immigration for the State of Florida, and each and all citizens of the State of Florida; and Walter Gwynn, treasurer of the State of Florida, trustees of the internal improvement fund of the State of Florida; and the Jacksonville, Pensacola & Mobile Railroad Company, a body corporate, created under and by the laws of the State of Florida, and a citizen of the State of Florida; and Milton S. Littlefield, and James G. Gibbes, Charles H. Foster and T. C. Spooner, citizens of the State of Florida; and Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, and Adrian Stoop, aliens residing in and citizens of Amsterdam, and subjects of the king of Holland; and John Collinson, an alien, residing in London, England, and a subject of the Queen of Great Britain; and Thomas B. Codington, a citizen of the State of New York.

And, complaining, your orator states:

I. That your orator, the Western Division of the Western North Carolina Railroad Company, is a body corporate and politic, created by the laws of North Carolina, as will better appear by the inspection of said laws chartering and incorporating your orator, to which, and the several acts amendatory thereof, reference is prayed to be made when necessary for the purposes of this suit.

II. That in the year 1868 your orator was, among other assets, the owner and holder of six millions ($6,000,000) in bonds of the State of North Carolina, which were conferred upon your orator by the 64 legislature of said State to be used in the construction of the railroad of your orator, according to the terms of its act of incorporation aforesaid.

III. That George W. Swepson was the president, and hence agent and fiduciary ot your orator in the years 1868 and 1869—but being a citizen of the State of North Carolina cannot be made a party defendant to this suit—who, as such president, and by virtue of his official position, as the chief executive officer of your orator, became possessed of its said $6,000,000 of bonds.

IV. That said Swepson, as the agent, trustee and fiduciary of your orator, undertook to convert and did convert said bonds into money for its pretended use in constructing its said railroad, receiving therefor a very large sum of money by the use and sale of said bonds, amounting to several millions of dollars, but of the exact amount your orator is not advised.

V. That said Swepson, as such president, agent, and fiduciary of your orator, and without any authority of law, used and invested a large amount of said money, to wit, about the sum of $720,000 in purchasing the bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, corporations situated in the State of Florida; that the amount of said bonds, as purchased by the money and assets of your orator so fraudulently diverted was about one million

and sixty-three thousand dollars ($1,063,000) of both grades of said
65 bonds. That the purchase of a portion of the said bonds was made through the defendant Milton S. Littlefield, and the remainder through one Edward Houstoun, of the State of Georgia, now deceased, each of which said parties knew of the official and fiduciary relations of the said Swepson to your orator, as aforesaid.

VI. That the said Swepson, though the president and trustee of your orator, purchased and held said bonds in his own name, making no record thereof in the books or records of your orator. That in the month of March, 1869, the defendants, the trustees of the internal improvement fund of the State of Florida, being authorized by law so to do, caused to be sold at public auction the said Pensacola and Georgia Railroad and the Tallahassee Railroad to pay the first mortgage bonds of said companies, including the said $1,063,000 of bonds so purchased with the money of your orator by said Swepson, through the said Houstoun and Littlefield as aforesaid.

VII. That the said railroads, when so sold by the defendants, the said governor, comptroller, attorney-general and commissioners of lands and immigration aforesaid, who are by law, ex-officio, the trustees of the internal improvement fund of the State of Florida, were purchased by an association of persons described as "F. Dibble and associates," which association ultimately included the said George W. Swepson. That said Dibble and associates were permitted to pay for said railroads by surrendering to the defendants, the said trustees of the internal improvement fund, the said Pensacola and Georgia and Tallahassee Railroad bonds, so purchased with the money of your orator, to the
66 amount of about $960,300 exclusive of the accrued interest thereon, and the note or acceptance of said Swepson for about $472,065, the said note or acceptance being unlawfully accepted by said trustees as so much cash representing the outstanding portion of said Pensacola and Georgia and Tallahassee Railroad bonds, which were not delivered to said trustees at the time of said sale, there being in fact no other payment made to said trustees except the said $960,300 of said bonds, so purchased with your orator's money, by its agents and fiduciaries aforesaid, as your orator is advised and believes to be true.

VIII. That when said association of "F. Dibble and associates" was formed, including the said Swepson, the president, agent, and fiduciary of your orator aforesaid, he paid over and surrendered up to the defendants, the said trustees of the internal improvement fund of Florida, the $960,300 of the said Pensacola and Georgia, and the said Tallahassee Railroad bonds, so purchased with your orator's money as aforesaid, and as a material part of the terms of said sale, purchase and payment, an agreement and declaration of trust was executed by said "F. Dibble for himself and associates" to said George W. Swepson, securing him for the $960,300 in said bonds and his, said Swepson's said note or draft, for the said $472,065, being the entire purchase consideration paid to said trustees for the said Pensacola and Georgia Railroad, and the Tallahassee Railroad, as will better appear by the said trust agreement, dated the 22nd day of April, 1869, made part hereof, marked Schedule A.

67 IX. That by the terms of said trust agreement and the payment of said $960,300 bonds aforesaid, there was secured and reserved to said Swepson a prior lien and equity in and to the said Pensacola and Georgia and Tallahassee Railroads, which has never been lawfully discharged or extinguished, but that the same remains in full

force and effect, and inures to the benefit of your orator, as will be hereinafter stated.

X. That it was one of the conditions and purposes of said trust that the said Dibble and associates should obtain from the legislature of Florida an act of incorporation, to which said trust property should be conveyed upon terms stated in a certain agreement dated the 26th day of March, 1869, and for which purpose the said property as described was duly conveyed in two certain deeds of conveyance from the defendants, the said trustees of the internal improvement fund, dated April 8th, A. D. 1869, which are made part hereof, marked Schedule B, and C, respectively.

XI. That the only real consideration for the execution and delivery of the said two conveyances last above named, (Schedule B, and C,) was the payment to said trustees of the internal improvement fund, the said $960,300 of the said Pensacola and Georgia and Tallahassee Railroad bonds, so purchased and paid for by the money of your orator as aforesaid; the alleged payment of the remaining $472,065, was a note, draft, or acceptance, created by the said Swepson, in collusion with the said trustees, or some of them, in the year 1869, and was a mere sham and pretence and fraudulent contrivance gotten up, covering 68 that portion of said Pensacola & Georgia and the Tallahassee Railroad bonds held by and belonging to other people, which had, in truth, neither been sold, bought, nor paid for, as was well known to the said trustees and said Swepson and others, co-operating with them for such false and fraudulent purpose; that said draft, note, acceptance, or promise to pay said $472,095, was not intended to be paid when created and delivered, and has never yet been paid, as your orator, upon information and belief, alleges to be true.

XII. That it was also a part of the condition of said trust (Schedule A) that the said "Dibble and his associates" should have granted to them such or similar relief as the legislature of the said State of Florida granted to William E. Jackson and his associates by an act for the relief of William E. Jackson and his associates, approved July 29th, A. D. 1868, and that upon the procuring of such legislation and the passage of such an act the said property and estate, to wit, the Pensacola and Georgia Railroad and the Tallahassee Railroad, so purchased and paid for by your orator's money, should be conveyed to the body corporate and politic so created.

XIII. Your orator further states that, pursuant to said trust to your orator's, said president, agent, and fiduciary, the said Swepson, and in part fulfilment thereof, the legislature of Florida did, by an act approved June 24, 1869, incorporate the said F. Dibble and associates into a body corporate and politic, under the name and style of the "Tallahassee Railroad Company," the said company being composed of the 69 said Pensacola and Georgia and the said Tallahassee Railroads, so sold and purchased in the name of said F. Dibble and associates on the 20th day of March, 1869, and paid for with your orator's said $960,300 of bonds as aforesaid, which act of incorporation is made part hereof, marked Schedule D.

XIV. That by the 6th section of said act of incorporation the said Tallahassee Railroad Company was authorized to issue bonds for the purpose, among other things, of paying and discharging said trust so held by said Swepson for the use and benefit of your orator, but in order to guard against and prevent all possible abuse or violation of said trust agreement, its existing priority of lien was expressly reserved in the said 6th section of said act (Schedule D), wherein it was "Provided, That

any deed of trust, mortgage, bond or bonds, or security which may have been executed, made, created, or provided for as a lien on said railroad or otherwise by said Franklin Dibble, in behalf of himself and associates, prior to the passage of this act, shall be valid and effectual to all intents, either at law or in equity as a lien or mortgage or security on said railroad, as if the same had been made by virtue of this act, and shall in no wise be affected by any provisions thereof." That the "conveyance, bond, or security which had been executed, made, or contracted for as a lien on said railroad by said Franklin Dibble, in behalf of himself and his associates, prior to the passage of said act," was the said assignment in trust to your orator's said agent and fiduciary, the said George W. Swepson, of the 22d of April, 1869, aforesaid, and that by the provisions of said act a statutory reservation of rights and priority of lien was
70 created in the face of said law, and was and is notice to all persons, and especially to the state of Florida, whose governor and cabinet officers, the said Harrison Reed, and the treasurer, comptroller, attorney-general, and the commissioner of immigration, being the trustees of the internal improvement fund, and who participated in the said sale and proceedings, had personal notice of the existence of said trust and of the rights of your orator as the beneficiary thereunder, and that the said State of Florida and all others are bound thereby.

XV. That no bonds were ever issued by the said Tallahassee Railroad Company, or put in circulation, as provided by said law; though your orator is advised that fifteen hundred proposed bonds, of the amount of $1,000 each, were signed by F. Dibble and placed in the hands of your orator's said president, agent, and fiduciary, George W. Swepson, but which were never used, and which, if existing, are held in trust for your orator by the said Swepson, under said agreement, and subject to your orator's rights in the premises.

XVI. That on the said 24th day of June, 1869, another act of the legislature of the State of Florida was passed and approved, incorporating the defendant, the Jacksonville, Pensacola & Mobile Railroad Company, to which act your orator craves leave to refer, when necessary, for the purposes of this suit. That the incorporators of the Jacksonville, Pensacola & Mobile Railroad Company were your orator's said president, agent and fiduciary, George W. Swepson, together with said Milton S. Littlefield, J. L. ReQua, William Hunt, and others, who formed themselves into a body corporate and politic under said
71 act of incorporation. That at the time of such incorporation of the said Jacksonville, Pensacola & Mobile Railroad Company, it was possessed of no railroad, property, or estate of any kind, but was organized for the purpose of becoming the assignee and owner of the said Tallahassee Railroad, as incorporated by and created under the said purchases by said F. Dibble and associates, as aforesaid, and that pursuant to said acts of incorporation, or one of them, the said Franklin Dibble and associates did convey and transfer said Pensacola and Georgia and Tallahassee Railroads, according to the terms of said trust agreement, when, and from and after which time the said Pensacola and Georgia Railroad and the said Tallahassee Railroad, as separate properties, and the said Tallahassee Railroad Company, as incorporated in the name of said F. Dibble and associates, on the same 24th day of June, 1869, became, and now are, the railroad owned by the corporation defendant, the said Jacksonville, Pensacola & Mobile Railroad Company, as aforesaid.

XVII. Your orator further states that when the said Swepson, as the president, agent, and fiduciary of your orator, so fraudulently appropri-

ated its money in the purchase of said $960,300 Pensacola and Georgia and Tallahassee Railroad bonds; that the same became and henceforth were the property of your orator, and that when the said Swepson paid the said bonds to the said trustees of the internal improvement fund, he did so without authority, and in violation of the rights of your orator, and did not change the rights of your orator in or to said bonds, and that the said $960,300 of your orator's said Pensacola and Georgia and Tallahassee Railroad bonds, being the only and sole consid-
72 eration paid for the purchase of said railroads on the said 20th
day of March, 1869, the said railroads so purchased and paid for became and henceforth were the property of your orator; and that when the said Swepson and the said F. Dibble and associates created the said trust assignment in favor of said Swepson, signed by said "F. Dibble, for himself and associates," dated April 22d, A. D. 1869, that said trust agreement and the said two conveyances therein mentioned then and there vested in and became the property of your orator, and the title of the said Swepson was that of a trustee holding for the use of your orator, and that the said stock and bonds of the proposed organization, as provided in said trust agreement, became and was vested in your orator, and that when the said Jacksonville, Pensacola & Mobile Railroad Company was chartered and organized, it was founded upon no other capital property or estate than that so purchased and paid for by the said $960,300 Pensacola and Georgia and Tallahassee Railroad bonds so belonging to your orator, and that the capital stock and all the bond issues of the said Jacksonville, Pensacola & Mobile Railroad Company likewise became, was, and is, the property and estate of your orator to the same extent that the $6,000,000 of bonds were, out of the proceeds of which the said Swepson fraudulently diverted and appropriated the money with which he purchased, as such agent, and fiduciary, the said $960,000 Pensacola and Georgia and Tallahassee Railroad bonds; and that all and singular the said purchases of said bonds and said railroads, and the creating of said trust, and the said two deeds of conveyance from the trustees of the internal improvement fund, dated April 8th, A. D. 1869, and all and singular the
73 subsequent act or acts of the incorporation of the said Jackson-
ville, Pensacola & Mobile Railroad Company became and henceforth were, and in law and equity are, the property and estate of your orator.

XVIII. Your orator, further complaining, states that after the fraudulent investment of your orator's money, as aforesaid, by the said Swepson, he transferred such interest as he pretended to have in and to the said trust agreement of the 22d of April, 1869, and the said two deeds of conveyance of the Pensacola and Georgia and Tallahassee Railroads, described in and forming the foundation of said trust, to the defendant, Milton S. Littlefield, who was then, or soon thereafter, became the president, agent, and fiduciary of your orator; and the said Littlefield received said assignment and trust property aforesaid with the express understanding that he would apply said property to the use and benefit of your orator, for the purpose of refunding your orator the sum of about $870,000, with interest thereon, at eight per cent., such being the amount of your orator's money invested in the purchase of said bonds and railroads aforesaid.

XIX. That subsequent to the transfer of said trust property so belonging to your orator to said Littlefield and the incorporation of the said Jacksonville, Pensacola & Mobile Railroad Company, the said Littlefield and others caused certain papers, called bonds, to be executed

in the name of said company, under and by virtue of certain pretended acts of the legislature of the State of Florida, dated June 24th 1869, and January 28th, 1870, to the amount of $3,000,000, being 3,000
74 bonds of the par value of $1,000 each, and numbered from 1 to
3.000 inclusive, and payable to the said State of Florida, and placed the said 3,000 so-called bonds in the hands of the treasurer of the said State of Florida, for no good, valuable, or lawful consideration, and that the said 3,000 bonds are now held by the defendant, Walter Gwynn, as such treasurer, but who has no lawful right to hold the same; a copy of one of which said bonds is made part hereof, marked Schedule E.

XX. That after the said 3,000 papers, called bonds of the said Jacksonville, Pensacola & Mobile Railroad Company, were issued and placed in the hands of said treasurer of the State of Florida, the said Swepson, Littlefield, and others, conspiring together with Harrison Reed, governor of said State, procured certain other papers or tokens called bonds of the State of Florida, which were pretended. created, and issued by authority of a certain pretended statutory agreement between the State of Florida and the said Jacksonville, Pensacola & Mobile Railroad Company, under and by virtue of said acts of the legislature of the State of Florida, approved June 24th, 1869, and the 28th January, 1870, which said tokens or papers called bonds, so illegally created by the State of Florida, were by its consent, through the connivance and participation of its governor, said Harrison Reed, placed in the market in a manner designed to injure the rights of your orator, and also to create a burden and charge against the credit, franchise, and estate of said Jacksonville, Pensacola & Mobile Railroad Company contrary to law, when the said company, being advised thereof by a special meet-
75 ing of its board of directors convened on the 10th day of December,
1870, revoked and annulled the issue of said bonds and forbade the use thereof, and demanded that said bonds of the said Jacksonville, Pensacola & Mobile Railroad Company, so illegally placed in the hands of the said treasurer of the State of Florida, should be forthwith returned to said company, as is shown by a copy of such resolution, made part hereof, marked Schedule F.

XXI. Your orator further states that being so advised of the fraudulent use and appropriation of its money, so held by said Swepson in trust as aforesaid, and the issuing of said 3,000 bonds as a charge upon your orator's interest in said Jacksonville, Pensacola & Mobile Railroad Company, and which your orator was also advised was in the possession of Sidney W. Hopkins & Co., in the city of New York, or that some token or representation of said 3,000 bonds of the said Jacksonville, Pensacola & Mobile Railroad Company were so held by the said Hopkins & Co., with a view of vending the same in the market, caused suit to be instituted in the supreme court of the State of New York against said Hopkins & Co., and others, enjoining the use of said tokens or pretended representation of said bonds, setting up and alleging your orator's right, title, and interest in and to said bonds, and exhibited with and as part of your orator's complaint in said cause the sworn affidavit of said George W. Swepson, fully setting forth and publishing to all persons, and especially to the defendants in this cause, that said $960,300 Pensacola & Georgia and Tallahassee Railroad bonds, and which, as stated, were the sole consideration paid for the purchase of said two roads, and which by a new change of name constitutes the pres-
76 ent Jacksonville, Pensacola & Mobile Railroad Company, were
the proceeds and avails of the capital, money, and estate of your

orator, and declared that the said investments and every part thereof were held in trust for your orator, as will more fully appear by a copy of said affidavit of the said Swepson, made part hereof, marked Schedule G.

XXII. Your orator further states that notwithstanding the said resolution (Schedule D), so revoking and ordering the returning and cancellation of said 3,000 papers, purporting to be bonds of the said Jacksonville, Pensacola & Mobile Railroad Company, was passed and published by said company, and due notice thereof given to all the defendants, and especially to Harrison Reed, governor of the State of Florida, and to Charles H. Foster, then treasurer of the State of Florida, and to Robert H. Gamble, then comptroller of the State of Florida, and each of whom were then acting for and in behalf of the State of Florida, which State was thereby bound and concluded by such notice; but that the said 3,000 papers, called bonds, of the said Jacksonville, Pensacola & Mobile Railroad Company have not been returned to said company, but are now held by the defendant, Walter Gwynn, as treasurer of the State of Florida, or are in some way pretended to be controlled by the defendant George F. Drew, the governor of the State of Florida, for illegal purposes, to the great and irreparable injury of your orator, as will be hereinafter stated.

XXIII. Your orator, upon information, further states that at the time the said Swepson so purchased the said $960,300 Pensacola &
77 Georgia and the Tallahassee Railroad bonds by the fraudulent use and appropriation of your orator's said money, and then used the same bonds in the purchase of the said Pensacola & Georgia and Tallahassee Railroads, which was done without the knowledge or assent of your orator, the said bonds were "paid to the trustees of the internal improvement fund of the State of Florida, for and on account of F. Dibble and his associates," and that said trustees being so in possession of your orator's said bonds, did of their own motion, without the knowledge or assent of your orator and without authority of law, and to prevent your orator from getting possession of his said bonds, burn and destroy the same on the 26th day of February, 1872, so that your orator cannot now claim possession of the said bonds, or give the number thereof, or state precisely what number of Pensacola & Georgia Railroad bonds there were, nor what number of Tallahassee Railroad bonds there were, but your orator is advised that the defendant Columbus Drew, comptroller of the State of Florida, is in possession of the numbers of said $960,300 of said Pensacola & Georgia and Tallahassee Railroad bonds so burned by the said trustees, and of the different kinds and denominations thereof, and of whom your orator claims a full and complete discovery, as hereinafter prayed.

XXIV. Your orator is advised, and so states, that his title to said bonds, and his rights to enforce the collection of the same for the use and benefit of your orator, was not effected or destroyed by the burning of the said bonds by the said trustees of the internal improvement fund, or any of them, but that the rights of your orator, as the owner
78 of said bonds, still survives, unimpaired, with the same force and effect as if said bonds had not been destroyed, but were in possession of your orator and now present in court, and that the said same trusts, rights, and equities still survive to your orator as to the said $960,300 bonds so destroyed as exists in relation to the said $472,000 of said Pensacola & Georgia and Tallahassee bonds that are still outstanding and uncancelled, and should be enforced to the same extent by the decree of this court, as hereinafter prayed.

XXV. Your orator is further advised that if for sufficient reasons it should be adjudged on the final hearing of this cause that the said $960,300 Pensacola & Georgia and Tallahassee bonds are not existing in fact so as to be enforced against said railroads for the use of your orator, it then avers that your orator had an equitable lien on the said Pensacola & Georgia and Tallahassee Railroads, before its bonds were destroyed as aforesaid, and which lien attached to the Jacksonville, Pensacola & Mobile Railroad to the full amount of the purchase-money so paid for said roads, being the said sum of $960,300 with interest thereon at 8 per cent. per annum since the 20th day of March, 1869, and which is a prior and first lien on said roads, their franchises and estates, and is prior to any lien or encumbrance created by the said Jacksonville, Pensacola & Mobile Railroad Company, after acquiring possession of said roads, and is especially prior to the said 3,000 papers called bonds of the said last named company, and now in the hands of the defendant, Walter Gwynn, as treasurer aforesaid.

79 XXVI. Your orator is further advised that if the 3,000 papers called bonds of the said Jacksonville, Pensacola & Mobile Railroad Company, so held for no lawful or valuable consideration by the said Walter Gwynn, teasurer aforesaid, are adjudged to be in fact and in law the valid debt, bond, and obligation of the said company for any purpose, that then the same should be adjudged and decreed to be held in trust for the use and benefit of your orator, under said trust agreement and assignment to your orator's said agent, trustee and fiduciary, Geo. W. Swepson, on the 22nd of April, 1869, aforesaid, to the exclusion of all other rights and equities, except the said $472,000 of said Pensacola & Georgia and Tallahassee Railroad bonds yet uncancelled, which your orator will in that event crave leave to pay and discharge as hereinafter prayed.

XXVII. Your orator further states that it is advised that there was no law authorizing the said Jacksonville, Pensacola & Mobile Railroad Company to issue the said 3,000 bonds, or papers, payable to the State of Florida, and no law authorizing the State of Florida to become the payee of such bond, or to take and hold special property in or to said bonds, and that there is no law authorizing or requiring the State of Florida to assign, transfer, or pass said bonds to any other holders; and that the said State of Florida neither paid nor was capable of paying any good or lawful consideration, or any equivalent or value whatever for said 3,000 bonds so held by said Walter Gwyan, treasurer, under and by virtue of said acts of the legislature of Florida of the 24th June, 1869, and the 28th January, 1870, and that the said acts and all agreements thereunder between the said State of Florida and the said
80 Jacksonville, Pensacola & Mobile Railroad Company were in violation of the constitution of the State of Florida, and did not and could not create or confer any validity whatever upon any bonds issued under said acts, or either of them, by virtue of said statutory agreements between the State of Florida and said railroad company, or that could bind the franchises and property of the same; but that the acts authorizing such statutory agreement and every part thereof, and all acts done or suffered under the same in the matter of creating and issuing said 3,000 so-called bonds, were and are utterly null and void.

XXVIII. Your orator, upon information, further states that if the said acts of the legislature of Florida of the 24th of June, 1869, and 28th of January, 1870, pretending to authorize the State of Florida to exchange its bonds for the so-called bonds of the Jacksonville, Pensacola & Mobile Railroad Company, were not repugnant to the constitu-

tion of the State of Florida, and therefore utterly null and void, but were, on the contrary, free from all constitutional objections, and were sufficient to authorize such exchange of bonds, your orator nevertheless avers that the terms and positive requirements of said statutes were not obeyed, and that the prescribed conditions were not complied with, which could alone authorize such exchange; that such exchange of State bonds could only be made with any company "when the president thereof shall certify upon his oath that the road or parts of road for which he asks such exchange of bonds is completed and in good running order," and that without such "certifying upon his oath" by the president of the company, no exchange of State bonds could be law-
fully made; that the president of the said Jacksonville, Pen-
81 sacola & Mobile Railroad Company never did "certify upon his
oath that the road or parts of road for which he asked for an exchange of bonds was completed," and that the conditions precedent upon which said bonds could be exchanged never occurred, or were performed, and therefore the delivery of any bonds by Harrison Reed, governor of the State of Florida, for said so-called bonds of the said Jacksonville, Pensacola & Mobile Railroad Company, was in disregard of the requirements of said statutes, and imposed no obligation whatever on said company.

XXIX. Your orator is advised, and so states and charges, that if the said acts of the legislature of the 24th of June, 1869, and 28th of January, 1870, attempting to authorize such exchange of bonds, were free from all other objections, and the conditions precedent had been fulfilled, requiring "the president of said company to certify upon his oath" as to the condition of such roads being such as the said statutes required, that still the said statutes were never capable of being carried into effect, because in the case of sale being made, as mentioned in said statutes, it requires the same to be "for lawful money of the United States, and for nothing else, except that the State, for its own protection, may become the purchaser at said sale, and may pay in said purchase any evidence of indebtedness the State may hold against said roads, which purchase money or said evidence of indebtedness shall be paid on the day of sale into the treasury of the State, or within ten days thereafter, and all moneys arising from said sale and paid into the treas-
ury of this State, as heretofore prescribed, shall be promptly and
82 exclusively applied to the payment and satisfaction of the bonds
issued by the State of Florida under this act," and can be applied to no other purpose and in no other mode, and that there being "no bonds issued by the State of Florida under this act," the essential object of the statute is rendered abortive and incapable of execution for the want of the specified subject matter to which to apply the proceeds of sale destroys the mutuality of the statutory agreement and would simply take the proceeds of sale from its rightful owner and place the same in the treasury of the State of Florida, from which it could only be removed, paid out, or withdrawn by the aid of another statute, authorizing the same to be done, which, being a mere matter of option, might never be done, thus arbitrarily using and absorbing the said proceeds of sale in violation of law and without redress to your orator or other holders of the stock of said company.

XXX. Your orator is further advised, and so avers, that the rights of your orator to said $960,300 of Pensacola & Georgia and Tallahassee Railroad bonds vested previous to the 24th day of June, 1869, that said bonds, being authorized by a statute of the State of Florida passed in 1855, became the subject of a contract at that date between said State and the holder of each and every bond so issued under said statute, and that the rights of your orator in and to said bonds were founded upon such statutory contract between your orator and the said State of Florida, and could not be altered or impaired, and much less absolutely destroyed, by said acts of the 24th June, 1869, or the 28th January, 83 1870, because such is prohibited by the constitution of the State of Florida and the Constitution of the United States as impairing the obligations of a contract, as your orator will ever maintain on the trial of this cause.

XXXI. Your orator is advised, and so states and charges, that the relation of trustees and cestui qui trust is essentially a matter of contract, with a means of mutual enforcement and adequate redress for any breach of trust; that the position of trustee cannot, by the constitution of the State of Florida, be created by act of its legislature between the State and its citizens and individuals or private corporations; that the State cannot be held responsible for a breach of trust, and that said acts of the 24th June, 1869, and 28th January, 1870, make no provision whatever for securing redress for such breach of trust, and therefore, besides being arbitrary and unjust, are repugnant to the constitution of the State of Florida, and are hence null and void.

XXXII. Your orator, upon information and belief, further states and alleges the fact to be, that after the placing of the 3,000 so-called bonds of the said Jacksonville, Pensacola & Moblie Railroad Company in the possession of the treasurer of the State of Florida, and before any of the pretended bonds of the State of Florida pretended to be exchanged for the bonds of said company were sold and purchased in the market by the defendants, or any of them, the fact that said 3,000 pretended bonds of the said Jacksonville, Pensacola & Mobile Railroad Company were not the bonds of the said company and created no lawful lien in favor of the State of Florida on the fran- 84 chises and property of the said company, as alleged by your orator, became a fact well known to the defendants, who were duly advised thereof by their counsel in New York, Messrs. Barlow, Laroque and Macfarland, who made the legal insufficiency of said bonds known to the State of Florida, and discussed means of remedying the same, whereupon the said State of Florida, through its governor, Harrison Reed, entered into a re-convention with the defendants holding, or proposing to hold, any of the bonds of said State, which resulted in the adoption of a new and different security, agreement, and contract between the State of Florida and said Jacksonville, Pensacola & Mobile Railroad Company, which was reduced to writing by the said counsel of the defendants in the city of New York, or London, in the shape of deed of conveyance, containing certain recitals and covenants, wholly waiving and superseding the said statutory agreement, if any there was, by said act of 24th June, 1869, and 28th of January, 1870, and substituting said written conveyance or covenant in lieu thereof, dated the day of , 1871, which among other things declared that said writing was an "indenture, made by and between the Jacksonville, Pensacola & Mobile Railroad Company, a corporation created, organized, and existing under and by virtue of the laws of the State of Florida, party of the first part, and Harrison Reed, governor of said State, party of the second part;" that said covenant and conveyance after further recitals and referring to the said acts of the legislature of Florida, approved January 28th, 1870, and the object thereof, and declaring that the object of said covenant and conveyance was in order to secure and

effectuate the true interest and meaning of the said statute, and
85 after reciting the various articles and provisions designed for such
purpose, the said conveyance provided that "in the event that it shall be considered best for the interest of the holders of bonds secured hereby, the party of the second part (the governor of Florida), and his successors in office, in case of such default, shall have the right to take possession of the mortgages and premises, and use and operate the same, taking the rents, profits and income thereof, and shall apply the net rents, profits and income thereof to the payment and discharge of such sums as may be due and unpaid from time to time, lent under due and legal proceedings to that end, had in a court of competent jurisdiction," as will better appear by the text and terms of said covenant, to which your orator craves leave to refer as part hereof for the purposes of this suit.

XXXIII. That said covenant thus prepared for the said Jacksonville, Pensacola and Mobile Railroad Company was signed by the president thereof, and its corporate seal was affixed thereto, and being in such manner executed, the said conveyance was accepted by the said State of Florida, through Harrison Reed, its governor, and which was bound thereby, and was by said governor, on the part of said State, placed on record in the proper registry office for the county of Columbia, State of Florida, when and whereby the State waived all and any rights to seek security under the said acts of the 24th of June, 1869, and 28th January, 1870, and was from and after the accepting and recording of said covenant and conveyance confined and limited to the provisions thereof.

86 XXXIV. Your orator further complaining states, that the defendants, Gideon M. Boissevain, Adrian J. Mildeus, Joseph Zaddocks, Adrian Stoop, John Collinson, and Thomas B. Coddington, although fully advised of the matters and facts alleged in the premises and with full notice thereof, claim, or pretend to claim, some right, title, or interest in or to the said 3,000 papers, or so-called bonds, of the said Jacksonville, Pensacola & Mobile Railroad Company, but precisely what interest your orator is not advised, and that said defendants further claim, or pretend to claim, that said 3,000 so-called bonds are a prior lien to the rights of your orator in and to the railroad, property and estate of the said Jacksonville, Pensacola & Mobile Railroad so purchased and paid for with your orator's said $960,300 of the Pensacola & Georgia and Tallahassee Railroad bonds aforesaid; and in pretending and making such claims did, in person or through some agency, apply to the governor of the State of Florida to exercise the extraordinary power of seizure mentioned in said null and void acts of the legislature of the State of Florida approved the 24th June, 1869, and the 28th day of January, 1870, respectively, and that said governor, utterly disregarding his lawful duty, and with a full knowledge of the facts herein alleged, and especially aware of the fact that the State of Florida, by the said re-convention, covenants and conveyance of the day of , 1871, aforesaid, had formally and solemnly waived all rights and power, had any ever existed, to interfere with the said railroad, under the said statutory provisions, and with a full knowledge that no
87 bonds of any kind ever had been lawfully issued under said null,
void, and inoperative statutes, or either of them, and utterly disregarding the terms and conditions of said re-convention and waiver in said deed, that the seizure of said railroad and the converting the same into money should be "under due and legal proceedings to that end, had in a court of competent jurisdiction," did, on or about the nineteenth day of February, 1877, arbitrarily and in defiance of law,

enter upon, intermeddle with, and with force seize the said Jacksonville, Pensacola & Mobile Railroad, and proceed to appoint persons, other than the officers and owners of said railroad, to work and handle the same, in a manner utterly destructive to the interests and rights of said company and your orator, as the lawful and equitable owner of the stock thereof, and after so seizing, advertised the said railroad and every part thereof for sale on the 4th day of June, 1877, as will better appear by a copy of said advertisement made part hereof, marked Schedule H.

XXXV. Your orator further states, that the defendant, Geo. F. Drew, governor, who with his advisors, the defendants, Columbus Drew, as comptroller of the said State; Walter Gwynn, as the treasurer of said State; George P. Raney, as attorney general of said State; and Hugh A. Corley, as commissioner of lands and immigration of said State, and constituting the advisors of said Governor Drew, and the said several parties named constituting collectively the trustees of the internal improvement fund of the State of Florida, though fully advised of the premises, still continue to seize, hold, and advertise said railroad 88 for sale under and by virtue of said illegal and arbitrary seizure, pursuant to said null and void acts of the legislature of the 24th June, 1869, and the 28th January, 1870, and declare their purpose, or the purpose of the said governor, to sell and dispose of said railroad on the said 4th day of June, 1877, as aforesaid, and your orator verily believes will make such sale in defiance of said covenants and agreements aforesaid and the prior and exclusive rights and equities of your orator in the premises alleged, unless such illegal and arbitrary proceedings be enjoined and restrained by this honorable court as hereinafter prayed.

XXXVI. Your orator states that the said defendants nor any of them ever acquired, owned, or held any bond or obligation of the said Jacksonville, Pensacola & Mobile Railroad Company, and certainly never owned or held, and do not now own or hold any of the said 3,000 so-called bonds of said company, so issued and placed in the hands of the said treasurer of the State of Florida, which said bonds never were out of the State of Florida, or out of the hands of the said treasurer of the State of Florida, who holds the same by virtue of no law or authority, and for no good, lawful, or valuable consideration, as aforesaid, but whose possession is that of a bailee for said company, or as a trustee for your orator, as founded upon the investment of its said $960,300 of said Pensacola and Georgia and Tallahassee Railroad bonds aforesaid, and not otherwise; and that the said 3,000 so-called bonds are held within the jurisdiction of this honorable court, and of right should be returned to said company.

XXXVII. Your orator further states, upon information and 89 belief, that the said defendants, and each of them, have at all times had full and sufficient notice of the fraudulent character of said bonds, and that the State of Florida never had acquired and could not acquire any legal or equitable title whatever in or to said 3,000 so-called bonds of the said company; that said State never issued, and never was capable of issuing any good or valid bond in exchange for the said 3,000 so-called bonds, as stated, and that the notice of the fraudulent character of said State bonds was given, among other things, by articles of impeachment being proffered by said State, through its house of assembly, charging the said Harrison Reed, governor, with having fraudulently conspired with others to procure, and did procure by such conspiracy, the creation and issue of such bonds, he, the said Governor

Reed, being fraudulently interested therein, and upon which said articles of impeachment the said Governor Reed was solemnly arraigned at the bar of the senate of Florida for trial; all of which was known to the defendants and each of them, and was and is such notice, and shows such arts of fraud perpetrated by the neglect and sufferance of said State, as to deprive it of all right to seize and hold said Jacksonville, Pensacola & Mobile Railroad.

XXXVIII. Your orator further states that the defendant, Thomas B. Codington, has come into possession of $25,000 of the coupons which were attached to and were illegally detached from the said Pensacola and Georgia and Tallahassee Railroad bonds, and which of right belong to your orator; that said coupons were placed in the hands of said
Codington by virtue of a corrupt and illegal transaction between
90 said Codington, Milton S. Littlefield, Edward Houstoun, and R.
H. Gamble, on or about the 11th day of January, 1871, as your orator is advised and believes, and that said Codington holds said coupons by virtue of no legal right and for no lawful consideration, but holds the same in trust for your orator, with whose money the said coupons were purchased, and to whom they rightfully belong.

XXXIX. Your orator, upon information and belief, further states, that the defendant, James G. Gibbes, claims to have or to hold a title of some sort to the portion of the said Jacksonville, Pensacola & Mobile Railroad extending from Quincy westward to the Chattahoochee River. That said Gibbes, as your orator is informed and believes, was a contractor for building the said portion of the Jacksonville, Pensacola & Mobile Railroad referred to, and did work not exceeding in amount about $92,000, after full and complete measurement by competent engineers, and that for this amount of work he was paid by said company, in cash, about $172,565, being an overpayment of about $80,000. That the money so paid the said Gibbes, was derived from the property and assets of your orator by the defendant, Milton S. Littlefield, the president of said company, whereby your orator became and is the equitable owner of the said work and labor done on said portion of said railroad. That subsequent to said overpayment, the said Gibbes rendered an account, in which he admitted the payment, by said company, through said Littlefield, of the said $172,565 and the receipt thereof, but claimed a further balance due him of $51,068.70, as will be seen by a copy of
said account, made part hereof, marked Schedule I.

91 XL. That said account, upon its face, besides being false and
inconsistent, shows that said Gibbes charged for and claimed pay for the tools, implements, stock and materials used in the work on said portion of the road, but which your orator, upon information and belief, states the said Gibbes never turned over and delivered to said company, but fraudulently used and appropriated the same to himself, and is justly and lawfully chargeable therewith.

XLI. Your orator further states upon information and belief, that said Gibbes, subsequent to the said overpayment of about $80,000, and well knowing there was not a dollar due to him, instituted a false and fraudulent suit in the circuit court for Gadsden County, Florida, claiming a large balance due him for damages of some sort that never, in fact, occurred, and sued the said Jacksonville, Pensacola & Mobile Railroad Company therefor, which, by the neglect of its officers and by the collusion of the president, the defendant Milton S. Littlefield and others, a pretended judgment was taken by default for a large amount, but what precise amount your orator is not able to state, but will ascertain and show to the court.

XLII. That the said Gibbes and said Littlefield, further colluding, have permitted said judgment to stand against said company, and have caused or permitted a portion of said Jacksonville, Pensacola & Mobile Railroad, to-wit, the portion extending west from Quincy to Chattahoochee River, to be levied upon and sold and purchased in by said Gibbes, who pretends some title thereto, but your orator charges 92 that the whole of said proceedings—that is, the said suit, the alleged demand and the suit thereon—the failure to defend on the part of the said company—the taking of a judgment by default—and the failure to open or reverse the same, and the said sale and purchase under said judgment—was a false and collusive proceeding ab initio and fraud upon your orator, the real owner of the money paid to said Gibbes, and the large and valuable property so sacrificed to pay the same, and your orator claims the right to a full and complete accounting with said Gibbes on the part of the said company for any and all sums ever at any time due to said Gibbes, and all monies at any time paid to him; and your orator will well and truly pay to said Gibbes any and all sums justly due him after such accounting, and your orator claims that said false, fraudulent and collusive judgment against said Jacksonville, Pensacola & Mobile Railroad Company shall be declared null and void so far as the rights of your orator are concerned, and as against the right of any and all bona fide creditors and stockholders of said company, as hereinafter prayed.

XLIII. Your orator, further complaining, states, that the governor of Florida has for and during the period of about five years past, without any lawful right so to do, taken forcible possession of and held, or caused to be held, and still holds, or causes to be holden, by persons of his appointment, the said Jacksonville, Pensacola & Mobile Railroad, and that at present, the defendant, T. C. Spooner, by the direction of George F. Drew, under color of his office as governor, but in violation of law, is holding possession of the said railroad, the receipts and income of which amount to a large sum of money; the taking, 93 holding and using of which railroad, and the receipts and income thereof by the said T. C. Spooner, under and by virtue of the order of said Drew, is a violation of and trespass upon the rights, property, estate, franchise, privileges and immunities of the said Jacksonville, Pensacola & Mobile Railroad Company, and is inflicting great and irreparable injury upon said company and the rights of your orator, as the lawful and equitable owner of the capital stock of said company, by reason of the same having been purchased and paid for by the fraudulent use and appropriation of your orator's said $960,300 Pensacola and Georgia and Tallahassee Railroad bonds, as aforesaid, and that the said illegal seizure of and trespass upon the property and estate of the said company and the rights of your orator should be enjoined and restrained as hereinafter prayed.

XLIV. That at the time the said governor of Florida took possession of said Jacksonville, Pensacola & Mobile Railroad, in or about the year 1872, there was no interest due on any bonds that were a lawful charge against said company; that the receipts of said railroad have since and during said period been received and absorbed without regard to the rights of said company or the stockholders thereof; that there never has been any statement of any amount of interest due and unpaid, or any legal ascertainment thereof, but on the contrary, upon the mere assertion of a default in the payment of alleged interest, the said governor of the State of Florida, after so usurping the possession of the said railroad, and without rendering any account of the receipts thereof,

further seized and advertised said railroad for sale, which your
94 orator charges is a mere arbitrary confiscation of the said railroad
of said company, without regard to law or the right of your orator and others, the lawful and equitable owners of the stock thereof.

XLV. Your orator, upon information, further states, that there is in the hands of the State of Florida a large amount of money, to wit, more than $40,000, which of rights is the property of and belongs to the said Jacksonville, Pensacola & Mobile Railroad Company, and which is in equity and good conscience the money and assets of your orator, the same having been derived from the earnings, receipts and income of the said Jacksonville, Pensacola and Mobile Railroad Company during the seizure and holding of the railroad of the said company, and that this said large sum of money is kept idle and useless to said company and your orator, and of right should be brought into the registry and under control of this honorable court, and by its order invested in some good interest-paying bonds; either the bonds of the United States or the bonds of the State of Florida, at their market value, during and pending the final hearing of this cause; and if not so ordered to be invested, your orator has good cause to believe and fear that the said money will be absorbed and wasted, to the great injury of said company and your orator, to whom it of right belongs.

XLVI. Your orator is informed and believes that the defendants, or some of them, and especially the said George F. Drew, governor as
aforesaid, is contemplating and threatening other and further
95 seizures and intermeddling with the affairs of said railroad company, under color of said null and void acts of the legislature of the 24th of June, 1869, and 28th January, 1870, well knowing the same are declared null and void, and that no valid obligation could be created or obligatory act done or performed under the same, and although the said statutory agreement was waived and abandoned by the said State of Florida, through its governor, said Harrison Reed, in the making and executing of said new covenant and stipulation with the said Jacksonville, Pensacola & Mobile Railroad Company, on the day of , 1871, aforesaid, and that the only existing agreement, if any, and the only and sole rights, if any, vested in or appertaining to the said State of Florida, are such as are set forth and provided in said conveyance and covenants last above mentioned, and none other whatever, and that the said rights, whatever they are, cannot be enforced by an arbitrary seizure of said road, under said statutes, but must be proved, established, and ascertained "under due legal proceedings to that end, had in a court of competent jurisdiction," as provided, covenanted, and agreed in the said conveyance and contract last above mentioned.

XLVII. Your orator further states, that the said Jacksonville, Pensacola & Mobile Railroad Company is a body corporate and politic, created under and by virtue of the laws of the State of Florida, and is qualified and capable, and in law and equity has the right to be invested with the full, complete, and untrammeled control of its franchise and estates, free and exempt from the trespasses, intrusions, intermed-
dlings, interferences, or hindrances or delays of the defendants,
96 or any of them, and especially the defendant Geo. F. Drew, gov-
ernor as aforesaid, and T. C. Spooner, under color of said null and void statutory agreement of the 24th of June, 1869, and the 28th of January, 1870, or any other pretext whatever, and in law and equity has a right to recover damages for such trespasses and injuries, and that the said Jacksonville, Pensacola & Mobile Railroad should be forthwith restored to the possession, use and control of said company,

and that the earnings and income thereof, amounting to a large sum of money, which for a long time past have been and are being absorbed and expended contrary to law and justice in extravagant demands and charges made and allowed under said illegal and arbitrary control of said railroad, by and to persons in no manner engaged, and for acts and proceedings in no manner designed for the benefit of said railroad company, or its stockholders, or your orator, as the bona fide owner thereof, but as extravagant compensation to persons and counsel, whose only and sole object was, and is, to destroy the franchise, property, and estate of said company, without regard to law, right, or justice; that said sums and amounts should be restored and paid back to said company by the proper order of this honorable court in that behalf made, or by proper proceeding instituted by said company for the recovery of such illegal peculations upon and appropriations of the moneys, earnings, and income of said Jacksonville, Pensacola & Mobile Railroad Company, while in the usurped and illegal control of the defendants, or any of them, or of those who have heretofore taken possession of and interfered with the said railroad company, and despoiled it of its lawful earnings, receipts and income, as alleged in the premises.

97 XLVIII. Your orator, while not admitting, but at all times denying, that any valid debt or lien in favor of the defendants, or any of them, was created by virtue of the said 3,000 papers, called bonds, pretended to be a debt created by the said Jacksonville, Pensacola & Mobile Railroad Company, payable to or in the name of the State of Florida, under said null and void statutory agreement pretended to have been entered into by virtue of the said acts of the 24th of June, 1869, and the 28th of January, 1870, and now held by the defendant, Walter Gwynn, treasurer aforesaid; nevertheless your orator, in behalf of said company, and for the protection of its own rights, as alleged in the premises, hereby tenders to pay and discharge, or to cause to be paid and discharged, any and all such debt or obligation as this honorable court, upon the final hearing of this cause, upon proofs taken in behalf of the rights of said company, and your orator, shall, in good conscience and equity, order, adjudge, and decree due to the said defendants, or any of them.

XLIX. Your orator further states, upon information, that it may be that the said sum of $40,000, more or less, as alleged to have been derived and received from the earnings and income of the said Jacksonville, Pensacola & Mobile Railroad Company, by some person or persons acting as receiver thereof, may not, in fact, have been transferred to the defendant, Walter Gwynn, as treasurer, but is in the custody of and held by the defendant Charles H. Foster, at the instance, notice, or request of some person or persons designing to get possession of the same or a portion thereof, contrary to law and in violation of the
98 rights of your orator and the said Jacksonville, Pensacola & Mobile Railroad Company in the premises, and that said Foster should of right be restrained from parting with or paying out said money, or any part thereof, but should bring in and deposit the same subject to the order of this honorable court.

LXIX. Your orator further states that before filing this bill, it applied to the president and such other officers of said Jacksonville, Pensacola & Mobile Railroad Company as it could find, and urged the bringing of this suit, or of instituting similar proceedings to protect the franchise and property of said company from total destruction so far as the enjoining and restraining the said seizure and advertisement of the railroad of said company for sale, and to seek relief in having said 3,000 papers, called bonds, delivered up by the defendants or such of them as have charge of the same, for cancellation by the said company, but was informed that said company was not in a condition to defend or assert its rights or to avail itself of its earnings and income for that purpose, because the railroad of said company, together with the management, receipts and earnings of the same, were kept from its possession and enjoyment by the defendants, or some of them, and your orator is, therefore, compelled to institute this suit for the protection of its rights and the preservation of said company as the lawful and equitable owner of the capital stock thereof, as alleged in the premises.

99 Wherefore, the premises considered, and inasmuch as your orator has no adequate remedy, except through the equitable relief of this honorable court, your orator prays that the United States writ of subpœna may issue, directed to the defendants, George F. Drew, governor of the State of Florida, and George F. Drew, governor of said State; Columbus Drew, comptroller of said State; Walter Gwynn, treasurer of said State; George P. Raney, attorney-general of said State, and Hugh A. Corley, commissioner of lands and immigration of said State, and composing the board of trustees of the internal improvement fund of the State of Florida—the Jacksonville, Pensacola & Mobile Railroad Company, Milton S. Littlefield, T. C. Spooner, Chas. H. Foster, James G. Gibbes, Gideon M. Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, John Collinson, and Thomas B. Codington, commanding them and each of them, under a suitable penalty and on a day therein named, to appear, and each, upon their separate oaths, full, true and perfect answer make to all and singular the allegations of this bill, so far as said defendants, or any of them, are within or subject to the jurisdictional reach of the subpœna of this court, and as to such of said defendants, or any of them, who reside beyond the jurisdiction of this court, that such a proper order or notice of appearance, by publication, or otherwise, may be granted in accordance with the provisions of law in that behalf made, and as to this honorable court may seem meet and proper.

And as special relief, your orator prays:

First. That George F. Drew, governor as aforesaid, may show
100 upon and by virtue of what authority he has seized and advertised for sale the Jacksonville, Pensacola & Mobile Railroad, or to hinder, delay or interfere with said company in the management of its said railroad, by the appointing of the defendant, T. C. Spooner, to intermeddle with or assume to control and manage the said railroad and receive the earnings and income thereof, to the exclusion of the lawful rights of said Jacksonville, Pensacola & Mobile Railroad Company, and that the said seizure, and all and singular the said acts of the said Drew and his servants, agents or appointees may, upon the final hearing of this cause, be forever and perpetually enjoined by the decree of this court.

Second. That the defendant, the said Jacksonville, Pensacola & Mobile Railroad Company, under its corporate seal, well and truly answer the allegations of this bill, and may, with its answer, state and exhibit what bonds it has issued, upon what authority, to whom, and for what consideration, if any received, together with all and singular the details and facts connected therewith, and especially as to a certain 3,000 papers or obligations to pay money, dated on or about the 1st day of January, 1870, and whether or not the issue of these papers, called bonds, were revoked by any resolution or order of said company, and if so, to exhibit a certified copy of such resolution, with its said answer.

Third. That the defendant, Milton S. Littlefield, shall state and set forth as part of his answer to this bill, whether or not he, as president of the said Jacksonville, Pensacola & Mobile Railroad Company, ever at any time, and if so, when, certified upon oath as to the con-
101 dition of the road of said company for the purpose of procuring
any exchange of bonds, and if he did so "certify upon his oath," that he exhibit and file a copy of such certificate as part of his answer to this bill; and that said Littlefield shall further set forth and state in full the dealings between the said Jacksonville, Pensacola & Mobile Railroad Company and the defendant, James G. Gibbes, as contractor, agent or fiduciary; what amount of work, if any, was done by said Gibbes; was such work measured; by whom, and what was the amount? How much money was paid—how much demanded? Was there a suit brought—if so, on what account and for what amount? Was there a defense made to said suit? If not, why was there no defense? Was there any agreement, written or verbal, between them, or proposal, written or verbal, to divide or share the amount of any judgment that might be rendered, and to set forth the same, or copies of the same, if in writing or in any letters taken, or correspondence; and that said Littlefield, as president of said Jacksonville, Pensacola & Mobile Railroad Company, be required to produce all the above mentioned, and all other papers, letters or correspondence touching the dealings and transactions between said company and said Gibbes.

Fourth. That the defendant, Walter Gwynn, may state and set forth what number of papers, purporting to be bonds or obligations to pay, of the said Jacksonville, Pensacola & Mobile Railroad Company are in his possession, and for what lawful consideration he holds the same, and when and what time paid or advanced, and in what manner and to whom, and that said Gwynn may be ordered to bring the said 3,000 papers, called bonds, into this court to be delivered up to said
102 Jacksonville, Pensacola & Mobile Railroad Company as illegal
and void and to be held for naught.

Fifth. That the defendant, Walter Gwynn, treasurer, may further state and set forth what amount of money, if any, he holds as such treasurer of the State of Florida, derived from the said Jacksonville, Pensacola & Mobile Railroad Company, or from any receiver of said company, or by virtue of any order of any court, as funds derived from said company, and especially as to a certain sum of $40,000, more or less, received as money belonging to said railroad company, transferred to said treasurer by order of the Supreme Court of the United States, and that the defendants, and each and all of them, be enjoined from the use of, or handling or paying out said money, or using or appropriating the same, and that said $40,000, more or less, be brought into this court, and by its order, to be invested in good, interest-paying securities during the pending of this suit, for the benefit of your orator and said company and its lawful stockholders.

Sixth. That the defendant, Charles H. Foster, late treasurer of the State of Florida, may be required to truly state whether he has or ever had the sum of $40,000, or any other sum of money derived from the earnings and income of said Jacksonville, Pensacola & Mobile Railroad Company, and especially said sum of $40,000, more or less, transferred to his charge by virtue of a certain order of the Supreme Court of the United States, and if so, why and by whose authority he holds said money, and what amount, if any, has been paid out of said money, and

upon whose order and for what consideration, and who, if any one, has claimed said money, in whole or in part, and for what reason, service or consideration, and that said Foster may be enjoined from
103 using, appropriating or paying out said money, but that the same
may be brought into this court to be invested in some good, safe, interest-paying security, pending the final hearing of this cause, in such manner as this honorable court may direct.

Seventh. That the defendant, James G. Gibbes, may full, true and perfect answer make to the allegations of this bill as applicable to him, and that he set forth and discover all and singular his relations to and dealings with the said Jacksonville, Pensacola & Mobile Railroad Company, as a contractor, agent or fiduciary; what work he did on said road; how much the same amounted to when measured according to the rules of measurement; did it exceed the amount of $92,000, and if so, how much? How much money did he receive for such work? Did he not receive about the sum of $172,000, and did he not receive about $80,000 in excess of the work done and measured? What amount of judgment, if any, he claims to hold against the said Jacksonville, Pensacola & Mobile Railroad Company—upon what account, if any, the said judgment is founded, and for what consideration and when and how said consideration was paid or rendered. That he state and set forth the particulars and items of such claim, account or demand, and did he ever render any account stated therefor; did he ever render any account subsequent to the Schedule I, set forth in the bill; if so, when and for what amount? Was there any defense made to said suit, and if none, why not? Was there any agreement proposed or understanding between the defendant, Gibbes, and the defendant, Littlefield, about allowing a judgment to be taken by default upon an assumed or fabricated account for the mutual or joint benefit
104 of the defendants, Gibbes and Littlefield, and state with particu-
larity all the facts, and set forth such proposal, whether verbal or written, together with a copy of said judgment roll, if any there be.

And your orator prays that the said judgment may be decreed to have been procured by collusion between the defendants, Gibbes and Littlefield, and founded upon no good or lawful consideration and a fraud upon the prior vested rights, capital and interest of your orator, by whose means the said road was built, and upon whose estate the said judgment is a fraudulent charge and burden. That your orator, on the part of said company, and in behalf of your orator's said prior rights, may have a full and complete accounting with said Gibbes, and be allowed to pay and discharge, or cause to be paid and discharged, any and all just and lawful debt or demand, if any there be due from the said company to said Gibbes, and that the said judgment be adjudged and decreed to be collusive, fraudulent and void as against your orator and others, whose rights are affected thereby, and that said judgment be decreed cancelled of record as a claim upon and damage to said Jacksonville, Pensacola & Mobile Railroad Company, and to the rights of your orator, as the lawful and equitable owner of the stock of said company.

Eighth. That the defendants, Gideon M. Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, Charles Muller, John Collinson and Thomas B. Codington may each, upon his separate oath, state and set forth what interest, right or title they or either of them may have in and to the said bonds of the said Jacksonville, Pensacola & Mobile Railroad Company, to wit: the said 3,000 bonds so issued and placed

in the hands of the governor or treasurer of the State of Florida,
105 and that they each state what consideration they, or either of them, paid for said bonds of the said Jacksonville, Pensacola & Mobile Railroad Company, if any they ever had; and whether they, or either of them, ever, in truth, did, at any time ever have or hold any of the bonds of said company, and if so, when, how many, and for what consideration were they so held.

Ninth. That the defendant, Thomas B. Codington, may personally and further state and disclose whether or not he holds any coupons detached from the bonds of the said Pensacola and Georgia Railroad or the Tallahassee Railroad Company, and especially whether he has not got coupons to the par value of $25,000, more or less, and what amount, and also state the number of the bonds and the different grades of bonds from which the said coupons were detached, and that upon a final hearing, the said coupons may be decreed to be the property of your orator, the same having been detached from said $960,300 Pensacola and Georgia and Tallahassee Railroad bonds so purchased with the money of your orator, and that said bonds are of lawful right the property of your orator, and should be brought into this court and decreed to be the property of your orator, upon the final hearing of this cause.

Tenth. Your orator further prays that the said George W. Swepson may, by the decree of this court, be adjudged and declared to have been the president, agent and fiduciary of your orator, as a body corporate and politic, in the years 1868 and 1869, and that your honors may further and specifically decree as follows:

a. That as such president, agent and fiduciary, the said Swepson came into the possession of the said $6,000,000 of bonds of the
106 State of North Carolina, and received the same as the property of and in trust for your orator.

b. That as such president, agent and fiduciary, the said Swepson received the proceeds of said $6,000,000 of bonds, when he disposed of or sold the same in the city of New York.

c. That as such president, agent and fiduciary, the said Swepson used and invested the money of your orator in the purchase of $960,300 of Pensacola and Tallahassee Railroad bonds, and that said bonds, at the instance of said purchase, became vested in and henceforth were the property of your orator.

d. That when said Swepson paid said $960,300 of Pensacola and Georgia and Tallahassee Railroad bonds, in the purchase of the said Pensacola and Georgia Railroad and the said Tallahassee Railroad, that said railroads then and there became and were henceforth the property of your orator.

e. That when the said conveyance (Schedule A) was created and signed on the 22d day of April, 1869, conveying, among other things, the said two deeds, (Schedules B and C,) by the said trustees of the internal improvement fund of the State of Florida, dated April 8th, 1869, to said Swepson, and agreeing to have issued to him certain bonds by Franklin Dibble and associates when incorporated, that the said trust deed and every part thereof became and was and is the property of your orator, and that the same still survives and is held in trust for the use of your orator, together with all and singular the interests conveyed, transferred or embraced therein.

107 *f.* That when the said Franklin Dibble and associates were incorporated by the said act of the legislature of Florida, of the 24th of June, 1869, (Schedule D,) that the said act of incorporation

and every part thereof inured to the use of and was held in trust for your orator.

g. That when the said Franklin Dibble and associates conveyed said Tallahassee Railroad, so created by the said previous Tallahassee Railroad and the Pensacola and Georgia Railroad combined, under said act of incorporation, to the said Jacksonville, Pensacola & Mobile Railroad Company, that the said last named company received the said Tallahassee Railroad and all and singular the franchise and estate thereof, as the property of your orator, and that the stock issued thereupon by the said Jacksonville, Pensacola & Mobile Railroad Company, became and henceforth was and is the property and estate of your orator, as the rightful, lawful and equitable owner thereof.

h. That by the express terms of the reservation, in the 6th section of said act of incorporation of said Franklin Dibble and associates, conferring upon the said corporation so created the right to issue bonds, the prior lien and equity of your orator, as the beneficiary under said trust deed (Schedule A,) of the 22d of April, A. D. 1860, was preserved as a statutory lien, giving a prior right over all bonds or conveyances authorized to be made, and was due and legal notice to all persons dealing in bonds issued by or as a charge upon the said Tallahassee
108 Railroad or the said Jacksonville, Pensacola & Mobile Railroad,
and that such prior lien still survives and is in full force in favor of your orator.

i. That when the said George W. Swepson, Milton S. Littlefield, J. P. Sanderson, J. L. ReQua, Wm. H. Hunt and others, the corporators of the Jacksonville, Pensacola & Mobile Railroad Company under said act of the 24th of June, 1869, as aforesaid, acquired the said Pensacola and Georgia and Tallahassee Railroads and issued a capital stock to the said Littlefield and others, that the said stock instantly vested in and became the property, right and estate of your orator, as the fruits and acquisition of the use and appropriation of your orator's said $960,300 of bonds, as aforesaid.

Eleventh. Your orator further prays that upon the premises stated, that it may have a decree ordering the said $960,3000 bonds of the said Pensacola and Georgia and the said Tallahassee Railroads, to be treated as if the same were not burned or destroyed, but the said bonds still exist in equity, according to the numbers, dates and amounts of said bonds so destroyed, and that said Pensacola and Georgia and Tallahassee Railroads may be ordered to be sold for the use and benefit of your orator, to pay to it the said $960,300 of bonds so purchased with its money, together with the remaining outstanding $472,065 of said bonds intended to be purchased by the note of said Swepson for the said $472,065 mentioned in said trust deed, (Schedule A,) without regard to any other or subsequent incorporation of said property on the said 24th day of June, 1869, or any subsequent bond issued by the said company so incorporated, or either of them.

109 Twelfth. Your orator further prays that if for any sufficient
reason, such sale cannot be made as last prayed, then your orator prays for such decree, order and judgment as will invest your orator with the sole and exclusive ownership of the said Jacksonville, Pensacola & Mobile Railroad Company, and all and singular the shares of stock and any and all bonds issued by said company, especially the said 3,000 so-called bonds, illegally held by the defendant, Walter Gwynn, treasurer, and the said Jacksonville, Pensacola & Mobile Railroad shall be delivered to your orator free from incumbrance, except as to the said $472,065 of the said Pensacola and Georgia and Tallahassee Railroad bonds, and

which said last named bonds, together with the accrued interest thereon, your orator hereby tenders to pay and discharge, or cause to be paid and discharged and delivered up to the trustees of the internal improvement fund, in such manner as this honorable court shall order, adjudge and decree.

Thirteenth. Your orator further prays that in paying or discharging said $472,065 of said Pensacola and Georgia and Tallahassee Railroad bonds outstanding as aforesaid, that your orator may have the benefit of any and all payments made on account of said bonds by said Littlefield and Swepson, or either of them, especially the sum of about $18,000, more or less, paid to one Henry R. Jackson on account of a portion of said bonds, by said Swepson and Littlefield, under and by virtue of said agreement between said Littlefield and Swepson, or one of them, with said Jackson, and that said agreement and all and
110 singular the rights accrued thereunder may be transferred to and vested in your orator, and that your orator may be adjudged to have the right to the benefit of said agreement, according to the terms and tenor thereof.

Fourteenth. Your orator further prays that pending the hearing of this cause, the said Jacksonville, Pensacola & Mobile Railroad Company may be taken from the control and interference of the defendants, or any of them assuming to interfere with or control the same, and restored to the use and control of said company, or such person as your orator and the said company may nominate and appoint, and that the defendants, or such of them as have been handling or intermeddling with said railroad and receiving the income and earnings thereof, may be decreed to account with your orator, or said company, and to pay over the said earnings and income of said railroad and every part thereof to your orator, or its appointees, as the equitable owner thereof.

Fifteenth. Your orator further prays that the said 3,000 so called bonds, so held by the said defendant, Walter Gwynn, treasurer, may be decreed to have been issued without authority of law; that the said statutory agreement of the 24th of June, 1869, and 28th of January, 1870, providing for the exchange of bonds between the State of Florida and the said Jacksonville, Pensacola & Mobile Railroad Company, was null and void absolutely, and was not and could not be a lawful consideration for any agreement or undertaking of any sort, and formed no consideration for the transfer and delivery of said 3,000 so-called bonds, and that said so-called bonds are held by said defendant,
111 Walter Gwynn, treasurer, in trust for your orator and for said company, and that the same may be decreed to be delivered up for cancellation and held for naught.

Sixteenth. And your orator further prays that it may be adjudged and decreed that the said 3,000 so-called bonds, so pretended to be authorized to be issued under and by virtue of said statutory agreement and authority, were not issued in accordance with the conditions and requirements of said statute, inasmuch as the president of the said Jacksonville, Pensacola & Mobile Railroad Company never did "certify upon his oath" to the facts and conditions precedent, required by the positive terms of said statute to authorize the said exchange of said bonds, and that such exchange may be decreed to have been in violation of such statute and not obligatory upon said company, and conferred no title upon any holders thereof.

Seventeenth. Your orator further prays that said statute may be adjudged and decreed to be incapable of performance, inasmuch as the same provides that in the event of the sale therein mentioned occurring

that the proceeds of said sale "shall be paid on the day of sale into the treasury of this State, or within ten days thereafter, and all moneys arising from said sale and paid into the treasury of this State, as heretofore prescribed, shall be promptly and exclusively applied to the payment and satisfaction of the bonds issued by the State of Florida, under this act." That no bonds ever were issued by the State of Florida, under said act, and that no such bonds are in existence to which to
apply the proceeds of any such sale, and that the seizing and
112 holding of the railroad of said company, under such void statutory agreement, wherein no consideration, as pretended therein, was created, paid or parted with by the State of Florida, is purely arbitrary, oppressive and illegal, and is prayed to be restrained and perpetually enjoined by the decree of this honorable court.

Eighteenth. And your orator prays for such other relief, general and special, as to this honorable court may seem just and equitable, the premises considered, together with his costs in this suit expended.

JOS. B. STEWART,
MATT H. CARPENTER,
E. M. THOMPSON,
Solicitors for Complainant.

JAMES M. BAKER,
Of Counsel.

UNITED STATES OF AMERICA,
Northern District of Florida:

Joseph B. Stewart, being duly sworn, says that he is the attorney in fact of the Western Division of the Western North Carolina Railroad Company; that said company is a citizen of the State of North Carolina, having its business office and corporate seal at Ashville, in said State; and that neither its president nor any of its officers are within this district, and therefore cannot subscribe to, or certify to this bill of complaint.

That deponent has read the foregoing bill of complaint, and knows the contents thereof, and the matter therein alleged; that his knowledge is derived from the inspection of records and from information from intelligent and well advised sources known to the deponent; that the matters stated within deponent's own knowledge are true, and that the matters stated upon information, he believes to be true.

JOS. B. STEWART,
Attorney in fact for the W. D. W. N. C. R. R. Co.

Subscribed and sworn to before me this day of March, 1877.

PHILIP WALTER,
Clerk U. S. Circuit and District Courts, Northern District of Florida.

113 SCHEDULE A.

Whereas, George W. Swepson, has paid to the trustees of the internal improvement fund of the State of Florida, for and on account of F. Dibble and his associates, in payment for the Pensacola & Georgia and the Tallahassee Railroads, sold to said F. Dibble and his associates by said trustees on the 20th day of March last, bonds of said roads amounting at their face to nine hundred and sixty thousand and three hundred ($960,300) dollars, and has also paid to said trustees for the same parties the sum of four hundred and seventy-two thousand and sixty-five ($472,065) dollars, being the full amount due said trustees for said roads; and whereas said F. Dibble, for and on behalf of himself and his associates, has obligated himself and them, and does hereby obligate himself and them, to cause bonds upon said roads as now completed, as soon as further legislative authority from said State of Florida shall be obtained therefor, to be issued, the same to be secured and in every respect to be, as stated in an agreement executed and dated the twenty-sixth day of last March, between said F. Dibble, on behalf of himself and his associates, and said George W. Swepson, which bonds, when executed, are to be and shall be placed as provided in said agreement, for the purposes therein set forth and for the further purpose of enabling said Swepson to be reimbursed the said sum of four hundred and seventy-two thousand and sixty-five dollars:

Now, therefore, this indenture, made and entered into between F. Dibble, on behalf of himself and his associates, party of the first part, and George W. Swepson, party of the second part, witnesseth, that said party of the first part, for and in consideration of the premises, has granted, bargained, conveyed, and confirmed unto said party of the second part all that property of whatever name, nature, and description, conveyed to said party of the first part by said trustees of the internal improvement fund of the State of Florida by two separate deeds of conveyance, each dated April 8th, A. D. 1869, which deeds for full description of property are hereby made part and portion of this instrument. The said property hereby conveyed, to be held by said party of the second part in trust for the express purpose of enabling said party of the second part—which he hereby agrees and binds himself to do—to convey the same to that incorporation, consisting, or to consist as incorporators of said F. Dibble and his associates. As soon as said Dibble and his associates shall have granted to them such a similar relief as the legislature of the said State of Florida granted to Wm. E. Jackson and his associates by act for relief of William E. Jackson and his associates, approved July 29th, 1868, and also for the further purpose of securing said party of the second part in all advances made as specified and agreed upon in the said agreement between these parties, executed and dated March 26th, 1869, and the advancement, as aforesaid, of said sum of four hundred and seventy-two thousand and sixty-five dollars, until such time as said relief shall have been granted, and said party of the second part shall have conveyed said property to said incorporation, as hereinbefore prescribed.

114 To have and to hold said property to said party of the second part for the purposes and trusts herein declared.

In testimony whereof, said party of the first part has hereunto signed his name and affixed his seal this day of 22d April, A. D. 1869.

[s.] F. DIBBLE,
For Himself and Associates.

Signed, sealed, and delivered in presence of us—
W. J. WOODWARD.
JESSE CARTER.

No stamp being present, Geo. W. Swepson is authorized to stamp.
F. D.

115 SCHEDULE B.

Whereas by an act of the general assembly of the State of Florida entitled an act to incorporate the Pensacola and Georgia Railroad Company, approved January the eighth, A. D. 1853, the said railroad company was duly incorporated;

And whereas the said railroad company duly and fully accepted the provisions of an act of said general assembly entitled an act to provide for and encourage a liberal system of internal improvements in this State, approved January sixth, A. D. 1855, and in writing, dated January twelfth, A. D. 1855, notified the trustees of the internal improvement fund, created under said last-mentioned act, of said acceptance;

And whereas the third section of said act to provide for and encourage a liberal system of internal improvements in this State provides, among other things, "that all bonds issued by any railroad company under the provisions of this act shall be a first lien or mortgage on the road-bed, iron, equipments, workshops, depots, and franchise, and upon the failure of any railroad company accepting the provisions of this act to provide the interest as herein provided on the bonds issued by said company and the sum of one per cent. per annum as a sinking fund as herein provided, it shall be the duties of the trustees, after the expiration of thirty days from said default or refusal, to take possession of said railroad and all its property of every kind and advertise the same for sale at public auction to the highest bidder, either for cash or additional security, as they may think most advantageous for the interest of the internal improvement fund and the bondholders";

And whereas the said Pensacola and Georgia Railroad Company on the sixth of February, A. D. 1869, and for a long time previous thereto, to wit, more than thirty days, had failed to provide the interest on the bonds issued by said company and the sum of one per cent. per annum as a sinking fund as provided by said act to provide for and encourage a liberal system of internal improvements in this State, and had thereby incurred the liability of being sold by the trustees of said internal improvement fund under the requirements of said act;

And whereas the trustees of said internal improvement fund at a meeting of said trustees held at the capital of said State at the city of Tallahassee on the sixth day of February, A. D. 1869, at which meeting were present his excellency Harrison Reed, governor; R. H. Gamble, comptroller; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general of said State, did resolve that: Whereas the Pensacola and Georgia Railroad Company had failed to provide the interest on the bonds issued by said company and the sinking fund of one per cent. per annum as required by said act to provide for and encourage a liberal system of internal improvements in this State, that the said trustees, by virtue of and in compliance with the provisions of said act, take possession of said road and all its property of every kind and advertise the same to be
116 sold at public auction to the highest bidder for cash or additional approved security at the office of said company, in Tallahassee aforesaid, on Saturday, the twentieth day of March, A. D. 1869, and that the notice of said sale be published forthwith until day of sale in the Journal of Commerce and the New York Herald, published in New York; the Savannah Republican, published in Savannah, Georgia; the Florida Union, published in this State, and all the papers in Tallahassee aforesaid;

And whereas, in compliance with said resolution, said trustees did take possession of said road and all its property of every kind, and immediately after the adoption of said resolution and until said day of sale, advertised the same for sale at public auction to the highest bidder for cash at the time and place and in the newspapers named, and in compliance with the requirements of said act, and pursuant to said resolution, did proceed and offer said Pensacola and Georgia Railroad, its road-bed, iron, equipments, workshops, depots, and franchise, and all the property of said railroad subject to said sale under said act at public auction to the highest bidder therefor for cash, subject, however, to the condition that the purchaser shall be bound to continue the payment of one-half of one per cent. semi-annually to the sinking fund until all the outstanding bonds of said company are discharged, under the penalty of an amendment of the contract of purchase and the forfeiture of the purchase-money paid in, and all other conditions of said act to provide for and encourage a liberal system of internal improvements in this State; and whereas at said sale F. Dibble and associates were the highest and best bidders, having bid the sum of one million two hundred and twenty thousand dollars for the said Pensacola and Georgia Railroad, its road-bed, iron, equipments, workshops, depots, and franchise, and all the property of said railroad subject to said sale under said act were knocked off to said F. Dibble and his associates;

And whereas F. Dibble and his associates have requested said trustees to execute to said F. Dibble, on behalf of himself and his associates, a deed of said railroad and other property as aforesaid, agreeing, upon the execution and delivery of said deed, to pay the said purchase-money bid:

Now, therefore, this indenture, made and entered into between Harrison Reed, governor of the State of Florida, R. H. Gamble, comptroller, S. B. Conover, State treasurer, J. S. Adams, commissioner of immigration, Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general of said State, constituting, ex-officio, the trustees of the internal improvement fund of the State of Florida, under and by virtue of said act to provide for and encourage a liberal system of internal improvement in this State, and subsequent acts of the general assembly in relation thereto, party of the first part, and F. Dibble, on behalf of himself and his associates, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the premises, as also of the said sum of one million two hundred and twenty thousand dollars to them in hand paid by the said party of the second part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained,
117 sold, aliened, and confirmed, and do by these presents grant, bargain, sell, alien, confirm, and deliver unto the said party of the second part the said Pensacola and Georgia Railroad, its iron, equipments, workshops, depots and franchise, and all its property of every kind subject to sale under the provisions of said act, to have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining to the said party of the second part, their successors or assigns forever, in as full and ample a manner as the said trustees of said internal improvement fund can convey the same, and the said party of the first part will, from time to time and all times hereafter, upon the reasonable request of the said party of the second part, their successors or assigns, make and execute all such further deeds necessary, if any, for the perfect and absolute assurance and confirmation of the said railroad and other property hereby conveyed or intended to be conveyed unto said party of the second part, their successors or assigns.

In testimony whereof, the said trustees of the internal improvement fund of the State of Florida, party of the first part, have hereunto set their hands and seals, this eighth day of April, anno Domini one thousand eight hundred and sixty-nine. (The words "to wit, more than thirty days" interlined before signature in the)

HARRISON REED, *Governor*. [SEAL.]
R. H. GAMBLE, *Comptroller*. [SEAL.]
S. B. CONOVER, *Treasurer*. [SEAL.]
J. S. ADAMS, *Com. of Immigration*. [SEAL.]
FRANK W. WEBSTER, *Surv'r-Gen*. [SEAL.]
A. R. MEEK, *Attorney-General*. [SEAL.]

Signed, sealed and delivered in presence of—
GEO. W. DRIGGS.
W. M. MCINTOSH.

Be it remembered that on this eighth day of April, A. D. 1869, personally appeared before me Harrison Reed, governor; R. H. Gamble, comptroller; S. B. Conover, treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general; and A. R. Meek, attorney-general, who each being thereunto examined, acknowledged that they executed the foregoing deed of conveyance as and for their act and deed and for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and private seal the day and year last aforesaid.

JAMES D. WESTCOTT, JR.,
Associate Justice Supreme Court of Florida.

STATE OF FLORIDA,
County of Duval, *ss*:

118 Be it remembered that on the 22d day of April, A. D. 1861, I, Chas. L. Mather, clerk of the circuit court and for said county, have duly recorded the foregoing deed in the public records of said county.

In witness I have hereunto set my hand and the seal of said court this day and year above written.

[SEAL.]
CHAS. L. MATHER, *Clerk*,
By F. B. KNAPP, *D. C.*

STATE OF FLORIDA,
Leon County:

Be it remembered that on this 22d day of October, A. D. 1869, the foregoing instrument of writing was presented to the subscriber, clerk of the circuit court in and for said county and State aforesaid, for record; the same being duly authenticated, I have admitted the same to record.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court the day and year last above written.

[SEAL.]
C. H. EDWARDS, *Clerk*,
By EDW. M. WEST, *D. C.*

119 SCHEDULE C.

Whereas by an act of the legislative council of the Territory of Florida, approved February tenth, A. D. 1834, entitled "An act to incorporate the Tallahassee Railroad Company," the said railroad was duly incorporated;

And whereas the said railroad company duly and fully accepted the provisions of an act of the general assemby of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, A. D. 1855, and in writing presented December nineteenth, A. D. 1855, notified the trustees of the internal improvement fund, created by said last-mentioned act, of said acceptance;

And whereas the third section of said act to provide for and encourage a liberal system of internal improvements provides, among other things, "that all bonds issued by any railroad company under the provisions of this act shall be a first lien or mortgage on the road-bed, iron, equipments, workshops, depots, and franchise, and upon a failure on the part of any railroad company accepting the provisions of this act to provide the interest as herein provided, it shall be the duty of the trustees, after the expiration of thirty days from said default or refusal, to take possession of said railroad and all its property of every kind and advertise the same for sale at public auction to the highest bidder, either for cash or additional approved security, as they may deem most advantageous for the interest of the internal improvement fund and the bondholders";

And whereas, the said Tallahassee Railroad Company, on the sixth of February, A. D. 1869, and for a long time previous thereto, to wit, more than thirty days, had failed to provide the interest on the bonds issued by said company, and the sum of one per cent. per annum, as a sinking fund, as provided by said act, to provide for and encourage a liberal system of internal improvements, and had thereby incurred the liability of being sold by the trustees of said internal improvement fund, under the requirements of said act;

And whereas the trustees of said internal improvement fund, at a meeting of said trustees, held at the capital of said State, at the city of Tallahassee, on the sixth day day of February, A. D. 1869, at which meeting were present His Excellency Harrison Reed, governor; R. H. Gamble, comptroller; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general of said State, did resolve that: Whereas the Tallahassee Railroad Company has failed to provide the interest on the bonds issued by said company and the sum of one per cent. per annum as a sinking fund, as required by said act, to provide for and encourage a liberal system of internal improvements, that the said trustees, by virtue of and in compliance with the provisions of said act, take possession of said road and all its property of every kind, and advertise the same to be sold at public auction to the highest bidder, for cash, or additional approved security, at the office of said company, in Tallahassee aforesaid, on Saturday, the twentieth day of March, A. D. 1869, and that the
120 notice of said sale be published forthwith until day of sale in
the Journal of Commerce and the New York Herald, published in New York; the Savannah Republican, published in Savannah, Georgia; the Florida Union, published in Jacksonville, in this State, and all the papers in Tallahassee aforesaid;

And whereas, in compliance with said resolution, said trustees did take possession of said road and all its property of every kind, and immediately after the adoption of said resolution, advertise the same for sale at public auction, to the highest bidder, for cash, at the time and place, and in the newspapers named, and in accordance with the requirements of said act, and pursuant to their said resolution, did proceed and offer said Tallahassee Railroad, and all its property of every kind, including road-bed, iron, equipments, workshops, depots, and franchise, for sale at public auction, to the highest bidder, for cash, subject, however, to the condition that the purchaser shall be bound to continue the payment of one-half of one per cent. semi-annually, to the sinking fund, until all the outstanding bonds are discharged, under the penalty of an amendment of the contract of purchase and the forfeiture of the purchase-money paid in, and all other conditions of *of* said act;

And whereas, at said sale, F. Dibble and associates were the highest and best bidders, having bid the sum of one hundred and ninety-five thousand dollars for the said Tallahassee Railroad and its property of every kind, including the road-bed, iron, equipments, workshops, depots, and franchise, the said road was knocked off to said F. Dibble and assocates, as the highest bidders therefor;

And whereas said F. Dibble and his associates requested said trustees to execute to said F. Dibble, on behalf of himself and his associates, a deed of said road and all its property as aforesaid, agreeing, upon the execution and delivery of said deed, to pay the purchase-price bid:

Now, therefore, this indenture, made and entered into between Harrison Reed, governor of the State of Florida; R. H. Gamble, comptroller; S. B. Conover, State treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general of said State, constituting, ex-officio, the trustees of the internal improvement fund of the State of Florida, under and by virtue of said act to provide for and encourage a liberal system of internal improvement in this State, and subsequent acts of the general assembly of this State, in reference thereto, party of the first past, and F. Dibble, on behalf of himself and his associates, party of the second part, witnesseth:

A. R. M., Attorney-General.
April 8, '69. Revenue stamp.

A. R. M., Attorney-General.
April 8, '69. Revenue stamp.

A. R. M., Attorney-General.
April 8, '69. Revenue stamp.

That the said party of the first part, for and in consideration of the premises, as also of the said sum of one hundred and ninety-five thousand dollars to them in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, and confirmed, and do by these presents grant, bargain, sell, alien, confirm and deliver unto the said party of the second part, the said Tallahassee Railroad, its iron, equipments, workshops, depots, and franchise, and all its property of every kind subject to sale under the provisions of this act, to
121 have and to hold the same, with all the rights, privileges, and
appurtenances thereto belonging, or in anywise appertaining, to the said party of the second part, their successors or assigns forever, in as full and ample a manner as the said trustees of said internal improvement fund can convey the same, subject, however, to the conditions and provisions stated and made known at said sale as above set forth; and the said party of the first part will, from time to time, and at all times hereafter, upon the reasonable request of the said party of the second part, their successors or assigns, make and execute all such further deeds, if any, necessary for the perfect and absolute assurance and confirmation of the said railroad and other property hereby conveyed or intended to be conveyed unto said party of the second part, their successors or assigns.

A. R. M., Attorney-General.
April 8, '69. Revenue stamp.

A. R. M., Attorney-General.
April 8, '69. Revenue stamp.

A. R. M., Attorney-General.
April 8, '69. Revenue stamp.

A. R. M., Attorney-General.
April 8, '69. Revenue stamp.

In testimony whereof the said trustees of the internal improvement fund of the State of Florida, party of the first part, have hereunto set their hands and seals this eighth day of April, anno Domini one thousand eight hundred and sixty-nine.

HARRISON REED, *Governor.* [SEAL.]
R. H. GAMBLE, *Comptroller.* [SEAL.]
S. B. CONOVER, *Treasurer.* [SEAL.]
J. S. ADAMS, *Com. of Immigration.* [SEAL.]
FRANK W. WEBSTER, *Surv'r Gen.* [SEAL.]
A. R. MEEK, *Attorney-General.* [SEAL.]

Signed, sealed, and delivered in presence of—
GEO. W. DRIGGS,
W. M. McINTOSH.

Be it remembered that on this eighth day of April, A. D. 1869, personally appeared before me Harrison Reed, governor; R. H. Gamble, comptroller; S. B. Conover, treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general, who each being thereunto examined, acknowledged that they executed the foregoing deed of conveyance as and for their act and deed and for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and private seal the day and year last aforesaid.

[SEAL.] JAMES D. WESTCOTT, JR.,
Associate Justice Supreme Court of Florida.

STATE OF FLORIDA,
Leon County:

Be it remembered that on this 23d day of October, A. D. 1869, the foregoing instrument of writing was presented to the subscriber, clerk of the circuit court in and for the county and State aforesaid, for record, and the same being properly authenticated I have admitted the same to record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court the day and year last above written.

[SEAL.] C. H. EDWARDS, *Clerk.*
By EDW. M. WEST, *D. C.*

122 STATE OF FLORIDA,
County of Duval, ss:

Be it remembered that on this 22d day of April, A. D. 1871, I, Chas. L. Mather, clerk of the circuit court in and for said county, have duly recorded the foregoing deed in the public records of said county.

In witness whereof I have hereunto set my hand and the seal of said court this day and year above written.

[SEAL.] CHAS. L. MATHER, *Clerk,*
By F. B. KNAPP, *D. C.*

123 SCHEDULE D.

AN ACT for the relief of Franklin Dibble, A. Huling, E. M. Cheney, and their associates, purchasers of the railroad from Tallahassee to St. Marks, and of the railroad from Quincy to Lake City, and incorporating the Tallahassee Railroad Company.

Whereas, at a sale of the Pensacola and Georgia Railroad and the Tallahassee Railroad, on the 20th day of March, 1869, by the trustees of the internal improvement fund, under and by virtue of the provisions of the internal improvement law, Franklin Dibble, A. Huling, E. M. Cheney, and their associates became the purchasers thereof;

Preamble.

And whereas it is essential for the interests of the people of this State that the parties aforesaid, and their associates, shall be invested with such corporate powers as are needful for the operations of said road, as well as more accurately to define their powers and duties: Therefore

The people of the State of Florida, represented in senate and assembly, do enact as follows:

Corporation.

Name of corporation.

Powers.

SECTION 1. That said Franklin Dibble, A. Huling, E. M. Cheney, and their associates and their successors and assigns, are hereby made a body politic and corporate, under the name of the Tallahassee Railroad Company, and they, their associates and assigns, as such body politic and corporate, are hereby vested with and shall be entitled to exercise and enjoy the like powers, franchises and privileges as were granted to the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company by the several acts incorporating said Pensacola and Georgia Railroad Company and said Tallahassee Railroad Company, and with the right to hold, operate, and enjoy the said railroad, under the name of the Tallahassee Railroad Company, subject to the conditions annexed to the sale of said roads by the trustees of the internal improvement fund, and by and in the name of the Tallahassee Railroad Company, they, their associates, successors, and assigns may purchase, receive, and hold lands and tenements, goods and chattels of whatsoever character that shall be necessary or useful for the purposes of said railroads, and the same to grant, sell, mortgage or dispose of, and to sue and be sued, implead and be impleaded, to make a common seal, and at pleasure to break and alter the same, and to establish and put in execution such by-laws and regulations as may be necessary and expedient, not inconsistent with the constitution and laws of the State of Florida.

Certain provisions of the charter of the Pensacola and Georgia R. R. Co. made applicable to this corporation.

SEC. 2. Be it further enacted, That the provisions of this act incorporating the Pensacola and Georgia Railroad Company, for the protection of its roads from trespass, injury or intrusion, and providing for the punishment of persons who shall trespass upon or injure the same, be, and they are hereby made applicable to all cases of trespass, injury or intrusion on, to, or upon the aforesaid railroads, and the said Tallahassee Railroad Company shall be entitled to all the benefits and protection thereof and therefrom.

Amount of stock to be issued.

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SEC. 3. Be it further enacted, That said Franklin Dibble, A. Huling, E. M. Cheney, and their associates, shall be entitled to declare the amount of which the stock in the said Tallahassee Railroad Company shall consist, and to divide the same into shares, which shares, however, shall not be less than one hundred dollars each.

May rent or farm road.

SEC. 4. Be it further enacted, That said Tallahassee Railroad Company may, when they shall see fit, rent, lease, farm out, or sell any part of the said railroad to any person or persons, corporators or corporations, upon such terms as may be agreed on, provided said sale, renting or leasing shall not be made to any person or persons, or corporation owning any railroads out of the State of Florida.

SEC. 5. Be it further enacted, That the board of directors of the said Tallahasse' Railroad Company shall consist of nine directors, of whom the president of said company shall be one. The first directors shall be elected or appointed within one month after the passage of this act, and annually thereafter, at such time as may be fixed by resolution or law, but the said company shall not be dissolved for failure to elect or appoint its directors, so long as the said railroads shall be kept running and in operation, but the directors may be elected or appointed at the next meeting thereafter. Dirctors.

SEC. 6. Be it further enacted, That said company shall have the right to issue coupon bonds in such denominations and at such rate of interest annual or semi-annual, and payable at such time and place as they may determine, and may secure the same by mortgage on said railroads, their equipments, depots, workshops, property and franchise, executed in such form and manner as may be determined. Provided that any deed of trust, mortgage, conveyance, bond or bonds, or security which may have been executed, made, created or contracted for, as a lien on said railroads or otherwise, by said Franklin Dibble, in behalf of himself and his associates, prior to the passage of this act, shall be valid and effectual to all intents, either at law or in equity, as a lien or mortgage, or security on said railroad, as if the same had been made by virtue of this act, and shall in no wise be effected by any provisions thereof. Company may issue bonds.

Approved June 24th, 1869.

125 SCHEDULE E.

No. 201.] UNITED STATES OF AMERICA. [$1,00

STATE OF (coat of arms.) FLORIDA.

Bond of the Jacksonville, Pensacola and Mobile Railroad Company.

Train of cars.] [Cut of steamship.

Know all men by these presents that the Jacksonville, Pensacola and Mobile Railroad Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars for value received, which sum the said Jacksonville, Pensacola and Mobile Railroad Company promises and agrees to pay to the State of Florida on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon, at the rate of eight per centum per annum, payable semi-annually, on the first days of July and January in each year, on the presentation and delivery of the proper coupons hereunto attached.

This bond is one of a series of like tenor, limited to sixteen thousand dollars per mile, issued in accordance with an act of the legislature of the State of Florida, passed on the 24th of June, eighteen hundred and sixty-nine, entitled "An act to perfect the public works of the State;" also an act amendatory thereof, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,' approved June 24th, eighteen hundred and sixty-nine," and given in exchange for bonds issued by the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company for an equal amount, in accordance with said act.

In witness whereof the said company has caused this bond to be signed and attested in its behalf by its president, and its common seal affixed at its office in Tallahassee, this first day of January, in the year 1870.

[SEAL J., P. & M. R. R. CO.] M. S. LITTLEFIELD,
President.

Issued in accordance with the provisions of an act of the legislature of the State of Florida, approved the 24th of June, 1869, entitled "An act to perfect the public works of the State;" also an act amendatory thereof, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entiled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine.

January 1st, 1870.

STATE OF FLORIDA, EXECUTIVE OFFICE,
Tallahassee, Feb. 14, 1877.

I, Geo. F. Drew, governor of the State of Florida, do hereby certify that the within is a true and correct copy of bond No. 201 of the J., P. & M. R. R. Co., now on file in the office of the State treasurer.

GEO. F. DREW, *Governor.*

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SCHEDULE F.

TALLAHASSEE, *December* 10, 1870.

At a meeting of the directors, convened this day at the call of the vice-president, were present: Col. J. P. Sanderson, vice-president; Messrs. Hawkins, Cheney, Stearns, and Purman, directors.

After a conversation as to the objects of the meeting, the following preamble and resolutions were offered and adopted:

" Whereas bonds of the Jacksonville, Pensacola and Mobile Railroad Company have been issued, according to the provisions of the act incorporating this company and the amendments thereto, which bonds have been exchanged for bonds of the State of Florida, according to the provisions of said act; and whereas said bonds of the State of Florida were delivered by the governor to the president of the company; and whereas though previous to the consolidation of the Tallahassee Railroad Company with this company, authority was granted by the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company to its president to issue, negotiate, dispose of, and apply the bonds for the purpose authorized by the act of incorporation, no action was had thereon after such consolidation, either by the stockholders or directors then newly elected, authorizing the issue or disposing of bonds; and whereas though no such action was formally taken, yet the stockholders and directors were advised that bonds had been issued and exchanged for an equal amount of State bonds, and were in the hands of the president, to be disposed of and applied, as they supposed, according to the law authorizing their issue, and they were satisfied therewith, if a proper application was to be made thereof; and whereas the directors are now advised that a contract was made by the president and George W. Swepson, as president of the Florida Central Railroad Company, and certain persons as commissioners, appointed by an act of the legislature of North Carolina, which contract was executed in April last, by which the bonds of the State of Florida taken in exchange for the bonds of this company were to be disposed of and the proceeds to be divided, according to the terms o said contract, between the above-named Florida railroads and the commissioners aforesaid, dollar for dollar, until the amount of over one million of dollars, with interest, should be paid to said commissioners;

"And whereas said contract was unknown to the directors, and is in violation of the law of this State authorizing the issue of said bonds, and is a misapplication of said bonds or their proceeds: Therefore

"Be it resolved, That all authority in the president of this company to dispose of or negotiate said bonds is hereby withdrawn.

127 "Resolved further, That a demand be made upon the president, or whomsoever else may have possession, control, or custody of said bonds, to return the same to the treasurer of this company forthwith.

"Resolved further, That a copy of the foregoing preamble and these resolutions be communicated by the secretary to S. W. Hopkins & Co., 71 Broadway, New York, and 58 Broad street, London, and to the president of this company and whomsoever else may have said bond, or any part thereof, in their hands or control."

Adjourned, subject to the call of the vice-president.

F. H. FLAGG, *Secretary.*

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SCHEDULE G.

New York supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
SIDNEY W. HOPKINS ET AL.

CITY AND COUNTY OF NEW YORK, *ss:*

GEORGE W. SWEPSON, having first been duly sworn, makes oath and says:

That he was from October, 1868, to October, 1869, president of the company, (the plaintiffs in this action,) and during the period from the spring of 1869 until the summer of 1870, he was the president of the Florida Central Railroad Company.

Affiant further states that as president of the plaintiff, he came into possession of about six millions of dollars in bonds of the State of North Carolina, said bonds being received by affiant for the account of said plaintiffs and in payment of a portion of the capital stock of said company.

Affiant further states that he held such bonds to be used for the purpose of constructing the railroad of said plaintiffs. Affiant further states that after receiving the said bonds, he brought them to the city of New York, and there pledged a large portion of them, that is, nearly all of them, as collateral security for money then and afterwards borrowed from time to time by this affiant. Affiant further says that he used about $150,000 of said money to purchase in Florida a quantity, being more than half, of the capital stock in the Florida Central Railroad Company, which company then had no mortgage debt upon its line of railroad, which was sixty miles long, completed, and in good running order. Affiant says that other portions of said money, to wit, about $720,000, was expended in buying first mortgage bonds of the Pensacola and Georgia Railroad Company and of the Tallahassee Railroad Company, said mortgage bonds amounting to about $1,000,000, and also in buying some stock in said companies and in paying expenses incident to said purchase. Affiant further says he purchased and held said railroad interest above named in his own name. Affiant further says that about the month of March, 1869, the trustees of the internal improvement fund of the State of Florida, having authority to do so, caused to be sold at public sale the Tallahassee Railroad and the Pensacola and Georgia Railroad to pay the first mortgage bonds thereof.

Affiant further says that Mr. F. Dibble, of Jacksonville. and associates, became the purchasers of both of said roads at said sale, they having bid the amount of the whole mortgage indebtedness of both of said railroads, amounting in all to over $1,400,000.

Affiant further says that said F. Dibble and associates were not able to pay the said trustees the amount of said bid, the larger portion of which would have been due to this affiant, and therefore said Dibble 129 and his associates proposed to this affiant that if this affiant would relinquish his claim to payment under said sale, they would cause a new company to be organized to own both of said railroads, (sold as aforesaid,) and that this affiant should be associated therein and should own one-third of the capital stock in said new company; and, further, that a new mortgage should be made on the new consolidated railroad, and the bonds thereof should be sold for one purpose only, to wit, to pay this affiant the entire amount of his investment and outlay in purchasing said railroad interest, and a further sum of $150,000, and also to pay to said trustees of said internal improvement fund the amount of the remaining outstanding bonds for which said railroad was sold, said remaining bonds amounting to over $400,000.

Affiant further says that he agreed to said proposal, and a written memorandum of said agreement was duly executed by said Dibble and his associates and this affiant, and this affiant surrendered his bonds to said trustees of said internal improvement fund.

Affiant further says that said written agreement was drafted by M. D. Papy, esq., and J. P. Sanderson, esq., attorneys, &c., in Florida, and said agreement was transferred by this affiant to Gen. Milton S. Littlefield, after he became the president of said W. D. W. N. C. R. R. Co. Affiant further says that subsequently a supplemental agreement was made by him with said F. Dibble and a majority of his associates, whereby the latter agreed that in consequence of the payment of $25,000 (which was duly paid) by affiant, he should receive about 60 per cent. of the capital stock of said consolidated company, instead of one-third thereof, as originally agreed.

Affiant further says that part of said money expended as above for said railroad companies was about $7,000 for two locomotives and the purchase money for a lot of land in Jacksonville, said lot having cost the sum of $5,000.

Affiant further says that he assigned and transferred said agreement with F. Dibble and associates, and all affiant's interest in and claims upon said Florida railroads to said Gen. Milton S. Littlefield, he being the president of the Western Division of the Western North Carolina Railroad Company, and said assignment was so made upon the express understanding and agreement that he would apply said property to reemburse said railroad company the full amount (with 8 per cent. interest) of all of their money which affiant had invested and expended as above stated in said Florida railroads.

Affiant further says that out of the sum of $720,000 invested as above in said Florida railroads, about $120,000 was so expended for affiant through the agency of Milton S. Littlefield in person.

(Signed) GEO. W. SWEPSON.

Subscribed and sworn to before me this 8th day of September, 1871.

JAMES W. CONNOLLY,
Notary Public, N. Y. C.

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SCHEDULE H.

STATE OF FLORIDA:

Sale of the Jacksonville, Pensacola and Mobile Railroad.

Whereas, by an act of the legislature of Florida entitled "An act to perfect the public works of the State," approved June 24, 1869, and the several acts amendatory thereto, it is provided that in case the Jacksonville, Pensacola and Mobile Railroad Company shall fail to pay either principal or interest of the bonds issued by the said company under and by virtue of the said act, or any part thereof, for twelve months after the same shall become due, it shall be lawful for the governor to enter upon and take possession of the property and franchises of the said company, and sell the same at public auction, after having first given ninety days' notice by public advertisement, "for lawful money of the United States, and for nothing else;" and

Whereas the said Jacksonville, Pensacola and Mobile Railroad Company has failed to pay the interest due on its said bonds for twelve months after the same became due:

Now, therefore, I, George F. Drew, governor of the State of Florida, in accordance with the said act, have entered upon and taken possession of the Jacksonville, Pensacola and Mobile Railroad, extending from Lake City to the Apalachicola River, in Florida, and from Tallahassee to St. Marks, Florida, and all the property of the said company, real and personal, appertaining thereto, together with all the rights, franchises, and powers thereto belonging, and do hereby give public notice that I will sell the said railroad, and property, rights, franchises, and powers, at public outcry, for lawful money of the United States, at the eastern door of the principal depot building at Tallahassee, Florida, on Monday, the 4th day of June, A. D. 1877, at twelve o'clock m., it being understood, and notice being hereby given, that the said road, property, and franchises will be sold subject to the vendor's lien held by the board of trustees of the internal improvement fund of the State of Florida, for the unpaid purchase money due for said road.

Given at Tallahassee, the capital, this nineteenth day of February, A. D. 1877.

GEORGE F. DREW,
Governor.

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SCHEDULE I.

Gen. M. S. Littlefield, president, in account with Jas. S. Gibbes.

1869.		DR.
Aug. 27.	To cash paid passage 23 laborers and provisions..	$296 00
Sept. 3.	Passage of 90 hands from Charlotte & Columbia.	1,080 00
5.	Bacon and meal for same, $271.50; 12 dozen shovels, $216.....	487 50

	5. 4 doz. axes, $21, $84; 5 doz. wheelbarrows, $40, $200; 2 doz. picks, $24	308 00
	5. Tents, $180; expenses of hands, $35; passage of 51 hands, $602	817 00
	15. Paid for bacon, $162; 16 mules, $180, $2,880; 20 carts, $800	3,842 00
	15. Wagon, &c., $190; plows, &c., $74; corn and hay, $295.15	559 15
	23. Freight on mule and cart, $382; bacon and flour, $85.50	467 50
	27. Passage of hands, 11, $132; axes, $22.50; paid for hands, $52	206 50
Oct.	1. Pay-roll for Sept., $2,665.15; 3d expense hands, $205	2,807 15
	1. 3 hhds. bacon, $503; fodder, $56.25; corn, $226,	785 25
	7. Iron for wagon, &c., $42; harness, $85; horseshoes, $7	134 00
	13. 10 bbls. flour, $75; clothing, $85; passage hands, $115.20	275 20
	18. 102 bacon, $153; hay, $43; salt, $6; 5 doz. shovels, $92	294 00
	18. 1 doz. picks, $12; beef, $11; lumber, $36; 10 carts, $340	399 09
	27. 18 mules, $180, $3,240; freight on mules and cart, $297.50	3,537 50
	27. Corn and fodder, $117; expenses for hands, $5.25; horseshoes, $18	140 25
Nov.	2. Wages for Oct., $5,724.55; 3 doz. axes, $68; lumber for ties, $131	5,923 55
	8. 80 bush. corn, $128; fodder, $29; 10 bbls. flour, $86; 10 bbls. pork, $300	543 50
	13. 5 doz. wheelbarrows, $36, $180; freight, $28.50; 18 passage, $48	292 50
	23. Bacon and meal, $692.50; freight, $47.50; wagon and harness, $128.25	868 25
	23. Fodder, $22; teamster, $45.50; 29th hauling bill, $24	91 50
	30. Wages for Nov., $6,285.50; paid for coat, $9.50; iron and shoes, $38.25	6,333 25
Dec.	1. 1,150 cross-ties, $30, $345; 184 B. corn, $1.50, $276; passage of hands, $172	793 00
132	Dec. 5. 3 hhds. bacon, $516.55; fodder, 143.45; cash to Davis, grade, $3,350	$4,010 60
Dec.	13. Bridge timber, $415; leather and harness, $194.75; 190 bush. corn, $309	903 75
	14. Passage 7 men, $84.50; 3 doz. shovels, $49.50; Day, grading, $1,625	1,759 00
	17. Paid for clearing, $356; 4,050 cross-ties, 30 cts., $1,215; wages, $210	1,781 00
	21. Expenses Hagood, $280.25; 124 bush. corn, $176.75; 4,000 lbs. fodder, $80	537 00
	21. Horse shoes and nails, $17.50; harness, $42.50	60 00
	28. 10 carts and 1 wagon, $390; 2,406 cross ties, $30, $721.80; iron, &c., $95	1,206 80
	28. Fodder and hay, $64; Jan. 1, pay-roll Dec., $9,087	9,151 00

	28.	Paid Davis, Shaw & Jordan, grading	5,000 00
	28.	Paid Day Carter, grading	2,154 25
	28.	Clearing and grading, Duncan & Bro	460 00
1870.		Amount brought forward in original	$58,104 35
Jan.	13.	Cash paid Hagood for hands and expenses	$315 00
	16.	Bill bacon, $526; freight, $119.25; passage 42 hands, $438	1,083 25
	22.	Corn and hay, $285; hay, fodder, &c., $166.50	451 50
	22.	8,000 x ties, 30, $2,400; bridge timbers, $195.50; axes, &c., $78.25	2,673 75
	29.	Fodder, $87.50; 23 bbls. pork, $660; fr't, $46.50.	794 00
Feb.	1.	Paid transportation hands, $417; pay-roll, $5,180.25	5,597 25
	7.	Corn and fodder, $115; axes, $42; 10,000 x ties, 30, $3,000	4,157 00
	7.	Bacon, $176.40; nails, $12.75; fodder, $46; wheelbarrows, $180	414 75
	18.	Corn and hay, $92.50; 23, bill bacon, $217.80; harness, $86.50	396 80
	18.	Leather, $62; beef, $13.60; pay-roll Feb., $5,386,	5,461 60
Mar.	3.	7,000 x ties, 30, $2,100; grading, $916; bacon, $183	3,199 10
	7.	20 bbls. flour, $162; March 9, 100 bus. corn, $170,	332 00
	9.	Fodder, $131.50; 11 flour, $150; bacon, $386.50; meal, $1.40	808 00
	11.	5,000 x ties, 30, $1.500; 5 doz. shovels, $76.50	1,576 50
	11.	Engine for piling, $750; for trestle work, $2,500.	3,250 00
	19.	30 bbls. meal, $7, $210; bacon and pork, $379.20.	589 20
	22.	Transportation, $123; grading, $450; 100 bushels corn, $175	748 00
	28.	Fodder, $58; April 1, pay-roll March, $6,217.60.	6,275 60
Apr.	7.	Fodder and hay, $76; 10 bbls. meal, $73; transportation, $150	299 00
	13.	1 hhd. bacon, $192; 50 bu. corn, $82; fodder, $26	300 00
133	Apr. 13.	5 doz. shovels, $92.60; 1 hhd. bacon, $186; 20 bbls. meal, $140	$418 60
	28.	2,000 x ties, 30, $600; trestle work, $3,500; pay-roll, $9,225	13,325 00
May	5.	Corn and bacon, New Orleans, $2,305; shovels & picks, $223	2,528 00
	10.	Corn, bacon, &c., $475; paid Shute, grading, $1,190	1,665 00
	16.	Hauling trestle-work, $252.20; Day, for grading, $1,200	1,452 00
	20.	Spiling iron and freights, $915.50; 290 bush. corn, $435	1,350 50
	30.	F. J. Davis, grading, $2,000; pay-roll May, $14,890	16,890 00
June	15.	Paid for oats, corn, and bacon, $1,006; transportation, $987	1,993 00
	15.	200 bush. corn, $350; harness, trestle-work, $1,600	1,950 00
	15.	C. A. Bowling, grading, $7,290; provisions, $760.	8,050 00

July	1.	Paid Durant on note, $190; Carolina Bank interest, $4,528	4,710 00
	1.	Pay-roll June, $12,390; McCan, provisions, $1,296.20	13,686 20
	7.	Freight, $190; grading, $1,320	1,510 00
	13.	Jackson, for grading, $2,100.15	2,100 15
	13.	J. Luger, paid bill of supplies	3,507 05
		Brought forward in original	$171,952 35
	21.	William Black & Co., supplies	$1,000 00
	23.	205 bush. corn, $321.50; fodder, $71.25	392 75
	27.	1 doz. axes, $22; timber for trestle, $950	972 00
Aug.	1.	Pay-roll August, grading and ties	10,052 50
	3.	Bacon, 3 hhds., $517.50; 250 bush. corn, $1.50, $375	892 50
	14.	Fodder and hay, $147.80; salt, $9; 72 bush. corn, $108	264 80
Sept.	3.	Pay-roll for August	7,810 20
	21.	Corn and fodder, $91.27; cash for trestle-work, $917.25	1,008 52
	30.	1,340 x ties, 30, $402	402 00
Oct.	3.	Pay-roll for September	4,504 56
	13.	Cash paid return of hands' passage	290 00
	13.	Provisions for hands' passage	34 50
	17.	22 bbls. flour, $150; 220 bush. corn, $330.75; fodder, $41	521 75
Nov.	7.	Pay-roll for October	2,725 00
	7.	Paid M. B. Smith, lawyer's fees	100 00
Dec.	1.	Corn and bacon, $321	321 00
	1.	Pay-roll for November	920 40
	19.	Paid return of hands	380 00
134		1871.	
Jan.	5.	Paid for corn and fodder	317 00
	21.	Paid for bacon, $162.15; pay-roll, $225.17	387 32
	28.	Paid for fodder, $112.20; 100 bush. corn, $1.45, $145	257 20
Feb.	3.	3 bbls. flour, $21; 17th pay-roll, $292	313 00
Mar.	3.	Law expenses, attachments South Carolina, New York, and Florida	964 20
	10.	100 bush. corn, $145; fodder, $24.50	169 50
Apr.	3.	A. P. Bauknight, grading, $1,590	1,590 00
		Discount on paper of S. W. Hopkins, with protests, &c	15,090 00
			$223,633 70
			Cr.
		Cash of Swepson	11,520 00
		M. S. Littlefield	2,000 00
		F. N. Flagg	4,045 00
		S. W. Hopkins—cash $55,000—paper, $100,000	155,000 00
			$172,565 00
		Balance	$51,068 70

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U. S. MARSHAL'S OFFICE,
NORTHERN DISTRICT OF FLORIDA,
Jacksonville, March 10th, 1877.

D. W. Connolly is hereby appointed special deputy U. S. marshal to serve copies of the within bill of chancery upon the within-named defendants.

S. CONANT,
U. S. Marshal.

Served a true copy of the within bill in chancery upon George F. Drew, governor of Florida; Geo. P. Raney, att'y gen. of Fla.; Hugh A. Corley, commissioner of lands and immigration; Columbus Drew, comptroller of Florida, all of whom are trustees of the internal improvement fund of the State of Florida; and upon Charles H. Foster and T. C. Spooner, at Tallahassee, within the northern district of Florida, on the 12 day of March, A. D. 1877, and upon James G. Gibbes, at Quincy, within the northern district of Florida, on the 13th day of March, A. D. 1877.

S. CONANT,
U. S. Marshal,
Per D. W. CONNOLLY,
Special Deputy.

John Collinson and Thos. B. Coddington cannot be found within the northern district of Florida.

S. CONANT,
U. S. Marshal.

136 *Amendment to bill of complaint.*

Circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant,

vs.

GEORGE F. DREW, GOVERNOR OF THE STATE of Florida; the Florida Central Railroad Company; the Jacksonville, Pensacola & Mobile Railroad Company; Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, claiming to be the authorized agent of the four parties last named; John Collinson, Milton S. Littlefield, Walter Gywnn, and Thomas B. Coddington; and now by way of amendment *vs.* J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, Dr. Nicolas Jacob Den Tex, J. Borzo, Edward Isaac Asser, and Adolph Engler, trustee, defendants.

Jos. B. Stewart, E. M. Thompson, solicitors for defendants.

Filed this 3rd day of July, A. D. 1877.

PHILIP WALTER, *Clerk.*

137 Circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant,

vs.

GEORGE F. DREW, GOVERNOR OF THE STATE of Florida; the Florida Central Railroad Company; the Jacksonville, Pensacola & Mobile Railroad Company; Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, claiming to be the authorized agents of the four parties last named; John Collinson, Milton S. Littlefield, Walter Gywnn, and Thomas B. Coddington; and now by way of amendment *vs.* J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, Dr. Nicolaas Jacob Den Tex, J. Borzo, Edward Isaac Asser, and Adolph Engler, trustee, defendants.

To the honorable the judges of the circuit court of the United States for the northern district of Florida.

Your orator, the Western Division of the Western North Carolina Railroad Company, being a corporation and body politic, created by and under the laws of the State of North Carolina, and a citizen of the State of North Carolina, brings this its bill of complaint against George F. Drew, governor of the State of Florida; the Florida Central Railroad Company, the Jacksonville, Pensacola & Mobile Railroad Company, corporations and bodies politic, created by and under the laws of the
138 State of Florida, and citizens of the State of Florida; and Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddocks, and Adrian Stoop, citizens of Amsterdam and subjects of the Kingdom of Holland; and Frank R. Sherwin, a citizen of New York, who claims to be the authorized agent of the four parties last named; John Collinson, a citizen of London, England, and a subject of the Queen of Great Britain, and Thomas B. Coddington, a citizen of New York; and Milton S. Littlefield and Walter Gywnn, treasurer of the State of Florida, citizens of the State of Florida; and by way of amendment, pursuant to leave prayed and granted, against J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, Edward Isaac Asser, Dr. Nicolaas Jacob Den Tex, citizens of Amsterdam and subjects of the Kingdom of Holland; and Adolph Engler, trustee, a citizen of the State of New York, residing in the city of New York.

And further complaining, your orator says:

1st. That your orator, now and at all times averring, and hereby re-averring, all and singular the matters in its said original bill alleged, with the like effect as if the said matters and things were each and severally hereby repeated verbatim and in detail, states and charges that the said last above-named defendants, now made parties, claim to be the owners and holders of a certain portion of the bonds alleged to have been issued by the State of Florida under said act of the 28th of January, 1870, numbered above 3,000, but which your orator, upon information, charges is not true, but, on the contrary, that none of said bonds numbered above 3,000 ever were sold and are not held by bona fide holders thereof for value.

2d. That the said defendants, and each of them, had full and due notice that said bonds numbered above 3,000, were illegally and
139 fraudulently put in circulation, and were used in violation of and
contrary to law, and that no good and valid title was acquired to any of said so-called bonds of the State of Florida.

3d. That the said defendants never had any dealings with, or gave any credit to the Florida Central Railroad Company, or paid cr advanced any money on its bonds, and never bought the so-called bonds of the State of Florida in faith of the same being secured by the bonds of the Florida Central Railroad Company, but bought the said so-called bonds on the credit of the State of Florida, which were declared to be issued to or for the use of the Jacksonville, Pensacola & Mobile Railroad Company, and not otherwise, and that all pretense or claim that defendants or either of them ever dealt with, purchased or paid for any bonds of the State of Florida, which were a charge upon or secured by the Florida Central Railroad Companies, is wholly and absolutely false.

4th. Your orator further states that it is advised, and so charges the facts to be, that the claims set up and pretended by the said defendants, as the holders of the said Florida State bonds, as against the said Florida Central Railroad Company, is the result of a scheme and conspiracy entered into by and between one W. H. Gleason, Frank R. Sherwin, and Charles D. Willard, during the year 1876, who sought the said defendants in Amsterdam, in the Kingdom of the Netherlands, and inspired said defendants with a belief that they, the said Gleason, Sherwin, and Willard, could influence the governor of Florida to seize and make a forced sale of the said Florida Central Railroad, together with the Jacksonville, Pensacola & Mobile Railroad, for the benefit of said
140 holders of repudiated State bonds, provided they, the said Gleason,
Sherwin, Willard and their associates were permitted to organize a scheme for that purpose.

5th. That pursuant thereto, the said Frank R. Sherwin, by a false and fraudulent petition, wherein he falsely and corruptly alleged himself to be the agent of the said holders of said Florida State bonds, and especially to be the agent of the defendants Boissevain, Mildens, Zadocks, and Stoop, did, on the 30th day of December, 1876, by such false oath and fraudulent means, induce the governor of Florida to seize the said Florida Central Railroad, and that just thirteen days thereafter, to wit, the 12th day of January, 1877, the said Sherwin, Willard, and Gleason, but acting in the name of said Sherwin, together with Henry R. Jackson and Charles H. Simonton, at the city of Savannah, Georgia, entered into a scheme "for the reorganization of the Florida Central Railroad Company, and the Jacksonville, Pensacola & Mobile Railroad Company wherein, among other things, it was agreed that the governor of Florida should make a forced sale of said railroads for the benefit of said combination, who should be at liberty to bid the said repudiated State bonds at such sale to be made by the governor, who was bound and required by the terms of said agreement, scheme, and adventure to accept in payment for said roads the said repudiated State bonds to the full amount of the principal and interest thereof, as cash, and to give such purchasers a complete title to said road and place them in actual possession thereof, as will more fully appear by a copy of said scheme, called the "memorandum plan," made part hereof, marked Schedule N.

6th. That pursuant to the purposes of said plan, the said governor

recognized the said Sherwin and Willard and their associates as
141 authorized to speak and act for such defendants as such bond-
holders, as will better appear by the correspondence which transpired between said parties, or some of them, and the said governor and Geo. P. Rainey, attorney-general of Florida, dated the 10th, 12th, 19th, 20th, and 23d days of January, 1877, copies of which said letters are made part hereof, marked Schedule O, P, Q, R, and S.

7th. But your orator states the fact to be that at the date of the executing of said memorandum plan, which was a mere scheme for "wrecking" said railroads for the benefit of the parties thereto, and at the date of said correspondence, neither the said Sherwin, or Willard, or either of them, had any right or authority whatever from the said defendants or parties residing in Amsterdam, or either of them, to speak or act or make any oath for them, but on the contrary sought and procured said seizure by the governor so as to use the evidence thereof, duly certified in an imposing form, to lead the said so-called bondholders to believe that they, the said Sherwin and Willard, had great influence with and could control the action of the governor of Florida, and used such evidence of influence to induce a subsequent procuring of certain powers of attorney from said defendants herein named, residing in Amsterdam, which they did by the use of printed circulars, coupled with the representations of the utter loss of everything on the part of said alleged holders of the repudiated Florida State bonds unless they entered into the said "memorandum plan" so executed on the 12th day of January, 1877; but none of said powers of attorney were procured till about the 1st of March, 1877, and then were coupled with conditions and obligations not apparent on the face of
such powers of attorney, but which your orator is advised, and so
142 charges, were to the effect that the said Sherwin, Willard, and
their associates were to pay and defray all the expense and outlay of said proceeding, while they, the said so-called bondholders, were to be content to receive but about one-third of the par value of said bonds, without interest, out of a bond issue of twelve thousand dollars per mile to be put upon said railroads, after such forced sale of said roads should be made by the governor of Florida, who was to receive in payment therefor said repudiated State bonds as aforesaid, all of which proceedings was a mere scheme to appropriate the franchise and estate of said railroad to the utter destruction of said Florida Central Railroad Company, and the great and irreparable injury of your orator, as the lawful and equitable owner of a large majority of the capital stock thereof.

8th. Your orator is further advised and so charges that the defendants, or some of them, are not the original purchasers of so called Florida State bonds, but are engaged in a scheme of speculation therein, together with said Sherwin, Willard, and their associates, expecting to derive great profit therefrom by the forced sale of said railroad by the means and for the purposes aforesaid.

Wherefore, the premises considered, and inasmuch as your orator is without relief, save through the interposition of this honorable court sitting as a court of equity, your orator prays that a United States writ of subpœna may issue requiring the said J. Fred Schutte, Adrianus Prins, Jan Prins, Elias Fuld, J. Borzo, Edward Isaac Asser, Dr. Nicolaas Jacob Den Tex, Heinrich Ulrici, and Adolph Engler to appear at a day named, under a suitable penalty, and each, upon his or their separate corporate oaths, true and perfect answer make to all and singular the allegations of this bill of complaint.

143 And your orator prays, as in its said original bill it has prayed and prays, for all general and special relief, with a decree for its costs expended in this suit.

JOS. B. STEWART,
Solicitor for Complainants.

E. M. THOMSON,
Of Counsel.

UNITED STATES OF AMERICA,
Northern District of Florida :

Joseph B. Stewart, being duly sworn, says that he is the attorney in fact of the Western Division of the Western North Carolina Railroad Company ; that said company is a citizen of the State of North Carolina, having its business office and corporate seal at Ashville, in said State ; and that neither its president nor any of its officers are within this district, and therefore cannot subscribe to or certify to this amended bill of complaint. That deponent has read the foregoing amended bill of complaint, and knows the contents thereof, and the matter therein alleged ; that his knowledge is derived from the inspection of records and from information from intelligent and well-advised sources known to the deponent ; that the matters stated within deponent's own knowledge are true, and that the matters stated upon information he believes to be true.

JOS. B. STEWART,
Attorney in fact for the W. D. W. N. C. R. R. Co.

Subscribed and sworn to this 3 day of July, 1877.

PHILIP WALTER, *Clerk.*

144 SCHEDULE N.

To His Excellency Hon. M. STEARNS,
Governor of the State of Florida :

The undersigned respectfully represents :

That he is the duly authorized and accredited agent in this country of the committee of foreign bondholders in the city of Amsterdam, in the Kingdom of Holland, having in charge the interest of Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddocks, Adrian Stoop, and others of said kingdom, who are bona-fide purchasers and holders for a valuable consideration to a very large amount, to wit, to the amount of more than three million two hundred thousand dollars, of the bonds of the State of Florida, issued by said State in aid of the Jacksonville, Pensacola & Mobile Railroad Company and the Florida Central Railroad Company of said State, which bonds bear date the first day of January, 1870, payable on the first day of A. D. 1900, which were issued by the said State of Florida in pursuance of an act of the legislature thereof, passed June 24th, 1869, and the act amendatory thereof, approved January 28, 1870, in which act and amendment it was and is, among other things, provided that in exchange for the bonds so issued by the said State, the said companies should execute and deliver to the said State its own first-mortgage bonds, embracing all and singular its railroad property and appurtenances, and which latter-named bonds were so issued and delivered to the said State in compliance with the laws aforesaid, and are now held by the said State as a trustee for the benefit of the purchasers of the said State bonds as an additional security for payment of the same.

The undersigned further represents, in the name and on behalf of the said committee of foreign bondholders and the holders of the said bonds of the State of Florida, that the said State has failed to pay the interest thereon at maturity, according to the tenor of its obligation, and has so failed to pay said interest for a period of more than twelve (12) months thereafter, or, that is to say, for the period of about five (5) years on all of said bonds.

The undersigned further represents that your excellency has, in pursuance of the said acts of the legislature of said State, taken possession of and advertised for sale the said The Jacksonville, Pensacola & Mobile Railroad, together with all its property and appurtenances.

The undersigned further represents that as yet no provisions have been made, as required by law, for the payment of the bonds of said State issued in exchange for the said bonds of the said the Florida Central Railroad Company; that your petitioner further says he has recently arrived in this country from Amsterdam, in the said kingdom of Holland, for the purpose hereinbefore referred to; that before so doing he spent much time in consultation with the said committee of foreign bondholders and its consul and various holders of the said bonds of the said State of Florida, and in the examination of the books, correspondence and other data in the possession of said committee and its counsel, pertaining to this subject, and your petitioner, from his own personal knowledge, derived from such examination, says that there is now held and owned in the said kingdom of Holland more than three million two hundred thousand dollars of the said bonds of the State of Florida, purchased and held for a valuable consideration, of which 145 said amount more than two hundred thousand dollars of said bonds were issued by the said State in exchange for the bonds of the said The Florida Central Railroad Company, and that the said State has failed to pay any part of the interest thereon for a period of about five years. Your petitioner further represents that he received a cablegram from the said GideonMaria Boissevain, J. Wortheim, the later being counsel for the said committee of foreign bondholders, and Charles Mueller, the American consul, dated at Amsterdam, in the said kingdom of Holland, on the 20th day of September, eighteen hundred and seventy-six, which states the number of said State bonds sold absolutely in the said kingdom of Holland to be at least three million two hundred and six thousand dollars ($3,206,000), which said cablegram your petitioner begs leave to attach herewith as a part of his said petition. Your petitioner further says that all of said State bonds were sold in the market through the said Gideon Maria Boissevain, one of the late leading and principal banking houses in the said city of Amsterdam, and that the said Charles Mueller, now and for many years past the American consul at the said city of Amsterdam, has extensive knowledge of the sale in said market of said bonds of the State of Florida, by reason of having been selected to make an examination of the books, papers, and other data in the possession of the said banking-house of the said Boissevain, relating to the sale of the same. Your petitioner, in the name and on behalf of the holders and owners of the said bonds of the said State to the extent of two hundred thousand dollars or more, issued in exchange for the bonds of the said The Florida Central Railroad Company, therefore demands that your excellency shall, with due diligence, make provision for the prompt payment of said bonds and overdue coupons thereon, and to this end that your excellency shall enter upon and take possession of the Florida Central Railroad, together with all of its appurtenances and franchise, and sell the same at public auction for the benefit of the holders and bona-fide owners of said bonds, in pursuance of the said acts of the legislature hereinbefore referred to.

Your petitioner further represents to your excellency that he will hold himself ready at any and all times to maintain and make proof in such manner as your excellency shall see fit to indicate as to the holders and owners of said bonds of the said State of Florida. And your petitioner will ever pray.

FRANK R. SHERWIN.

DISTRICT OF COLUMBIA,
County and City of Washington, ss:

I, Jos. T. K. Plant, a commissioner of the State of Florida for said District, certify that before me personally came Frank R. Sherwin, who, being first duly sworn, says the facts set forth as of his own knowledge in the foregoing petition are true, and those stated on information and belief he believes to be true.

Witness my hand and official seal Sept. 22, 1876.

[L. S.] JOS. T. K. PLANT,
Commissioner of the State of Florida.

146 Received at Washington, Sept. 20, 1876, 14, 8.26 a. m. Cable, five. Sherwin, Washington. Up to eighteen seventy-three absolute sale here known of Florida bonds, thirty-two hundred six. Boissevain, Wertheim, Mueller, American consul, Aiteen, Amsterdam.

I certify that the foregoing is a correct and true copy of the original on file in my office.

GEO. P. RAINEY,
Attorney-General, Florida.

147 SCHEDULE O.

STATE OF FLORIDA:

EXECUTIVE OFFICE,
Tallahassee, Fla., Jan. 10, 1877.

SIR: The Jacksonville, Pensacola & Mobile Railroad having been seized and advertised for sale under the act of February, A. D. 1870, entitled an act to alter and amend an act entitled "An act to perfect the public works of the State, approved June 24th, A. D. 1869," and the act of June 24th, 1869, so amended, it is my intention to sell the same according to the present advertisement, and such intention will be carried out unless, upon representation of the bondholders, it should be shown that such sale should be postponed for a very short time. It is not the intention of this office to encumber its administration with the operation or management of a road, which it is the purpose of the law it should seize only for the purpose of selling.

As to the Florida Central Railroad, I am without sufficient testimony of there being any bona-fide holders for value of State bonds issued to the Jacksonville, Pensacola & Mobile Railroad Company in exchange for bonds of the Florida Central Railroad Company, and shall not seize the Florida Central Railroad and property by the lien of its bonds, held by the State, until such evidence of bona-fide ownership as would at least satisfy a judicial tribunal has been presented by such bona-fide owners for value of such State bonds or their duly authorized agents.

I must respectfully say that the affidavit made by yourself, filed as to your being the representative of the foreign bondholders, is not sufficient evidence of such agency. I would not be willing to act on such evidence in such matters, coming from any one claiming to be such agent.

Should I seize the Florida Central Railroad, I should sell it just as soon as the law permits. All evidence of any matters involving the roads, their seizure or sale, must be submitted in writing.

It is my desire that the State be released as soon as possible of all railroad trusts and complications, and my disposition shall be to perform all my duties promptly.

Governor of Florida.

To FRANK R. SHERWIN, ESQ.,
Tallahassee, Fla.

I, George P. Rainey, do hereby certify that the foregoing is a correct copy of the original on file in my office.

GEO. P. RAINEY,
Attorney-General, Florida.

MAY 19, 1877.

148 SCHEDULE P.

SAVANNAH, GA., *January* 12, 1877.

To His Excellency GEORGE F. DREW,
Governor of Florida:

SIR: The undersigned beg leave to call your attention to the fact that they are the attorneys in fact of a very large majority of the holders of the bonds of the Pensacola and Georgia Railroad Company, of Florida, and that a plan has been agreed upon between the holders of said bonds, and Frank R. Sherwin, the agent of the holders of the bonds of the State of Florida issued in aid of the Jacksonville, Pensacola & Mobile Railroad Company, which it is believed can and will be carried into effect, thereby resulting in the return to the State of its bonds now held in Europe and the speedy settlement of the litigation, and place the railroad upon a substantial business basis. We are gratified to learn that it is your intention, as trustee for the holders of said State bonds, to sell the said railway property at as early a day as practicable, for the benefit of all concerned, thus rendering a great public service to the State as well as an act of justice, long deferred, to both classes of bondholders.

With consideration of high respect, we remain, sir, very respectfully,

HENRY R. JACKSON.
CHARLES H. SIMONTON.

I certify that the foregoing is a correct and true copy of the original on file in my office.

(Signed) GEO. P. RAINEY,
Attorney General.

149 SCHEDULE Q.

NEW YORK, *January* 19, 1877.

To his excellency GEORGE F. DREW,
Governor of Florida:

SIR: I have the honor to enclose herewith the affidavit of Gideon Maria Boissevain, of Amsterdam, Holland, explicitly stating the number of Florida bonds purchased and now held there by bona fide holders. It confirms my affidavit in all details except that the number of bonds which are a lien upon the Florida Central Railroad, proves to be 208 instead of 206. Mr. Willard will also transmit you from Washington the certificate of the American consul at Amsterdam, corroborating the affidavit of Boissevain, which I trust, when received by you, will be deemed sufficient evidence to warrant the seizure and advertisement of the Florida Central Railroad and the postponement of the sale of the Jacksonville, Pensacola & Mobile Railroad, to take place on the same day.

I remain with great respect, your obedient servant,

FRANK R. SHERWIN.

P. S.—I would request that your reply to this be addressed to me, care of Mr. Willard, at Washington, who will read and forward it.—F. R. S.

I certify that the foregoing is a correct and true copy of the original on file in my office.

GEO. P. RAINEY,
Attorney General.

MAY 19, 1877.

150 SCHEDULE R.

(Personal.)

NEW YORK, *January* 20, 1877.

To his excellency GEORGE F. DREW:

DEAR GOVERNOR: I desire, before sailing, to reiterate to you personally, in writing, the assurance which I have verbally given that the railroads reorganized by me will be managed in a liberal spirit, with the view, so far as may be consistent with business principles, of fostering and developing State interests. To be explicit, it is my belief that the permanent prosperity and increasing value of the road can be best secured by competing sharply with all rivals for the Gulf and upriver trade, and by favoring Jacksonville and Fernandina as our outlets, and discriminating in their favor, if at all, as between them and Georgia ports. I have said as much to Gen. Jackson, and he recognizes it as impossible that I should favor Savannah. My plans for the development of the State are comprehensive, and render me not less earnest than yourself in the desire and determination to advance the material prosperity by every legitimate means, and I am confident you will find the endeavors of my associates and myself, to that end, a valuable aid to your administration, under which, I predict, Florida will enjoy great prosperity.

With every assurance of esteem and support, I am, sir, faithfully, yours,

FRANK R. SHERWIN.

I certify that the foregoing is a correct and true copy of the original on file in my office.

(Signed) GEO. P. RAINEY,
Attorney General, Florida.

MAY 19, 1877.

151 SCHEDULE S.

WASHINGTON, D. C., *January* 23, 1877.

HON. GEO. P. RAINEY,
Attorney-General Tallahassee, Fla.:

DEAR SIR: The enclosed certificate of Charles Mueller, U. S. consul at Amsterdam, previously referred to, states of his own knowledge that "Boissevain and co-operators had, in good faith and at fair prices, purchased of one John Collinson 3,206 of above-named bonds of Florida." This, in connection with the sworn statement of said Boissevain, previously mailed to you by me from New York, would now seem to be full and explicit enough to establish the fact that there are 208 of the State bonds now in the hands of bona fide holders, and I therefore trust you may seize the Central road and advertise the same for sale on the first Monday in May, and postpone the sale of the J., P. & M. R. R., to take place at the same time.

Hoping that I may hear from upon this subject at your earliest convenience, I remain very respectfully,

C. D. WILLARD.

I certify that the foregoing is a correct and true copy of the original on file in my office.

GEO. P. RAINEY,
Attorney-General, Florida.

MAY 19, 1877.

(Pages 152 to 181 inclusive omitted per stipulation.)

182 UNITED STATES OF AMERICA,
Northern District of Florida:

The President of the United States of America to Milton S. Littlefield:

We command you, and every of you, that you appear before the judges of the circuit court of the United States of America for the fifth circuit and northern district of Florida, at Jacksonville, in said district, on the first Monday, being the 5th day of March next, to answer to a bill of complaint exhibited against you by the Western Division of the Western North Carolina Railroad Company, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf. And this you are not to omit, upon pain of judgment by default being pronounced against you.

To the marshal of the United States, to execute and return.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States and the seal of this court, at the city of Jacksonville, in said district, this 9th day of February, A. D. 1879.

{ SEAL U. S. CIRCUIT CT. FOR NORTHERN DIST. OF FLA. } PHILIP WALTER, *Clerk.*

JOS. B. STEWART,
Solicitor for Compl't.

MEMORANDUM.—The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court, at Jacksonville aforesaid, on or before the day to which the above is returnable, the complaint will be taken against him as confessed and a decree entered accordingly.

PHILIP WALTER, *Clerk.*

183 This was served the 12th day of Feb'y, 1877.

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

Appearance for J., P. & M. R. R. Co. & M. S. Littlefield entered by S. B. Stroms, esq.

P. WALTER, *Clerk.*

(Indorsed:) No. . Circuit court United States, northern district of Florida. W. D. W. N. C. R. R. vs. M. S. Littlefield. Chancery subpœna. Returnable to rule day, first Monday in March, A. D. 1877. Philip Walter, clerk.

184 I, George R. Sampson, of the city of New York, United States of America, temporarily residing in the city of London, Kingdom of Great Britain and Ireland, do declare, under oath, that on the 17th day of August, between the hours of two and three o'clock p. m., I called at the office No. 50 Old Broad street, London, and enquired for Mr. John Collinson, and then and there met a gentleman who declared himself to be the said Collinson, whereupon I immediately served him with a copy of the chancery subpœna of the circuit court of the United States of America, northern district of Florida, of which the attached document is a duplicate copy.

London, August 17th, 1877.

GEO. R. SAMPON.

Sworn at the consulate-general of the United States of America, No. 53 Old Broad street, in the of London, this the 17th day of August, 1877, before me.

[CONSULATE SEAL.] T. NUNN,
Vice and Deputy Consul-General and Notary Public ex-officio of the United States at London, and a Commissioner to administer oaths in the Supreme Court of Judicature in England.

185 United States circuit court, northern district of Florida.

WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Co.
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, The Florida Central Railroad Company, The Jacksonville, Pensacola & Mobile Railroad Company, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, claiming to be the authorized agent of the four parties last named; John Collinson, Milton S. Littlefield, Walter Gwynn, Thomas B. Coddington, et al.

It appearing to my satisfaction that a suit is pending in this court upon bill filed by the Western Division of the Western North Carolina Railroad Company, complainant, against George F. Drew, governor of of the State of Florida, the Florida Central Railroad Company, the Jacksonville, Pensacola & Mobile Railroad Company, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddocks, Adrain Stoop, Frank R. Sherwin, claiming to be the authorized agent of the four parties last named; John Collinson, Milton S. Littlefield, Walter Gwynn, Thomas B.

Coddington, Gideon Maria Boissevain, J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, J. Borzo, Elias Fuld, Edward Isaac Asser, Dr. Nicholaas Jacob Den Tex, and Adolph Engler, defendants.

And it further appearing that the defendants, Gideon M. Boissevain, Adrian J. Mildeus, Joseph Zaddocks, Adrian Stoop, J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, Edward Isaac Asser, Dr. Nicholaas Jacob Den Tex, are each subjects of the King of Holland, and reside in or about Amsterdam, in said kingdom, and John Collinson is a subject of the Queen of Great Britain, and resides in London, England, and the defendants Thomas B. Coddington and Adolph Engler are residents of the State of New York, and reside in the city of New York, beyond the territorial jurisdiction of this court, so that the ordinary writ of subpœna cannot be served upon them, or either of them, and it further being represented to me that said parties are, or claim to be, interested in the subject-matter of this suit, and are material parties thereto, wherefore it is now ordered, that said non-resident defendants, and each of them, be served with a notice of the pendency of this suit by the personal service of a certified copy of this order upon each of them, to enter their appearance in person, or by solicitor, on or before the first Monday of August, 1877, and then and there plead, answer or demur to the complainant's bill in such manner as they may be advised, and according to the rules of this court, or that in default thereof, a decree pro confesso will be entered against them and each of them, provided that a copy of this order be served upon them thirty days previous to the first Monday of August, 1877.

Dated May 22d, 1877.

(Signed) JOSEPH P. BRADLEY,
Circuit Justice.

I, Philip Walter, clerk of the United States circuit court, 5th judicial circuit, and northern district of Florida, do hereby certify that the foregoing is a true copy of its original on file and of record in my office.

In witness whereof I have hereunto set my hand and official seal at the city of Jacksonville, in the district and circuit aforesaid, this 31st day of May, 1877, and of our Independence the 101st year.

{ SEAL OF U. S. CIRCUIT CT.
NORTHERN DIST. OF FLA. } PHILIP WALTER, *Clerk.*

186 UNITED STATES OF AMERICA,
Northern District of Florida :

The President of the United States of America to Geo. F. Drew, gov., The Fl'a Cent'l R. R., The J. P. & M. R. R., Gideon Maria Boisevain, Thos. B. Coddington, John Collinson, Adolph Engler et als.:

We command you, and every of you, that you appear before the judges of the circuit court of the United States of America for the fifth circuit and northern district of Florida, at Jacksonville, in said district, on the first Monday, being the 6th day of August next, to answer to a bill of complaint exhibited against you by the Western Division of the Western North Carolina Railroad Company, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf. And this you are not to omit, upon pain of judgment by default being pronounced against you.

To the marshal of the United States, to execute and return.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this 31st day of May, A. D. 1877.

PHILIP WALTER, *Clerk*.

STUART AND THOMPSON,
Solicitor for Compl't.

MEMORANDUM.—The above named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Jacksonville aforesaid, on or before the day to which the above is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

{ SEAL OF CIR. C'T U. S. FOR NORTHERN DIS'T OF FL'A. } PHILIP WALTER, *Clerk*.

By order of the complainants, the time for entering appearance on the part of the defendants is extended to the first Monday, being the 3d day of September, 1877.

PHILIP WALTER, *Clerk*.

187 By order of the complainant's counsel the time for John Collinson to appear and answer the within named bill of complaint is extended to the first Monday in October, 1877.

JOS. B. STEWART,
Solicitor for Complainants, 35 *Broadway*, *N. Y.*

(Indorsed:) Filed Sept. 1st, A. D. 1879. Philip Walter, clerk, by Simon Baer, deputy clerk.

188 United States circuit court, northern district of Florida.

WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Co.
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, The Florida Central Railroad Company, The Jacksonville, Pensacola & Mobile Railroad Company, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, claiming to be the authorized agent of the four parties last named; John Collinson, Milton S. Littlefield, Walter Gwynn, Thomas B. Coddington, et al.

It appearing to my satisfaction that a suit is pending in this court upon bill filed by the Western Division of the Western North Carolina Railroad Company, complainant, against George F. Drew, governor of the State of Florida, the Florida Central Railroad Company, the Jacksonville, Pensacola & Mobile Railroad Company, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddocks, Adrian Stoop, Frank R. Sherwin, claiming to be the authorized agent for the four paties last named; John Collinson, Milton S. Littlefield, Walter Gwynn, Thomas B. Coddington, Gideon Maria Boissevain, J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, J. Borzo, Elias Fuld, Edward Isaac Asser, Dr. Nicolaas, Jacob Den Tex, and Adolph Engler, defendants.

And it further appearing that the defendants, Gideon M. Boissevain, Adrian J. Mildeus, Joseph Zaddocks, Adrian Stoop, J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, Edward Isaac Asser, Dr. Nicolaas, Jacob Den Tex, are each subjects of the King of Holland, and reside in or about Amsterdam, in said kingdom, and John Collinson is a subject of the Queen of Great Britain, and resides in London, England, and the defendants, Thomas B. Coddington and Adolph Engler, are residents of the State of New York, and reside in the city of New York, beyond the territorial jurisdiction of this court, so that the ordinary writ of subpœna cannot be served upon them, or either of them; and it further being represented that said parties are, or claim to be, interested in the subject-matter of this suit, and are material parties thereto; wherefore it is now ordered, that said non-resident defendants, and each of them, be served with a notice of the pendency of this suit by the personal service of a certified copy of this order upon each of them, to enter their appearance in person, or by solicitor, on or before the first Monday of August, 1877, and then and there plead, answer, or demur to the complainant's bill in such manner as they may be advised, and according to the rules of this court, or that, in default thereof, a decree pro confesso will be entered against them, and each of them, provided that a copy of this order be served upon them thirty days previous to the first Monday of August, 1877.

Dated May 22d, 1877.

(Signed) JOSEPH P. BRADLEY,
Circuit Justice.

I, Philip Walter, clerk of the United States circuit court, 5th judicial circuit, and northern district of Florida, do hereby certify that the foregoing is a true copy of its original on file and of record in my office.

In witness whereof, I have hereunto set my hand and official seal at the city of Jacksonville, in the district and circuit aforesaid, this 31st day of May, A. D. 1877, and of our Independence the 101st year.

[SEAL.] PHILIP WALTER, *Clerk.*

189 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Andrew Colvin, being duly sworn, upon oath states that he did, *no* the 17th day of July, 1877, at No. 160 Pearl street, in the city of New York, serve the within order and notice of appearance upon the defendant, Adolph Engler, therein named, in proper person, the said Engler admitting that he was the Adolph Engler named in said order.

ANDREW COLVIN.

Subscribed and sworn to before me this 18th day of September, 1877.

[SEAL.] R. E. STILWELL,
U. S. Com's for Southern District of New York.

190 United States circuit court, northern district of Florida.

WESTERN DIVISION OF THE WESTERN AND North Carolina Railroad Co.
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, The Florida Central Railroad Company, et al.

And now comes the complainant, by its solicitors, Jos. B. Stewart and E. M. Thompson, and upon their motion it is ordered that the complaint be, and it hereby is, granted leave to amend its bill, by adding as parties defendant thereto J. Fred Schutte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzó, Edward Isaac Asser, Gideon Maria Boissevain, Dr. Nicholas, Jacob Den Tex, and Adolph Engler, trustee, each of whom are alleged to be, and by matters of record appear to be, interested in the subject-matter of this suit.

May 22d, 1877.

(Signed) JOSEPH P. BRADLEY,
Circuit Justice.

I, Philip Walter, clerk, do hereby certify that the foregoing is a true copy of its original order on file in my office.

In witness whereof I have hereunto set my hand and official seal at the city of Jacksonville, in the fifth circuit, northern district of Florida, this 31st May, 1877, and of our Independence the 101st.

[SEAL.] PHILLIP WALTER, *Clerk.*

191 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Jesse C. Conner, being duly sworn, upon oath states that he did, on the 14th day of August, 1877, at No. 27 Cliff street, in the city of New York, serve the order and notice of appearance hereto annexed upon the defendant Thomas B. Coddington, therein named, in proper person. He, said Coddington, admitting that he was the Thomas B. Coddington named in said order.

JESSE C. CONNER.

Subscribed and sworn to before me this 18th of September, 1877.

[SEAL.] R. B. STILWELL,
U. S. Com's for Southern District of New York.

192, 193 UNITED STATES OF AMERICA,
Northern District of Florida:

The President of the United States of America to Geo. F. Drew, gov. of Fla., The Fla. Central R. R. Co., The Jacksonville, Pensacola & Mobile R. R. Co., Gideon Maria Boissevain, Jans Prins, Edw. Isaac Asser, Tho's B. Coddington, John Collinson, et al.:

We command you, and every of you, that you appear before the judges of the circuit court of the United States of America for the fifth circuit and northern district of Florida, at Jacksonville, in said district, on the first Monday, being the sixth day of August next, to answer to a bill of complaint exhibited against you by the Western of Western North Carolina Railroad Company, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf. And this you are not to omit, upon pain of judgment by default being pronounced against you.

To the marshal of the United States to execute and return.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this 31st day of May, A. D. 1877.

PHILLIP WALTER, *Clerk.*

STEWART AND THOMPSON,
Solicitor for Compl't.

MEMORANDUM.—The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Jacksonville aforesaid, on or before the day to which the above is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

PHILIP WALTER, *Clerk.*

By order of the complainants, the time for entering appearance on the part of the defendants is extended to the first Monday, being the 3d day of Sept., 1877.

PHILIP WALTER, *Clerk.*

Filed this 22d Sept., 1877.

PHILLIP WALTER, *Clerk,*
By SIMON BAER, *D. C.*

194 UNITED STATES OF AMERICA,
Northern District of Florida;

The President of the United States of America to Geo. F. Drew, gov. State of Fla., the Fla. Cent. R. R. Co., the Jacksonville, Pensacola & Mobile R. R. Co., Milton S. Littlefield, & Walter Gwynn, treasurer of the State of Florida:

We command you, and every of you, that you appear before the judges of the circuit court of the United States of America for the fifth circuit and northern district of Florida, at Jacksonville, in said district, on the first Monday, being the 5th day of March next, to answer to a bill of complaint exhibited against you by the Western Division of the Western North Carolina R. R. and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf. And this you are not to omit, upon pain of judgment by default being pronounced against you.

To the marshal of the United States to execute and return.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this 9 day of February, A. D. 1877.

{ U. S. CIRCUIT COURT }
{ NORTHERN DIST. OF FLORIDA. }

PHILIP WALTER, *Clerk.*

JOS. B. STEWART,
Solicitor for Compl't.

MEMORANDUM.—The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Jacksonville aforesaid, on or before the day to which the above is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

PHILIP WALTER, *Clerk.*

195 (Endorsements.)

Received the within writ the 9th day of February, A. D. 1877.

Served the within by delivering a true copy of the same, also a true copy of the bill, to Geo. F. Drew, gov'r of the State of Florida; also by serving a true copy of the within, also a copy of bill, upon Walter Gwynn, treasurer of the State of Florida; also by serving true copy of within subpœna on J. P. & M. R. R., by delivering a true copy of same to T. C. Spooner, superintendent and in charge of said railroad, all in Leon Co., Fla., within the northern district thereof, all done on the 10th day of February, A. D. 1877. Served the within, by delivering a true copy of the within subpœna to M. S. Littlefield, also by delivering a true copy of within on Florida Central Railroad, by handing same to W. M. Davidson, in charge of said Florida Central Railroad, this 13th day of February, A. D. 1877, at Jacksonville, within the northern district of Florida.

S. CONANT,
U. S. Marshal.
By THOS. McMURRAY,
Deputy U. S. Marshal.

Chancery subpœna returnable to rule day first Monday in March, A. D. 1877. Philip Walter, clerk. Filed Feb. 19th, A. D. 1877. Philip Walter, clerk.

(Pages 196 & 197 omitted, per stipulation.)

198 UNITED STATES OF AMERICA,
Northern District of Florida :

The President of the United States of America to the Western Division of the Western North Carolina Railroad Company, Gideon Maria Boissevain, Adrian J. Mildens, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, John Collinson, Thomas B. Coddington, J. Fred. Schutte, Jan Prins, Adrianus Prins, Heurich Ulrici, Elias Field, J. Berryo, Edward Isaac Asser, Nicholas Jacob Den Tex, Adolph Engler, trustee:

We command you and every of you that you appear before the judges of the circuit court of the United States of America for the fifth circuit and northern district of Florida, at Jacksonville, in said district, on the first Monday, being the seventh day, of April next, to answer to a cross-bill of complaint exhibited against you by the Florida Central Railroad Company, filed in the case of the Western Division of the Western North Carolina Railroad Company against George F. Drew, governor, trustee, &c., The Florida Central Railroad Company, and other defendants above named, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf. And this you are not to omit upon pain of judgment by default being pronounced against you.

To the marshal of the United States to execute and return.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this 24 day of February, A. D. 1879.

[CIRCUIT COURT NORTHERN
DIST. OF FLORIDA.]

PHILIP WALTER,
Clerk.

JAMES M. BAKER,
Solicitor for Compl't in said cross-bill.

MEMORANDUM.—The above-named defendants are notified that unless they shall enter an appearance in the clerk's office of said court at Jacksonville aforesaid, on or before the day to which the above is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

PHILIP WALTER, *Clerk.*

199 (Endorsed as follows:)

U. S. MARSHAL'S OFFICE, NORTHERN DISTRICT FLORIDA.

Executed the within writ of subpœna by handing to and leaving with C. D. Willard a true copy thereof. "Also certified copy of order ordering the within-named defendants to appear, plead, or demur to the cross-bill of compla'nts at Jacksonville, within the northern district of Florida, on this 24th day of February, A. D. 1879.

S. CONANT,
U. S. Marshal.
JAMES L. BANKS,
Deputy.

Chancery subpœna. Returnable to rule day, first Monday in April, A. D. 1879. P. Walter, clerk. Filed Feb'y 24, A. D. 1879. P. Walter, clerk. J. M. Baker, esq., complainant's solicitor in cross-bill.

200 UNITED STATES OF AMERICA,
Northern District of Florida :

The President of the United States of America to the Western Division of the Western North Carolina Railroad Company, George F. Drew, governor of the State of Florida, The Jacksonville, Pensacola and Mobile Railroad Company, Gideon Maria, Boissevain, Adrian J. Mildens, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, John Collison, and Milton S. Littlefield.

We command you and every of you that you appear before the judges of the circuit court of the United States of America for the fifth circuit and nothern district of Florida, at Jacksonville, in said district, on the first Monday, being the third day of September next, to answer to a cross-bill of complaint exhibited against you by the Florida Central Railroad Company, in the case of the Western Division of the Western North Carolina Railroad Company, against George F. Drew, governor of the State of Florida, and others, and filed in the clerk's office of 201 said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf; and this you are not to omit upon pain of judgment by default being pronounced against you.

To the marshal of the United States to execute and return.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this 28th day of July, A. D. 1877.

[SEAL.] (S'g'd) PHILIP WALTER,
Clerk.
By SIMON BAER,
Dep'ty Clerk.

JAMES M. BAKER,
Solicitor for Compl't.

MEMORANDUM.—The above named defendants are notified that unless they shall enter their appearance in the clerk's office of said court at Jacksonville aforesaid, on or before the day to which the above is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

(S'g'd) PHILIP WALTER,
Clerk.
By SIMON BAER,
Dep'ty Clerk.

202 Came to hand July 23, 1877. Served a true copy of the within subpœna upon M. S. Littlefield, at Jacksonville, within the northern district of Florida, this 28th day of July, 28*th*, 1877, and also upon M. S. Littlefield, president of the Jacksonville, Pensacola and Mobile Railroad Company, at the same time and place.

S. CONANT,
U. S. Marshal..

Executed the within subpœna by serving a true copy thereof on George F. Drew, governor of the State of Florida, at the city of Tallahassee, in the northern district of Florida, this the 27th day of August, A. D. 1877.

SHERMAN CONANT,
U. S. Marshal.
By SAMUEL QUAILE,
Dep'ty.

Filed this 4th day of September, 1877.

PHILIP WALTER,
Clerk.
By SIMON BAER,
Dep'ty Clerk.

203 Circuit court of the United States, fifth circuit, northern district of Florida. In equity.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, the Jacksonville, Pensacola and Mobile Railroad Company, G. M. Boissevain, A. J. Mildens, Joseph Zaddock, Adrian Stoop, and others.

The demurrer of George F. Drew, governor of the State of Florida, and Walter Gwynn, who is treasurer of said State, by George P. Raney, their attorney and solicitor, to the bill of complaint in the above cause.

These defendants, by protestations, not confessing or acknowledging any of the matters and things in said complainant's bill to be true in such manner or form as therein set forth and alleged, do demur thereto, and for cause of demurrer do show:

204 I.

That the complainant has not in said bill of complaint made and stated such a case as does or ought to entitle him to any such relief as is thereby sought and prayed for against these said defendants or either of them:

First. Because said bill does not show that the said defendants, Boissevain, Mildens, Zaddock, and Stoop, the holders of the Florida State bonds, numbered over three thousand, exchanged for bonds of the Florida Central Railroad Company, for whom the defendant, George F. Drew, governor, is acting for the State of Florida as trustee, took said bonds, with notice of any fraud upon the complainant's rights in the premises affecting such bonds.

Second. Because the said complainant shows in said bill no right to maintain any suit in its own name or behalf, or in behalf of said Florida Central Railroad Company, as against these defendants, for the relief prayed in the bill.

Third. The said bill does not state such facts and circumstances as entitle the complainant, as a stockholder in the said Florida Central Railroad Company, to maintain a suit for the relief prayed for in said bill.

Fourth. Because the bill shows that if the complainant ever had any rights, or was ever entitled to the relief prayed for, it has slept upon the same, which have become barred by the lapse of time under the state of facts, as shown by said bill.

Fifth. Because, if the complainant ever had any rights as alleged, or was ever entitled to the relief prayed, as against said bondholders, the same has become barred by the lapse of time and the circumstances stated in the bill.

II.

That it appears by said bill that the same is exhibited against these defendants and Milton S. Littlefield, the Florida Central Railroad 205 Company, the Jacksonville, Pensacola and Mobile Railroad Company, as defendants thereto, for several distinct matters and causes, in many whereof, as appears by said bill, these defendants are in no way interested, and by no reason of such distinct matter the said bill is drawn out to a considerable length, and these defendants are compelled to take a copy of the whole thereof, and by joining distinct matter together which do not in any way depend upon each other, the proceedings in the progress of the suit will be prolix and intricate, and these defendants put to unnecessary charges and expenses in matters which in no way relate to or concern them or said bondholders.

III.

The said bill is so uncertain, inconsistent, and vague that it cannot be answered, because it fails to state what rights to the Florida Central Railroad stock, or in the same, have been admitted as being said complainant's right, and how and in what manner and upon what terms and conditions they have been admitted, or what its exact legal or equitable status, title, or claim to or upon said stock is, or to set out what its just and equitable title to said stock (and how or in what manner such title was admitted by said Littlefield and other parties interested), and to state what parties interested therein, other than said Littlefield, have admitted such just and equitable title, or their names and place of residence, or what their interest or rights in said stock was, and because the said bill in many other respects is so uncertain, vague, and inconsistent that these defendants are unable to learn from said bill the exact interests claimed in said stock by the said complainant, and the exact state of facts constituting the pretended claim or right of said complainant to the relief sought by said bill, or who should or should not be made parties to said bill; wherefore these said defendants demand the judgment of this honorable court, whether they shall be compelled to make any further or other answer to said bill of complaint, or any of the matters or things therein contained, and pray to be hence dismissed with their reasonable costs therein sustained.

GEORGE P. RANEY,
Att'y for Def'ts, Gov. Drew and Gwynn.

206 I hereby certify that the above demurrer is well founded in law.

GEO. P. RANEY,
Attorney.

UNITED STATES OF AMERICA,
Northern District of Florida:

Personally appeared before me, Frederick T. Myers, deputy clerk of the United States for the northern district of Florida, Walter Gwynn, treasurer of the State of Florida, who made oath that the foregoing demurrer is not interposed for delay.

WALTER GWYNN.

Subscribed and sworn to before me this 31st day of March, A. D. 1877.

[SEAL.] FREDERICH T. MYERS,
Deputy Clerk of the United States Circuit Court for the Northern District of Florida.

I, Simon Baer, deputy clerk of the United States circuit court, fifth judicial circuit, northern district of Florida, do hereby certify that the forgoing is a true copy of the original one on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Jacksonville, this 9th day of April, A. D. 1878.

[SEAL.] SIMON BAER,
Deputy Clerk.

207 Circuit court of the United States for the northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEO. F. DREW, GOVERNOR OF THE STATE OF Florida, The Florida Central Railroad Company, et als.

The answer of Geo. F. Drew, governor of the State of Florida, to the bill of complaint, and also the petition filed by the said complainant in the above-entitled cause.

The respondent, reserving to himself the right of exception to all errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereto, or to such parts and to so much thereof as he is advised is or are material for him to make answer unto, answering says:

208 That respondent is informed that Geo. W. Swepson, in June, 1869, or sometime in said year, obtained from W. W. Holden, governor of North Carolina, or from its treasurer, certain paper writings purporting to be bonds of the State of North Carolina, obligating it to pay six millions of dollars, and that the said Swepson professed to act in the premises as president of said company, but respondent is

informed, and upon such information states that neither the executive, legislative, nor judicial departments of the government of said State admit such paper writings to be lawful obligations thereof, but that said legislature has absolutely refused to recognize the sum or to pay anything for interest thereon, and that one of the judges of the superior court of said State has decided in a suit pending before him in said court, that the said paper writings were issued contrary to and in violation of the constitution of said State. Respondent is advised because of such invalidity of such so-called bonds, the said Western
209 Division of the Western North Carolina Railroad Company never acquired any lawful property or held any six millions of bonds of the State of North Carolina, as is in said bill of complaint alleged, and that because of the fraud by the means whereof such paper writings were sold by said Swepson, no trust has resulted in favor of said complainant corporation in respect of any money which said Swepson obtained by any sale of said paper writings to any persons such as this court will recognize or enforce.

Respondent has never had any knowledge of the acts of said Swepson such as are set forth in the third & fourth paragraphs of said bill, nor of his dealings with said Houston, but is informed that said Swepson did sell the paper writings mentioned, and respondent is informed and believes the said Swepson purchased three thousand one hundred shares of stock in the Florida Central Railroad, but no more; that such purchase was made prior to the month of April, 1869, but that
210 the money paid by said Swepson for such stock was his own, and was not the money of complainant corporation, and was not derived from the sale of any bonds of the State of North Carolina, such as are mentioned in said bill, and that the said bonds in the second paragraph of said bill described were not issued and delivered to said Swepson until the year A. D. 1869, as appears from the report of the treasurer of North Carolina, a certified copy of which is hereto annexed marked A, and respondent is informed and believes and says that such stock was purchased at a price very greatly below par value; respondent knows nothing of the transactions between said Littlefield and said Swepson in the fifth paragraph of said bill mentioned, but is informed and believes that said Swepson did sell and deliver to said Littlefield as his own property all the stock in the said Florida Railroad Company which said Swepson had purchased as before stated; that such sale took place in October, 1869, at which time it was fully
211 known to the officers of complainant company, who made no opposition thereto, and set up no claim in behalf of said company to such stock, and that such company have ever since permitted such sale to remain unquestioned in the courts of the State of Florida, and have not given any notice to the officers of said Florida Central Railroad Company of any such claim to such stock or to any other stock which is in said bill set forth and asserted to exist, but said company permitted said Littlefield to deal with the same as his own property.

Respondent is informed and believes, and on such information states that the dealings of said Swepson with the said so-called North Carolina State bonds and the purchase and sale of the stock of the Florida Central Railroad Company were fully known to the officers of the plaintiff company before the month of October, 1869; and respondent therefore denies the allegations in the sixth and seventh paragraphs of said bill, wherein it is alleged that complainant company remained igno-
212 rant of such matters until the summer of 1870, or that it ac-

quired knowledge thereof from the affidavit of said Swepson, exhibited with said bill.

Respondent admits that plaintiff company brought suit in the supreme court of New York against said Houston and said Littlefield; but respondent knows nothing of the proceedings in said suit, and insists that complainant company should be required to file a certified copy thereof, but respondents deny that jurisdiction of said Houston or said stock was ever obtained in said suit.

Respondent knows nothing of any admissions by said Littlefield, or by any other person, touching the equitable title to said stock which the complainant company in its said bill asserts, and he insists that he and those for whom he acts are in no wise affected by any such admissions, if any have been made.

213 Respondent admits that the Florida Central Railroad Company and Jacksonville, Pensacola and Mobile Railroad Company were legally incorporated by the laws of the State of Florida, and refers to such laws for the purpose of determining the powers and liabilities of each corporation.

Respondent, answering the eleventh paragraph of said bill, denies the correctness of the statements therein contained, and alleges the fact to be that at a meeting of the stockholders of the Florida Central Railroad Company, held on the 2d day of June, 1870, at which were present M. L. Littlefield, representing thirty-three hundred and fifty shares of capital stock; O. Huling, representing ten shares; E. Houston, representing thirteen hundred and ten shares; G. R. Foster, representing ten shares; and M. D. Papy, representing ten shares; resolutions were introduced by said Littlefield, and adopted by a unanimous vote, ratifying the action of the said Swepson, president, and the said H. H. 214 Thompson, treasurer, in signing the said bonds and adopting the said bonds as bonds of said company, all of which will more fully appear from a copy of said resolutions hereto annexed and marked Exhibit B.

Respondent further says that on the same day, at a meeting of the directors of said company, at which the said Littlefield, Huling, Houston, Foster, and Papy were present, the said Littlefield offered a resolution, which was unanimously adopted, to carry into effect the said resolutions adopted by the said meeting of stockholders, as will more fully appear from a copy of the same hereto annexed and marked Exhibit C.

Respondent, answering the seventeenth, eighteenth, and nineteenth paragraphs of said bill, and all other parts of said bill and exhibits relating to that subject, says that subsequently, on the thirteenth of May, A. D. 1871, at a meeting of the stockholders of the said Florida 215 Central Railroad Company, a resolution was introduced by Edward Houston, and adopted by the meeting, authorizing the said Houston to place the said bonds of said railroad company in the hands of L. W. Hopkins and Co., in accordance with the said resolutions of June second, A. D. 1870, all of which will more fully appear from a copy of same hereto annexed and marked Exhibit D.

This defendant further says that, in the case of the State of Florida et al. vs. The Florida Central Railroad Company et al., appealed from the circuit court of Duval County to the supreme court of Florida, and reported in the 15th volume of Florida Supreme Court Reports. Milton L. Littlefield testified as follows in regard to said bonds of the Florida Railroad Company, to wit:

"The bonds signed by George W. Swepson as president. and H. H. Thompson as treasurer, being first-mortgage bonds of the Florida Cen-

tral Railroad Company, payable to the State of Florida, were in
216 the room when the meetings of the stockholders and directors
were held, and were examined by the parties who voted the stock; all the stock was represented at said meeting but about fifty thousand dollars ($50,000), to the best of my recollection, and as follows: The contract of June 7, A. D. 1870, between Houston and myself was made so as to authorize, in case the State bonds were not sold, their return, and other bonds issued in their place, for the reason that the bonds authorized were payable to the State of Florida.

"I do not think I have ever denied, as a stockholder in the Florida Central Railroad Company, that the State legally acquired possession of the Florida Central Railroad bonds. The bonds were in Tallahassee at the time; my opinion is that they were in the room at the time of the meeting, as Mr. Papy and Sanderson drafted the resolutions which
passed; I may, however, be mistaken, as the trouble between Mr.
217 Houston and myself did not occur until the sixth of June, 1870,
respecting the bonds being payable to the State of Florida instead of to bearer. I delivered the bonds to Col. Houston on the 4th & 5th of June of said year. The probability is that if Col. Houston had examined the bonds on the day of the meeting he would have made the same objection he did on the 6th. Mr. Houston was the only man who made objection to the form.

"M. D. Papy, Col. Sanderson, Houston and myself of the stockholders of the Central Railroad Company were present when Houston made objection to the form of the bonds. The difficulty between Col. Houston and myself as to the form of the bond led to the agreement of June 7th, A. D. 1870, between Houston and myself, now in evidence in the case. The certificate for 3,110 shares of stock of the Florida
Central Railroad Company, standing in the name of Geo. W.
218 Swepson, which I gave Houston as collateral, was endorsed in
blank by said Swepson. I was not to become the owner of the thirteen hundred shares (1,300) of stock of the Florida Central Railroad Company contracted to be purchased by me from Houston until paid for. I suppose I have indirectly recognized the existence of the trust in Mr. Papy, created by Mr. Houston."

219 This respondent further answering says, he is informed and believes and so alleges that Harrison Reed, who was governor of Florida from June, 1868, to January, 1873, did deliver to John P. Sanderson, who was the president of the said Jacksonville, Pensacola & Mobile Railroad Company, and president of the Florida Central Railroad Company, four million dollars of State bonds issued under said acts, to perfect the public works, in exchange for three million of bonds of the Jacksonville, Pensacola & Mobile Railroad Company, and one million bonds of the Florida Central Railroad Company, the said Sanderson acting as attorney for said Jacksonville, Pensacola & Mobile Railroad Company, and presenting and delivering to said Harrison Reed, governor, two certificates, one of which was to the following words and figures:

STATE OF FLORIDA,
Leon County:

220 In accordance with the requirements of the 4th section of an act entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,' approved June 24th, 1869," I, Milton L. Littlefield, president of the Jacksonville, Pensacola and Mo-

bile Railroad Company, do, for the purpose of obtaining the bonds of the State of Florida prescribed in said acts, hereby deliver to Harrison Reed, governor, first-mortgage bonds of the Florida Central Railroad Company, and ask in exchange therefor bonds of the State of Florida provided for in said section to the extent of sixteen thousand dollars per mile, for a distance of said road of sixty-three miles, said Florida Central Railroad first-mortgage bonds being issued for and upon a part or portion of the road between Quincy and Jacksonville, said part or portion of the railroad being from Lake City to Jacksonville, and that said exchange of bonds is asked for the purpose of further aiding
221, 222 said Jacksonville, Pensacola & Mobile Railroad Company to the speedy completion of its road.

[SEAL J. P. & M. CO.] MILTON L. LITTLEFIELD,
President, Jacksonville, Pensacola & Mobile Railroad Company.

Respondent, further answering the eleventh, seventeenth, eighteenth, nineteenth, twentieth, and twenty-first paragraphs of said bill, says that he has been advised of the record of proceedings of the cause tried and decided in the supreme court of the State wherein the Florida Central Railroad Company and others were appellants, and the State of Florida and others were appellees, and that from such information as is furnished to him thereby he denies all the allegations in said several paragraphs of said bill contained, touching the invalidity and want of efficacy of said bonds, or that they were fraudulently and illegally issued, and respondent insists that the judgement of said court is final and
223 conclusive as to such matters as are in said paragraphs set forth and that the same cannot be reviewed and litigated anew in this suit, and he prays that reference may be had to such proceedings in said supreme court of the State, and that they be deemed a bar to any further proceedings on the part of complainant touching the subject-matter therein litigated and decided.

Respondent says that he has no personal knowledge of the matters set forth in the twel'th, thirteenth, & fourteenth paragraphs of said bill, and that he is advised that if the facts be as are therein stated, they do not affect this respondent, but respondent says that he is informed and believes that all the stock in said paragraphs specified either remained the lawful property or became the lawful property of said Houston in the year 1870, by sale and purchase of the same, under provisions of the agreement between himself and Milton L. Littlefield, of May 13th, 1870, which appears in schedule C annexed to said bill of com-
224 plaint, and that it was regularly transfer'ed to him upon the books of said company, and that certificates therefor were issued by said company to said Houston, and that the legal title to said stock continued to be held by said Houston until his decease, which took place in the year 1875; that said Houston was domiciled at the time of his death in the county of Chatham, in the State of Georgia; that he left a will, and appointed J. P. S. Houston, Raymond Demene, & James H. Johnston executors thereof, who proved such will in the proper court of said State, and received letters testamentary therein, and are now acting as such executors; and respondent says he is advised that no suit touching the title to such stock can properly be determined by any court but one existing under and by virtue of the constitution and laws of the State of Georgia, and that in any such suit the said executors of the estate of said Houston are necessary parties, and that no decree can be made in this cause such as the complainant company seeks

225 to obtain, by reason of the want of jurisdiction of the honorable court over the said executors of said Houston.

Respondent further says that he is informed and believes that said Houston brought a suit in the superior court of the State of Georgia for the county of Chatham, against Mariano D. Pappy, to which suit certain other parties were afterwards added; that in the course of said suit the certificates of shares of the stock of the Florida Central Railroad Company, which were owned by said Edward Houston, were placed by order of said court in the custody of a receiver thereof, by whom they are now held; that the object of said suit was to determine the rights of certain claimants to such stock, and the said certificates were so placed in custody of said receiver to abide the decision of said court, yet to be pronounced, the said cause being still pending therein; and respondent says he is advised that by reason of the jurisdiction so acquired by the said superior court of the State of Georgia, touching the title to said stock, this honorable court is precluded
226 from trying and deciding the matters in said bill set up by complainant company and the title to said stock therein asserted.

Respondent says that he has seized, advertised the franchise railroad and property which was of the Florida Central Railroad Company, same for sale on the first Monday in July next, as appears from a copy of said advertisement hereto annexed, marked "E." That such seizure and proposed sale is authorized and commanded by the act of the legislature approved Jan. 28th, 1870, and by virtue of the decision of the supreme court of said State in the case of Daniel P. Holland, versus the State of Florida and others, wherein it was declared that it was the duty of respondent to take such proceedings upon the failure of the Jacksonville, Pensacola and Mobile Railroad Company, or of any other company included in such act of January 28th, 1870, to pay the interest on their bonds, and in the case of the State of Florida, et al., vs. The Florida
227 Central R. R. Co., et al., referred before herein. Respondent says
that J. Fred Shulte and others, of Amsterdam, in Kingdom of the Netherlands, have presented a memorial to him setting forth, on oath, that they are bona-fide holders of bonds issued by the governor of the State of Florida, to the Jacksonville Pensacola and Mobile Railroad Company, under the provisions of the act of January the 28th, 1870, and by it sold, and that no interest has been paid on such bonds by said company for more than twelve months after a default in payment of interest, and praying that the respondent would make such seizure and sale, and there having been presented to respondent by said persons a list giving the numbers of said bonds by them respectively held, copies of which list are herewith filed, marked Exhibit E, the respondent deems himself bound by the laws of the State and the decisions of the supreme court thereof to proceed in the manner and form as he has
228 before stated, and he is advised that it is his duty to proceed to
make sale of said franchise railroad and property at the time before specified.

Respondent says that the said parties holding said bonds do not admit that any specific bonds held by them are to the exclusion of the others a lien upon any particular portion of the line of railroad beginning at Jacksonville and running westward to the Ap'alachicola River, but that the whole of the said line of said road is liable for each and every of said bonds.

229 Respondent says he is informed and believes that the said Florida
Central Railroad and said Jacksonville, Pensacola and Mobile Railroad represented to said S. W. Hopkins & Co., bankers of

London & New York, through whom the said Florida State bonds were sold, and the latter likewise represented to the public in England and Holland, and particularly to the bankers and others who purchased the said Florida State bonds (so-called), that they were bona fide and valid obligations of the said State; that the State held a lien for the payment of such bonds on all the railroad which begins at Jacksonville and runs westward to Quincy, with its branches, and also on all such railroad as might be constructed in extension of such line on all the franchise of and the company owning such road, and on all property to such railroad pertaining, or to such company belonging, that the said line of railroad was one entire line of railroad, and that the same was
owned by the said Jacksonville, Pensacola and Mobile Railroad
230 Company; that such Florida bonds (so called) were purchased,
sold, and dealt in by the bankers and others in Holland on the faith of such representation; that said complainant company aided and assisted in making sale of said bonds by said S. W. Hopkins & Co., and authorized the before stated representation to be made, and has not asserted to the contrary, until the time when this suit was commenced. Respondent insists that complainant company is estopped to deny that said bonds are a lien on the line of railroad between Jacksonville and Lake City, or on the property thereto pertaining, and is estopped from asserting that the Florida Central Railroad Company is the owner of of such line of said road and property, or has any other or greater equity as against the bona fide holders of the bonds so sold by said S. W. Hopkins & Co. than such as are possessed by the said Jacksonville, Pensacola and Mobile Railroad Company.

231 Respondent says he is informed and believes that either to the
said Littlefield directly, or to his order indirectly, the said bonds of the State of Florida were delivered; that by him were selected said bankers, S. W. Hopkins and Company, by whom the said bonds were placed upon the market; that thus by his action the said S. W. Hopkins and Company were made the agents as well of himself as of the Jacksonville, Pensacola and Mobile Railroad Company, of which he was the president, and of the said Florida Central Railroad Company, whose authorized representative he was; that neither by the said Littlefield, nor by the said S. W. Hopkins & Co., nor by any of their agents through whom the said last mentioned bonds were sold, was any distinction whatsoever drawn between the said bonds, which have been received in exchange for bonds of the said Jacksonville, Pensacola & Mobile Railroad Company, and those of the said State bonds which have been re-
ceived in exchange for the bonds of the said Florida Central
232 Railroad Company; that no such distinction whatever appeared
upon the face of said bonds; that they were numbered from one to four thousand, all issued under the same act, and for the same purpose, and apparently exchanged for bonds of the same line of railroad.

Respondent further says that not only did the said Littlefield, by himself and agents in Europe, make such representations as induced the purchase of the said State bonds upon the faith of the security of a consolidated railway, as hereinbefore set out, but it appears from his own affidavit, used in the case of the State of Florida vs. Edward E. Anderson, jr., et al., in the Supreme Court of the United States, a copy of which said affidavit is hereto annexed, marked F., that the bonds of the Florida Central Railroad Company subsequently exchanged for State bonds were actually issued by the stockholders of the said last mentioned company as a step towards consolidation of the said Florida

Central with the said Jacksonville, Pensacola and Mobile Rail-
233 road Company;" that after said bonds were issued it was repre-
sented to Harrison Reed, governor of the State of Florida, that such consolidation had taken place, and because of such consolidation the said governor was requested and urged to deliver to the said Jacksonville, Pensacola & Mobile Railroad Company one thousand bonds of the said Florida Central Railroad Company as the bonds of the said Jacksonville, Pensacola & Mobile Railroad Company."

The said Littlefield further swore that from the time of such exchange of bonds down to the 20th day of March, 1872, "the entire line of railroad from Jacksonville, Duval County, westward, was under the exclusive management of the Jacksonville, Pensacola and Mobile Railroad Company and the officers thereof"; that on the time tables of the Jacksonville, Pensacola & Mobile Railroad Company, Jacksonville and all the stations westward to Lake City were designated and published as stations of the Jacksonville, Pensacola & Mobile Railroad
234 Company; that all contracts for conveying the mails, freight,
and passengers were with the Jacksonville, Pensacola & Mobile Railroad Company, and by resolution of the incorporation of the Jacksonville, Pensacola and Mobile Railroad Company, the principal office thereof was fixed at Jacksonville aforesaid, and the Florida Central Railroad Company had nothing more than a nominal existence, and was unknown as a distinct corporation to the business public; that Johnathan C. Greely, receiver of said State court was in possession of the entire line of railroad from Jacksonville westward, and operating the said road as said receiver; and that from the time of such exchange of bonds to the appointment of said receiver no stockholder of either the said Jacksonville, Pensacola & Mobile Railroad Company or of the Florida Central Railroad Company, ever raised any objection to the acts and proceedings of said directors and stockholders, nor to any of the acts or contracts done and made in view of consolidation. This defendant, further answering, says that the over-issue of State bonds to the Jacksonville, Pensacola and Mobile Railroad Company was entirely or nearly so on the line of the railroad west of Lake City. That
235 the two hundred and twenty-four State bonds cancelled, as alleged
in said bill of complaint, were of the series or numbers of bonds that were exchanged for bonds of the Florida Central Railroad Company. That two hundred and six of the State bonds over and above the number of three thousand has, as appears by the affidavits and pleadings in this cause, been sold, and are now held by bona fide holders for value That even if no other bonds are a lien upon said Florida Central Railroad, that said two hundred and six bonds are, through said company bonds, held by the State a lien upon it, and also two hundred and twenty-four bonds, numbered between 1 and 3000, which should have been cancelled, instead of said 224 bonds, above the number of three thousand (3000).

Respondent further says that, during the time limited above, a paper in the nature of a prospective was issued, in connection with a deed of of trust of the Jacksonville, Pensacola and Mobile Railroad Company, in which the said company was described as "a corporation organized and chartered under the laws of Florida, owning and operating a line of railroad from Jacksonville to Quincy, a distance of one hundred and eighty-five miles, with a branch from Tallahassee to St. Mark's, a
236 distance of twenty-two miles, which is in successful operation with
ample equipments, all of which will more fully appear by refference to said paper hereto annexed as Exhibit G.

Respondent respectfully submits that, in view of the above recited facts, the bonds of the State of Florida having been so sold by the said Littlefield and his agents, the holders of stock in the said Florida Central Railroad Company, but more especially the said Littlefield and all persons claiming through or under him or represented by him, are estopped both in law and equity from denying the lien of any and all of the four millions of State bonds so as aforesaid issued in aid of the said Jacksonville, Pensacola and Mobile Railroad Company, not simply upon the said J. P. & M. Railroad and its property but also upon the said Florida Central Railroad and its property.

Respondent avers, upon information derived among other sources, from the statements under oath of the said Littlefield himself, that he was during the time referred to the owner of nearly the entire capital
237 stock of both the said Florida Central Railroad Company and the said The J. P. & M. R. R. Company.

Respondent again respectfully submits that if the said complainant during the time referred to had, by reason of the frauds alleged to have been committed by the said Swepson, any equitable title in the capital stock so standing upon the books of the said Florida Central Railroad Company, in the name of the said Littlefield, it was the clear duty of the said complainant to interpose objections, if any it had, to the action of its said alleged trustee and of the directors of the said Florida Central Railroad Company, which said action was thus made public to the world. But this defendant avers that not only did the said complainant fail to make resistance to the issue, exchange, and sale of the bonds under the circumstances and representations herein-before set out, but it wholly failed to give any notice whatsoever of the right and title which it now undertakes by its said bills of complaint to set up; although from its own allegations the fact is established that as early as the month of Oct., 1870, it had full knowledge of the said alleged frauds of the said Swepson.

238 This respondent submits that, even if any title could be based upon the said alleged frauds, the assertion of that title has been barred by the lapse of time and by laches on the part of the said *said* complainant, and that it cannot now be set up as against the rights of third parties who have purchased the said bonds of the State of Florida without notice and in good faith, which your respondent alleges said bondholders to have done.

Respondent says he is informed and believes that there has been sold of the bonds which the Jacksonville, Pensacola and Mobile Railroad Company obtained from the governor of the State, in the year 1870, three thousand two hundred and six, but respondent is unable to say how many more were so sold; that he believes that the copy of the consent decree entered in England by the Jacksonville, Pensacola and Mobile Railroad Company, which is filed with complainant's bill, is correct, and that such consent decree was made by said company by its agent and attorney, duly empowered thereto in writing, and that the consent decree entered in the supreme court of the State of New
239 York, a copy of which is filed with said bill, marked II, was assented to by the before-named company, by its counsel employed in the suit in which the said decree was entered, under the direction of Converse L. Chase, who was at the time empowered thereto by said company by a power in writing duly executed, and that the eight hundred bonds in the receipt mentioned, which is signed by John Collinson, were actually received by him as therein stated, and your orator annexes hereto copy of said consent decree in the New York supreme

court, and other decrees and agreements relating thereto and to the dealings of complainant as to said bonds, and prays that the same may be taken as part hereof, they being marked K.

Respondent further says in respect to the making of the said consent decree that the complainant company was a party thereto being represented by its solicitor and counsel and by Nicolas W. Woodfin, one of the commissioners appointed by the State of North Carolina to settle and adjust the claims made by the plaintiff company against said Swepson and said Littlefield, which appointment was made by a law of said State, approved March , 1870, a copy of which law respondent
240 is informed and believes is in the possession of the officers of the plaintiff company.

Respondent further says that before said consent decree was made and entered in the supreme court of the State of New York, an agreement was entered into between the said Woodfin, acting as such commissioner, with the assent of his co-commissioners on the one part, in behalf of complainant company and the said Jacksonville, Pensacola and Mobile Railroad Company and Milton S. Littlefield, of the other part, whereby in consideration of the assent so given by said commissioners to the stipulation in the said last mentioned decree that said eight hundred bonds should be delivered to said John Collinson, the Jacksonville, Pensacola and Mobile Railroad Company, said Milton S. Littlefield and said Converse L. Chase, agreed that said commissioners should receive on account of the complainant company's decree and against said George W. Swepson and Milton S. Littlefield the sum of six hundred thousand dollars, of which amount two hundred thousand dollars it was by said agreement stipulated should be received by said commissioners from the money which said Collinson was obligated to pay for said bonds in case he elected to buy them, and the remaining four hundred thousand
241 dollars to be by said commissioners received out of future issues and sales of bonds of like character to be received by the said Jacksonville, Pensacola & Mobile Railroad Company. Such agreement was dated the fifteenth day of June, 1872, and respondent is informed and believes it is in the possession of said complainant company.

Respondent further says he is informed and believes that said complainant company, after it became known to it that said Swepson had sold or hypothecated the so-called State bonds of North Carolina, released said Swepson from all liability therefor upon a full and valuable consideration; that an agreement was made by and between said commissioners and said Swepson and said Littlefield individually, and executed by said Swepson as president of the Florida Central Railroad Company, and by said Milton S. Littlefield as president of the Jacksonville, Pensacola and Mobile Railroad, wherein it was recited that said Littlefield was about to obtain the bonds provided to be issued by the State of Florida under said act of Jan'y 28th, 1870, in exchange for bonds of said several railroad companies, and that such bonds
242 were to be deposited with S. H. Hopkins & Co., for sale; it was stipulated that the proceeds of the bonds of the Florida Central Railroad Company amounting to nine hundred and sixty thousand dollars should be applied to the payment of the existing liabilities of the said several railroad companies, including one hundred and fifty thousand dollars to be paid to the said commissioners for the purpose of paying the then existing liabilities of the complainant company, and that the balance to be received from the sale of the said bonds should be equally divided between the said Florida Railroads and complainant company; and respondent says he is informed and believes said agreement is in

the possession of said company. A true copy thereof is filed herewith, marked G G.

Respondent further says he is informed, and believes, in said agreement it was erroneously stated that said Swepson had invested one million two hundred and eighty-seven thousand four hundred and twenty-six dollars in securities of and in said Florida railroads.

Respondent further says: Afterwards, on the tenth day of November, 1870, in London, England, another agreement in writing was 243 made by and between said Littlefield and said commissioners, whereby the prior last-mentioned agreement was referred to, and it was recited that a sale of said Florida bonds had not been made, and it was stipulated, amongst other things, that in lieu of the provisions in said former contract stated, said Littlefield and said Jacksonville, Pensacola and Mobile Railroad Company should pay certain sums of money to said commissioners; also deliver to them, for the use of complainant company, rail iron and spikes to lay fifty-three miles of its track, and should sell and deliver to said company eight hundred of said Florida State bonds (so called). And respondent says he is informed, and believes, that the original of said agreement is in the possession of the said complainant company. Respondent files herewith a true copy thereof, marked H H.

Respondent further says, that said Littlefield gave to said Nicolas Woodfin an order on said S. W. Hopkins & Co. to hold eight hundred of said Florida bonds subject to the order of said Woodfin, as chairman to said commissioners, which order said Hopkins accepted in writing, and respondent files herewith copies of said order and acceptance, marked D H.

244 Respondent says that when the said order of said Littlefield and the acceptance of said Hopkins were made there had been delivered to said Hopkins & Co. two thousand nine hundred and ninety-eight of said Florida State bonds, the same being, with the exception of two bonds, all of the first issue made by Harrison Reed, governor, to said Jacksonville, Pensacola & Mobile Railroad Company.

Respondent says that some time in the year 1871 the complainant company, acting through said Woodfin and said other commissioners, brought a suit in the supreme court of the State of New York for the city and county of New York against said S. W. Hopkins & Co., and others, and that in the complaint whereby such suit was commenced the before-mentioned agreement of November 10th, 1870, & said orders of said Littlefield to said S. W. Hopkins & Co., and their said acceptance thereof, were set forth and made part of the said case of complainant company, and relied in for the relief in such complaint demanded, that it was therein also averred that said S. W. Hopkins & Co. had, at the time when they gave their said acceptance, eight hundred of the said (so-called) Florida State bonds in their hands. to which such order 245 and such acceptance applied; that said S. W. Hopkins & Co. had sold all of the bonds which they held at the date of their said acceptance, and amongst the same had sold the eight hundred bonds to which said complainant company became until, by the agreement aforesaid, that they had received therefor a large sum of money, and were accountable to said complainant company therefor; that said S. W. Hopkins & Co. had fraudulently appropriated such money to their own use. An order of arrest was procured by complainant company in said suit against S. W. Hopkins, one of said firm, and he was arrested, and bail was required of him, which he furnished, in the sum of three hundred thousand dollars. The said suit was pending at the time when said agreement of June, 1872, was made between said commissioners and said Jacksonville, Pensacola and Mobile Railroad Company and said Converse L. Chase, and when said consent decree was entered in the supreme court of the State of New York, on the sixth day of December, 1872; that by the terms and conditions of such agreements said commissioners agreed in behalf of complainant company to dismiss the said suit against said S. W. Hopkins & Co., and to release their bill, which was accordingly done. See Exhibit O.

246 Upon these allegations of fact respondent respectfully submits that the said complainant is estopped from denying the paramount lien as against its own pretended claims of the said Florida State bonds, not simply upon the entire line of the Jacksonville, Pensacola and Mobile Railroad, but also upon the entire line of the Florida Central Railroad, and says that he cannot admit any claim on the part of the said Florida Central Railroad Company, or any of its stockholders, to pay off any specific bonds less than the whole number, in discharge of the lien on said railroad and property.

Respondent says that the pretensions of said complainant as to the nature of the liability incurred by the said Florida Central Railroad Company to the holders of said Florida State bonds is contrary to the decision of said supreme court defining the rights of said bondholders and the liability of said Florida Central Railroad Company.

Respondent further says, in answer to the allegations made by said complainant's company in the forty-seventh paragraph of said bill, that the said company tenders to pay any money on account of the 247 liability of the Florida Central Railroad Company, that such offer is a mere pretense, and not honestly made, because *because*, as respondent is informed and believes, the said complainant company s insolvent, never had any cash capital stock paid in, and has never been able to construct any portion of its road but a small part of its road bed, and for which it has been sued, judgment obtained against it, which judgment remains unsatisfied.

Further answering, respondent denies that the said Florida Central Railroad Company, in consequence of controversies over its management during the past four years, is under the control of three or four different boards of directors and local management. On the contrary, avers the truth to be that on April, 16th, 1875, a board of directors was elected by the stockholders of said company, convened, in accordance with the charter and its by-laws, in the city of Tallahassee; that by said board of directors Robert Walker was appointed to be manager of said railroad company, and that under the charter this board of directors have continued and will continue to exist until another election shall be held, which said board consists of the following persons: 248 Edward M. L. Engle, Edward Lewis, B. Williams, P. Houston, R. H. Gamble, C. E. Dyke, sr., R. Walker, E. A. Cowgill, and George W. Belton; that the only party raising controversy as to the right of said board of directors to the management and control of said railroad is the said complainant, through its attorneys, agents, and confederates, who to the end, as respondent believes, of preventing the restoration of said property to the said board of directors, made application to the honorable the judge of the circuit court of Duval County for an alternative writ of mandamus to be directed to the said Milton S. Littlefield and others as holders of the capital stock of said last mentioned railroad company, requiring them to meet and elect a new board of directors.

In their petition, addressed to the said judge, the fact was distinctly alleged that the said stock, claimed by the said Milton S. Littlefield as belonging rightfully to him, stood upon the books of said company in the name of the said Edward Houston, the same having been hypothecated to him as collateral security.

A peremptory mandamus having been issued by the said court, there was a meeting, as the respondent is informed and believes, of the said Milton S. Littlefield and others claiming to hold stock in the said
249 company, and a board of directors was elected by them, who are
now claiming the right to take the said railroad from the hands of the said receiver, and to control and manage the same.

Respondent charges that their entire proceedings were illegal, null, and void; that the said State court had no jurisdiction to grant the said mandamus; that the said pretended meeting of stockholders was not held in accordance with the charter and the by laws of said company; and that the board which was regularly elected is 1875 still continues to be the only legal board of directors of the said company. Respondent hereto annexes a copy of the by laws of said Fla. C. R. R. Co. as a part hereof, marked Exhibit I.

Respondent, further answering, says that the said board of directors has never been actually in possession of the said Florida Central Railroad, or if actually, only for a very short while, because at the time of their said election the said road was in the charge and custody of a receiver appointed by the Supreme Court of the United States in the case of the State of Florida vs. E. C. Anderson and others, and in accordance with its order was subsequently by him turned over to
250 to said directory, from whom it was immediately seized by Joseph
W. Durkee, receiver appointed by the circuit court of the State of Florida for the county of Duval, in the case of the State of Florida and the trustees of the internal improvement fund versus the Jacksonville, Pensacola & Mobile Railroad Company and others. But respondent admits that the said road, because of the litigation in which it has been involved, and of the fact that no one has such title in it as will justify the investment of capital in its preservation and improvement, is in a delapidated condition.

And this defendant, having made full answer to the bill of complaint, prays hence to be dismissed with his reasonable costs in this behalf expended.

Sol. for Geo. F. Drew, Gov. of Florida.

U. S. OF AMERICA,
Northern District of Florida:

Personally appeared Geo. F. Drew, governor of Florida, above named, and he being duly sworn says that the facts stated in the foregoing answer are true, except those stated on information or belief, and these he is informed and believes to be true.

GEO. F. DREW,
Governor.

Sworn and subscribed before me the 12th day of May, A. D. 1877.

LEROY D. BALL,
Commis'r of U. S. Circuit Court, Northern Dist. Fla.

251 (Indorsed:) Filed this 19th day of May, A. D. 1877. Philip Walter, clerk.

252 Circuit court of the United States for the northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN N. C. Railroad Company
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, George F. Drew and others, trustees of the internal improvement fund of Florida, et al.

The answer of George F. Drew, governor of the State of Florida, to the bill of complaint, and also the petition filed by the said complainant, in the above entitled cause.

The respondent, reserving to himself the right of exception to all errors, uncertainties, and imperfections in the said bill of complaint contained, for answer thereto, or to such parts and to so much thereof as he is advised is or are material for him to make answer unto, answering, says:

It is not true, as alleged in the said bill of complaint, that in the year 1868 the said complainant was owner and holder of six millions of dollars in the bonds of the State of North Carolina, conferred upon
253 it to be used in the construction of its railroad; on the contrary, this respondent alleges that the only bonds of the State of North Carolina applicable to that purpose were not issued until during the year 1869, all of which will more fully appear from the auditor's statement of the public revenue and expenditures of the State of North Carolina for the fiscal year ending September 30th, 1869, to be found printed in the public laws of North Carolina for the year 1869 and 1870, beginning at page 369 of the said volume, which said report this respondent prays may be taken as an exhibit to this his answer, with the usual liberty of reference.

In establishment of the same fact respondent prays also to refer to the annual report of the public treasurer of North Carolina for the year 1869, which has been filed in this honorable court with the answer of this respondent in the suit of said complainant against this respondent, the Florida Central Railroad Company and others, and designated as Exhibit A, and prays further that it may be taken as an exhibit also to this his answer.

254 Respondent says, in further answer to paragraphs first, second, and third of said bill, that he is informed that George W. Swepson, in the year 1869, obtained from W. W. Holden, governor of North Carolina, or from its treasurer, certain paper writings purporting to be bonds of the State of North Carolina, obligating it to pay six million of dollars; and that the said Swepson professed to act in the said premises as president of said company, but respondent is informed, and upon such information states, that neither the executive, legislative, nor judicial departments of the government of said State admit such paper writings to be lawful obligations thereof; but that said legislature has absolutely refused to recognize the same or to pay anything for interest thereon, and that one of the judges of the superior court of said State has decided, in a suit pending before him in said court, that the said paper writings were issued contrary to, and in violation of, the
255 constitution of said State. Respondent is advised, because of such invalidity of such so called bonds, the said Western Division of

the Western North Carolina Railroad Company never acquired any lawful property, or held any six millions of bonds of the State of North Carolina, as is in said bill of complaint alleged, and that because of the fraud by means whereof such paper writings were sold by said Swepson, no trust has resulted in favor of said complainant corporation in respect of any money which said Swepson obtained by any sale of said paper writings to any persons such as the court will recognize or enforce.

Further answering, this respondent says that he has no personal knowledge as to the alleged purchase by the said Swepson of bonds of the Pensacola and Georgia Railroad Company, but is informed and believes that he did purchase a large number, about $960,000.00 of the said bonds at a price very far below the par value of the same, and not exceeding thirty-five per cent. of the said par value. Respondent,
256 upon this information, denies that he invested $720,000.00 in the
said purchase, and denies that he made said purchase with moneys derived from the alleged sale of the said State bonds of North Carolina; and alleges that said purchase was made by said Swepson with his own private funds.

Respondent has no knowledge of the personal relationship between the said Swepson and Milton S. Littlefield, or the said Swepson and Edward Houston, and cannot say whether or not the said Littlefield or Houston purchased the said railroad bonds for the said Swepson, and in making such purchase were advised of the official and fiduciary relations of the said Swepson to the said complainant; and respondent prays that said complainant may be held to strict proof of these allegations.

Upon information and belief respondent admits the statements contained in paragraphs sixth, seventh, eighth, ninth, and tenth of the said bill, with the exception of the allegation in the sixth paragraph,
257 that said Swepson held bonds of the Pensacola and Georgia and
Tallahassee Railroad Companies to the amount of $1,063,000.00.

Respondent, answering paragraph eleven of said bill, admits that the trustees of the internal improvement fund of Florida, after having made sale of the said Pensacola and Georgia and Tallahassee Railroad bonds, on March 20th, 1869, executed and delivered a deed of the same to the purchasers, F. Dibble and associates, receiving in payment therefor about $960,000.00 in bonds of said companies and a check drawn by one of the said purchasers for 472,065.00, which said check has never been paid. The said check was turned over by the said trustees to the said George W. Swepson, who had been previously appointed by them fiduciary agent to receive the balance of said purchase money, and with it to take up the remainder of the bonds of the said railroad companies which were still outstanding. This check, by collusion among
258 certain of the parties concerned, was never collected in money
but was used by the said George W. Swepson in purchasing from the said F. Dibble and associates the said railroad property, so sold on March 20th, 1869.

Because of these transactions, suits were subsequently instituted in the circuit court of the State of Florida for the county of Duval, by the State of Florida, and the trustees of the internal improvement fund against the Jacksonville, Pensacola and Mobile Railroad Company and others for the recovery, among other things, of said unpaid purchase money, in which said suit on the 2nd day of April, 1874, it was decreed, ordered, and adjudged that the then trustees of the internal improvement fund, and their successors in office do have and receive from the Jacksonville, Pensacola and Mobile Railroad Company, the full sum of six hundred and sixty-one thousand eight hundred and forty-five and $\frac{55}{100}$ dollars, together with costs, all which will more fully appear from a copy of said decree herewith filed, and marked "Exhibit A" to 259 which this respondent prays the usual liberty of reference.

Pending the said cause in Duval circuit court, E. C. Anderson and others, holders of the first mortgage bonds of the said Pensacola and Georgia and Tallahassee Railroad Companies, instituted their action in this honorable court against the Jacksonville, Pensacola and Mobile Railroad Company, the trustees of the internal improvement fund and others, in which they also, as well in their own behalf, as in behalf of all others similarly situated, sought like recovery of the said purchase money of the said railroad, which still remained unpaid. And on December 19th, 1872, his honor, Judge Woods rendered his decree in which, among other things, it was ordered, adjudged, and decreed that the parties complainant do recover against the J. P. & M. R. R. Company the full amount of the said bonds with interest thereon; all which will more fully appear from a copy of said decree, hereto annexed and marked Exhibit B.

Respondent further says that subsequently other decrees were 260 rendered in the said cause, and in other litigation between the same parties that sprang directly therefrom, all of which are of record in this honorable court.

Respondent prays that the entire proceedings in the said last mentioned causes, being so of record in this honorable court, may be taken as an exhibit to this his answer, with full liberty of reference thereto whenever occasion shall require.

Further answering, the respondent says he is advised that the execution of the said decrees of this honorable court were enjoined by the Supreme Court of the United States, at the instance of the State of Florida, in a suit against E. C. Anderson and others; but that the validity of the said decrees were in all material respects recognized and affirmed; all of which will more fully appear from a copy of decree of said Supreme Court hereto filed and marked Exhibit C.

Respondent further says that, at the January term 1876 of the 261 supreme court of the State of Florida, there came on to be heard the case of Daniel P. Holland vs. the State of Florida et al., respondents, and it was held by the said court that under the provisions of an act of the legislature providing for the exchange of bonds of the State of Florida, with the said J. P. and M. R. R. Company, the State had been created by the act a trustee holding the bond of the company and the lien created by the act to secure payment to the party who advanced money to the company; meaning the parties who had purchased the bonds of the State issued in accordance with the provisions of said act.

Respondent respectfully prays reference to the said decision of the supreme court of Florida, and that the same may be considered as part and parcel of this his answer. It is to be found in 15 Florida Reports, p. 455 et seq.

Respondent further says that subsequently the case of the State of Florida against E. C. Anderson and others having come up for further hearing before the Supreme Court of the United States, a decree was rendered from which the following is an extract.

262 And now on this first day of May, A. D. 1876, the court being advised of certain proceedings and decrees had and made by and

before the circuit court for Duval County, in the State of Florida, and by and before the supreme court of said State, in the cause mentioned in the bill and pleadings in this case, wherein the State of Florida and the trustees of the internal improvement fund of said State were plaintiffs, and the Jacksonville, Pensacola and Mobile Railroad Company and others were defendants, whereby it has been held and adjudged that the three thousand bonds for $1,000.00 each, issued by the said company, in the year eighteen hundred and seventy, in exchange for State bonds, are valid and binding and create a statutory lien upon the railroad and property of said company, and that by virtue thereof the said State is entitled to take possession of said property and sell the same, not only to raise and pay the unpaid purchase money mentioned in the said original bill, but also what may be justly due on said bonds; and 263 that the sale of said railroad and property under execution at the suit of the defendant Daniel P. Holland was void and of no effect, and gave him no right or title as against the said State to the possession of said railroad and property or to the income, tolls, or revenue thereof; and it appearing that the possession of that part of said railroad between Quincy and the Apalachicola River is claimed by one James G. Gibbs, but is a part of the said Jacksonville, Pensacola and Mobile Railroad, and was not in possession of said Gibbs when the receiver was appointed by this court, nor of any person claiming under said Gibbs, and his right to the possession thereof is denied by the said State as the holder of said bonds, and the said State of Florida through its executive and the said trustees of the internal improvement fund having deputed Dennis Eagan, the commissioner of lands and immigration of said State, to secure the said railroad and property from the receiver f this court.

"Therefore it is ordered and decreed that Robert Walker, the 264 receiver appointed by this court, do on or before the first day of June next, deliver the said railroad and all its appurtenances extending from Lake City to the Apalachicola River and from Tallahassee to St. Marks, and all the rolling stock and property connected therewith, to the said Dennis Eagan, commissioner of lands and immigration of said State of Florida, on behalf of said State;" all which will more fully appear by reference to the ninety first volume of the reports of the Supreme Court of the United States, pp. 684, 685, 686, 687, and 688.

Respondent further says, that in the meantime, on the 20th day of August, 1875, a final decree was rendered by the said circuit court of Duval County in the said case of the trustees of the internal improvement fund and the State of Florida against the J. P. & M. Railroad Company and others, in which it was ordered, adjudged, and decreed that the State of Florida is the owner and holder of valuable consideration of three thousand coupon bonds issued by the defendant, the J., P. 265 & M. R. R. Company, of the denominations of one thousand dollars each, numbered from one to three thousand, inclusive., etc., etc., and that to secure payment of same has a statutory lien, etc., etc., and that the said State do recover from the said R. R. company the full sum of six hundred thousand and forty dollars on account of interest, etc., etc.; and that said company had made default and had failed to pay interest on said three thousand of its bonds for over twelve months after the same became due and payable under the provisions of section third of said act of January 28th, A. D. 1870, and that the purchaser at any sale had or made under, or to enforce said statutory lien held by the State of Florida, shall take the property acquired at such sale subject to all existing rights and liens in favor of said board of trustees of the internal improvement fund of Florida, unless such rights and liens shall be satisfied and paid out of the proceeds of said sale; all which will more fully appear from a copy of said decree herewith filed and marked Exhibit D.

266 Respondent further says, answering, that in obedience to the decree of the said Supreme Court of the United States last above cited, the said Robert Walker, receiver, did place the said Eagan, commissioner of lands and immigration, in possession of the said line of railway, and the same is now held in possession by respondent under seizure of the same. It is not true therefore, as alleged in paragraph forty-three of said bill of complaint, that the governor of Florida has for and during five years passed, without any lawful right to do so, taken forcible possession of the said railroad, and is thus committing a trespass upon the alleged rights of the said plaintiff, or that the said governor took possession of the said railroad on or about the year 1872, when there was no interest due on the said bonds. These and all other allegations of like character in the said bill contained, this respondent says are untrue.

Respondent came into the possession and control of said rail-
267 road by virtue of his office, as governor of the State of Florida, has made and announced seizure of the same in accordance with the provisions of said act of January, 1870, and advertised the same for sale on the first Monday in July next.

Respondent says that while these acts upon his part are but simple obedience to the various decisions and decrees of the courts of justice, which have been heretofore referred to, and looks directly to the protection of the rights of the holders of the State bonds of Florida as adjudicated by her supreme court, he has entertained and still entertains the hope that in the early sale of this most important line of railway to some purchaser, who, having faith in the title, will improve the property, the interests of all concerned in the wellfare of the road will be promoted. And he respectfully submits that, if the said complainant has ever had any such rights to the said property as it now undertakes to set up, such rights have been barred and lost by its own laches, and
268 should not now be permitted to embarass others or to endanger the public.

Respondent is informed and believes that George W. Swepson sold and delivered to Milton S. Littlefield all the stock and other property mentioned in said bill, as his own; that such sale took place in October, 1869, at which time, as respondent is informed, it was fully known to the officers of complainant company, who made no objection thereto, and set up no claim in behalf of said company to such stock, and gave no notice whatsoever of any claim or lien against the same, and that said company have ever since permitted said sale to remain unquestioned in the courts of the State of Florida, and have not given any notice to the officers of the said J. P. & M. R. R. Company of any such claim to any such stock, or to any other stock which is in said bill set forth and asserted to exist, but said complainant permitted said Littlefield to deal with the same as his own property.

Respondent is informed and believes, and on such information
269 states, that the dealings of said Swepson with the said so called North Carolina bonds, and the purchase and sale of bonds and stock in the said Pensacola and Georgia and Tallahassee and J. P. & M. R. R. Companies were fully known to the officers of the plaintiff's company before the month of October, 1869, and respondent thereupon denies the allegations of said bill, wherein it is stated that the complain-

ant remained ignorant of such matters until the summer of 1870, or that it acquired knowledge thereof from the affidavit of said Swepson, exhibited with said bill.

Respondent is informed and believes, and accordingly avers, that the State of Florida through its officers have no knowledge or notice whatsoever of the alleged rights of the said complainant at the date of the passage of the said acts of 1869 and 1870, providing for the issueing of bonds of the State of Florida in aid of the said J. P. & M. R. R. Company, nor at the date of the actual exchange of said State bonds for the bonds of the said railroad company.

270 Respondent, further answering, says that even if it be true that moneys belonging to the said complainant corporation were invested by said Swepson in the purchase of the said R. R. bonds, and thus in the purchase of the said railroad stock, nevertheless the said complainant has ratified the acts of the said Swepson and recognized the title of the said Littlefield in the said property, and taken part in procuring the issue of bonds by the said J., P. & M. R. R. Company under the said act of January, 1870, and the exchange of said company bonds for bonds of the State of Florida, issued under the provision of the same act; and in causing the delivery of the said State bonds to Milton S. Littlefield, and the sale of the same by S. W. Hopkins & Co , of London and New York, bankers and agents, selected by the said Littlefield for that purpose.

First. Respondent is informed and believes, and accordingly so avers, that early in the year 1870, and before the exchange of the said 271, 272 company bonds for the said State bonds had been consummated, to wit, on April 16th, 1870, the said complainant entered into "an agreement and settlement with the Florida Central Railroad, George W. Swepson, president, and the Jacksonville, P. & M. R. R. Company, and Milton S. Littlefied, president, and Milton S. Littlefield, majority owner of the stock of said company, and also of the stock of the Tallahassee Railroad Company," which embraces all the stock now claimed by said complainant in its said bill of complaint, in which said agreement it was recited that said Swepson had conveyed to said Littlefield his interest in the said railroad subject to the payment of the alleged claim of the said complainant. And the said Littlefield had received authority from the legislature of Florida and the several railroad companies to secure bonds to be issued by said companies, and to be exchanged for bonds of the State of Florida, and had made a contract with S. W. Hopkins & Co., 71 Broadway, for the disposition of said bonds, etc., 273 and in which said agreement it was understoood and agreed between the parties that the proceeds of the sale of the said bonds so to be issued by the said railroad companies and the said State of Florida was to be equally divided, dollar for dollar, between the Western Division of the Western North Carolina Railroad Company and the said Florida railroads, until the entire amount of one million two hundred and eighty-seven thousand and thirty-six dollars and three cents, with interest at 8% as aforesaid, being the sum deposited by the parties of the first part as due to the Western Division of the Western North Carolina Railroad, is fully paid, all which will more fully appear from the said agreement itself, the original of which, as respondent is informed and believes, is in possession of the said complainant, but a copy of which is herewith filed, marked Exhibit E.

This respondent charges that by force of entering into this agreement and thereby countenancing, encouraging, and procuring the issuing and sale of said bonds in manner and form as set out in its said bill, the said

the said complainant is estopped from denying the title of the said Littlefield in the said railroad stock, or the paramount lien of the
274 holders of the said State bonds upon the property of the said Florida railroad companies.

Respondent further says he is informed and believes that in said agreement it was erroneously stated that said Swepson had invested one million two hundred and eighty-seven thousand four hundred and twenty-six dollars in securities of and in said Florida railroads.

Second. Respondent further says that afterwards, on the 10th day of November, 1870, in London, England, another agreement in writing was made by and between said Littlefield and certain commissioners appointed by the legislature of North Carolina to represent said complainant, whereby the prior last mentioned agreement was referred to, and it was recited that a sale of said Florida bonds had not been made, and it was stipulated among other things that in lieu of the provisions in said former contract stated, said Littlefield and said Jacksonville, Pensacola and Mobile Railroad Company shall pay certain sums of money to said commissioners; also to deliver to them for the use of complainant company railroad iron and spikes to lay fifty-three miles of its track, and should deliver to said company eight hundred of said Florida
275 State bonds (so called). And respondent says he is informed and believes that the original of said agreement is in the possession of the said complainant company. Respondent files herewith a true copy thereof, marked Exhibit F.

Respondent further says, and upon information and belief, that said Littlefield gave to Nicholas Woodfin, one of said commissioners, an order on said S. W. Hopkins & Co., to hold eight hundred of said Florida bonds subject to the order of said Woodfin, as chairman of said commissioners, which order said Hopkins accepted in writing; and respondent files herewith copies of said order and acceptance, marked Exhibit G.

Respondent says that when the said order of said Littlefield and the acceptance of said Hopkins were made, there had been delivered to said Hopkins & Co. two thousand nine hundred and ninety-eight of said Florida state bonds, the same being, with the exception of two bonds, all of the first issue made by Harrison Reed, governor, to said Jacksonville, Pensacola and Mobile Railroad Company.

276 Respondent says upon information and belief that about the same time, in the year 1871, the complainant company, acting through said Woodfin and said other commissioners, brought a suit in the supreme court of the State of New York, for the city and county of New York, against said S. W. Hopkins & Co. and others, and that in the complaint whereby such suit was commenced the before-mentioned agreement of November 10th, 1870, and said orders to said Littlefield to said S. W. Hopkins & Co., and their said acceptance thereof, were set forth and made part of the said case of complainant company and relied on for the relief in such complaint demanded; that it was therein also averred that said S. W. Hopkins & Co. had, at the time when they gave their said acceptance, eight hundred of the said (so called) Florida State bonds in their hands, to which such order and such acceptance applied; that said S. W. Hopkins and Co. had sold all of the bonds which they had at the date of their said acceptance, and amongst the same had sold the eight hundred bonds to which said complainant company became entitled by the agreement aforesaid; that they had received therefor a large sum of money and were acountable to said complainant company therefor; that said S. W. Hopkins & Co. had

277 fraudulently appropriated such money to their own use. An order of arrest was procured by complainant company in said writ against said S. W. Hopkins, one of said firm, and he was arrested and bail was required of him, which he furnished in the sum of three hundred thousand dollars.

The said suit was pending at the time when an agreement of June 15th, 1872, existed between said commissioners and said Jacksonville, Pensacola and Mobile Railroad Company, and said Converse L. Chase, and when a consent decree was entered in the supreme court of New York State, on the sixth day of December, 1872; that by the terms and conditions of such agreement said commissioners agreed in behalf of complainant company to dismiss the said suit against said S. W. Hopkins & Co. and to release their bail, which was accordingly done.

Third. Respondent further says, upon information and belief, that there were other transactions between the said complainant company and the said Swepson and the said Littlefield, and other proceedings before the courts, and consent decrees taken, after the issuing and sale of the said State bonds, all showing that said complainant fully satisfied and adopted the acts of said Littlefield in connection with such issue and sale and itself shared in the pecuniary profits resulting
278 therefrom; all which is more fully set out in the answer of this respondent to the bill filed by said complainant against himself, the Florida Central Railroad Company, and others in this honorable court, to which respondent now prays to refer as part and parcel of this his present answer.

Further answering, respondent admits from information and belief the allegations contained in paragraphs twelve and thirteen of said bill, but denies the statement contained in paragraph fourteen, to the effect that by act of incorporation of the Tallahassee Railroad Company, or any provision in said act, notice was given to the trustees of the internal improvement fund of any such rights, claim, or pretension on the part of the said complainant as it now seeks to set up.

Respondent further says, upon information and belief, that the number of miles of railroad for which said Jacksonville, Pensacola and Mobile Railroad Company exchanged its bonds for the bonds of the State was very much in excess of the number of miles of completed road owned and operated by said J. P. and M. Railroad Company.

Respondent upon information admits the statements contained
279 in paragraphs fifteen and sixteen of said bill, but denies the pretenses set up in the seventeenth paragraph, and says in reply to the eighteenth that it appears from affidavit of the said Swepsen, attached by complainant as Exhibit A to its said bill of complainant filed against this respondent, the Florida Central Railroad Company and others, that said Littlefield pledged "the whole interest and portion held by him, said Littlefield, of every kind and nature in said railroads in Florida, or any or all of them, to secure to said Western North Carolina Railroad Company all moneys due to said companies from said affiant" (George W. Swepson).

Respondent submits that, in accepting said pledge from said Littlefield, said complainant recognized the title of said Littlefield in the said property, and is estopped from claiming such title for itself.

Respondent further says, upon information and belief, that no notice was given to the State of Florida through any of its officers, or, so far as respondent is informed and believes, to any one whatsoever, of the existence of any such pledge.

Respondent, therefore, denies that any such notice was given, or that said pledge has ever had any force or efficacy whatever beyond the parties to it.

280 Respondent admits that $3,000 of bonds were issued by the said J. P. & M. R. R. Company, which are now held by Walter Gwynn, treasurer, etc.; that $3,000 of bonds (so called) of the State of Florida were issued and exchanged for the said company bonds, but, in answer to all of the allegations of the said bill in regard to these bonds of both classes, respondent refers to the cases before the court, and the decisions of the courts which have been already cited, and pleads them in bar.

Respondent admits that the bonds of the Pensacola and Georgia and Tallahassee R. R. Companies, turned over to the trustees of the internal improvement fund in part payment for the said railroad bonds of said companies, are cancelled and destroyed, as it was altogether proper they should have been.

Respondent denies that they can be revived, or can have any validity whatsoever, or that complainant company has any lien whatsoever upon the said line of railway to secure recognition or judgement of the same.

Respondent, speaking from information and belief, avers that
281 the offer of complainant, in the 26th paragraph of said bill, to pay the $472,000 unpaid purchase-money bid for the Pensacola and Georgia and Tallahassee Railroads, is a mere sham, mockery, and pretense; said complainant being wholly destitute of means, and unable to pay its existing debts, as your orator is informed and believes.

Answering paragraph thirty-second of the said bill, respondent says that he has no present knowledge of any of the matters therein set out, but, speaking from information and belief, he denies the truth of complainant's allegation as to any agreement between Governor Reed and the parties therein mentioned, and prays that complainant may be held to strict proof of the same.

Respondent, further answering, submits that said Governor Reed had no power or authority to enter into any such reconvention (so called), and that any such act upon his part would have been simply a nullity. Besides, it appears from the statements of said bill that said pretended reconvention was undertaken after the bonds of the State of Florida had been placed upon the market and sold.

282 Respondent denies the validity of the claim set up in paragraph forty five of said bill, to the effect that a sum of money, now in the hands of the treasurer of the State of Florida, belongs to the said J. P. and M. Railroad Company. The said money was placed in the hands of said treasurer by order of the Supreme Court of the United States, to be disposed of in accordance with said order, which excludes the idea that the said R. R. company can set up any claim to it whatsoever.

And the defendant having made full answer to the bill of complaint, prays hence to be dismissed with his reasonable costs in this behalf expended.

UNITED STATES OF AMERICA,
Northern District of Florida :

Personally appeared George F. Drew, governor of Florida above named, and he, being duly sworn, says that the facts stated in the foregoing answer are true, except those stated on information and
283 belief, and these he is informed and believes to be true.

GEORGE F. DREW, *Governor.*

Sworn to and subscribed before me, this the 12th day of May, A. D. 1877.

LE ROY D. BALL,
U. S. Commissioner of U. S. 5th Circuit Court,
Northern District of Florida.

284 *Separate answer of the Jacksonville, Pensacola and Mobile Railroad Company.*

In the circuit court of the United States for the northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, TRUSTEE, ET AL., THE Jacksonville, Pensacola and Mobile Railroad Company et al.

The defendant, the Jacksonville, Pensacola and Mobile Railroad Company, by protestation, not admitting all and several the matters and things in complainant's bill to be true as therein alleged, or good and sufficient in law to be answered unto, for answer to the same or so much thereof as the defendant is advised it is material for it to answer unto, answering, says:

1st. This defendant has no knowledge as to whether the complainant is or is not a body corporate as in its said bill alleged, and therefore denies the same.

285 2d. This defendant has no knowledge or information sufficient to form a belief as to whether the complainant at any time owned the bonds to the amount and value in its said bill alleged, and whether the same were or were not fraudulently used and appropriated by the agents and fiduciaries, the said George W. Swepson, Edward Houston, M. S. Littlefield, and others, as in the said bill alleged, and therefore denies the same.

3d. This defendant has no knowledge or information sufficient to form a belief as to whether the complainant's said agents and fiduciaries did or did not use its money in the purchase of any Pensacola and Georgia and Tallahassee bonds to the amount of $960,300, or any other amount as in complainant's bill alleged, and therefore denies the same.

4th. This defendant admits that the Pensacola and Georgia and Tallahassee Railroad Companies were bodies corporate, existing, and owning, and working their respective lines of railroad, previous to the 20th day of March, 1869, and that the same had issued and were chargeable with certain bonds called the Pensacola and Georgia and Tallahassee bonds respectively; and this defendant is advised, and therefore 286 admits, that the said railroads were sold on the said 20th day of March, 1869, and were purchased by F. Dibble and associates, including one George W. Simpson, for the sum of $1,420,000, and that $960,300 in said Pensacola and Georgia and Tallahassee bonds were paid by said Dibble and associates and said Swepson, and that said Swepson gave his note, check, or promise for the sum of $472,000 and upwards in the payment for said roads as alleged in complainant's bill; but this defendant has no knowledge or information as to whether the said $960,300 of said Pensacola and Georgia and Tallahassee bonds were or were not the moneys, assets, or property of the complainant as alleged in its bill, and therefore denies the same.

5th. This defendant is advised and admits the fact to be that said Pensacola and Georgia and Tallahassee Railroads sold as aforesaid were conveyed by the trustees of the internal improvement fund of the State of Florida to said Dibble and associates on the 8th day of April, 1869; and upon like advice further admits that said deeds, with all the right, title, and interest therein, were, by said Dibble and associates, conveyed in trust to said George W. Swepson on the 22d day of
287 April, 1869, as in complainant's bill alleged, but whether or not said conveyance in trust so made enured to the use and benefit of the complainant as alleged in its said bill, this defendant has no knowledge or information sufficient to form a belief, and therefore denies the same.

6th. This defendant admits that said Dibble and associates were created into a body corporate and politic by the legislature of Florida under the name and style of The Tallahassee Railroad Company, on the 24th day of June, 1869, which said body corporate covered said line of road from Lake City to Quincy and from Tallahassee to St. Mark's, including the Monticello branch, all of which was a completed line of railroad at the date of said act of incorporation. And this defendant further admits that on the same 24th day of June, 1869, this defendant was incorporated into a body corporate and politic, authorized to build and construct a line of railroad westward from Quincy, as in complainant's bill alleged.

7th. And this defendant further admits that by said act of in-
288 corporation, and by virtue of amendments thereto, on the 28th day of January, 1870, a statutory contract and agreement was created between the State of Florida and this defendant authorizing the issue and exchange of bonds to the amount of $16,000 per mile, as in complainant's bill alleged.

8th. And this defendant, further answering, is advised and so charges the facts to be, that said act of the legislature of Florida of the 14th of June, A. D. 1869, and the act amendatory thereof passed January 28th, 1870, creating said statutory contract and agreement for the said exchange of bonds, was in violation of the constitution of the State of Florida, and therefore null and void, and that the papers called bonds issued pursuant thereto were possessed of no legal value and constituted and could constitute no good or valid consideration for the exchange of the bonds of this defendant with the State of Florida as by said statute provided; and that the papers called the bonds of this defendant, to the amount of $3,000,000, which were exchanged for
289 said void and illegal papers called bonds of the State of Florida, are now held by the treasurer of said State for no good or valid consideration and in violation of the lawful rights of this defendant.

9th. And this defendant, further answering, admits that papers called bonds of the State of Florida, numbered from 1 to 3,000, of the par value of $1,000 each, were issued by said State under said statutory agreement and delivered to persons who had no lawful right to receive the same; that the president of this defendant, Milton S. Littlefield, conspired with the persons so getting possession of the pretended State bonds and fraudulently diverted and appropriated the same as hereinafter stated.

10th. That at the time the said so-called Florida State bonds were so procured by said Littlefield and others, they, the said Littlefield and others, signed, sealed, and issued in the name of this defendant 3,000

papers called bonds, of the par value of $1,000 each, made payable to the State of Florida, which were in violation of law and were
290 fraudulently delivered to the treasurer of the State of Florida,
who, as stated, paid no good or lawful consideration therefor, and who illegally holds the same; that there was no law authorizing the issue of the bonds of this defendant payable to the State of Florida; that the bonds authorized by said statute, if any, was a first mortgage bond to be secured by deed, which was never issued.

11th. That the so-called bonds of the State of Florida, so numbered from 1 to 3,000 as aforesaid, were by the statute creating them and upon the face thereof declared to be for the exclusive use and purpose of constructing the road of this defendant from Quincy westward as aforesaid, and could be lawfully used and applied to no other use or purpose, and that each and every taker of said bonds had lawful notice of the dedicated use thereof, but that nevertheless this defendant is advised, and so charges, that said bonds were used and applied to other illegal purposes, and that but a small fraction of this proceeds
291 thereof, not exceeding about $150,000, was applied to the use of this
defendant, all the remainder of the proceeds thereof being embezzeled and fraudulently appropriated to other purposes by those who got possession of said bonds or the proceeds thereof.

12th. And this defendant, further answering, denies that any bonds of the State of Florida ever were issued to or for exchange for the bonds of this defendant which were numbered above 3,000, and denies that any of said State bonds numbered above 3,000 ever were in fact received, owned, or handled by this defendant, and avers that the said State bonds numbered under 3,000 were only received in its name and never were in truth in the possession of this defendant. And this defendant further and especially denies that it ever entered into any agreement with the Florida Central R. road Co. to receive, use, or apply any bonds to be issued or which were issued by said Florida Central Railroad Company in extending or constructing the railroad of this defendant, and this defendant states and avers that no bonds of the
292 said Florida Central Railroad Company ever came to the posses-
sion of this defendant or became a charge upon this defendant at any time or for any purpose whatever.

13th. And this defendant, further answering, states, that it is advised, and so charges the fact to be, that the supreme court, and the court of last resort, in the State of Florida has decided that said statutory agreement between the said State and this defendant, created by said acts of the 24th of June, 1869, and January 28th, 1870, were null and void so far as the obligations of said State were concerned, and that the papers called bonds of the State of Florida never were the bond, obligation, act, or deed of said State. And this defendant is further advised, and so charges the fact to be, that said statutory agreement is likewise null and void as to this defendant, and that said statute should be treated as if it never had been enacted, and that the so called bonds of the State of Florida, by reason of the same having been declared unconstitutional and null and void as aforesaid, were not capable of constituting and did not constitute a good or legal consideration for the
293 papers called the bonds of this defendant, so held by the State of
Florida as aforesaid.

14th. And, further answering, this defendant admits it is true that for more than six years past its railroad has been taken forcible and illegal possession of by the State of Florida, as trustee for the defendants, G. M. Boissevain, A. J. Milders, Joseph Zaddock, Adrian Stoup, Jans

Prins and others, commonly called the Dutch bondholders, claiming to be the owners of the so-called Florida State bonds, and that the road of this defendant has been so seized and continually advertised for sale for said five or six years, greatly to the injury thereof, till relieved by the injunction of this honorable court in the month of May, 1877.

15th. But this defendant denies that it ever had at any time any dealings with said Dutch bondholders or ever contracted any privity of relation whatever with them or either of them. That the dealings of this defendant, if any ever legally transpired in reference to said bonds under said statute or statutory agreement was with the State of Florida and with no other party whatever, and that the obligations of this defendant, if any were lawfully created by said statute or statutory agreement,
294 and the delivery of its said so-called bonds, was to the State
of Florida and to no other party, and in no respect to the said defendants called the Dutch bondholders, with whom it had no dealings and who do not hold and never held any obligations or promises of this defendant, and that the attempted seiz*ed* and sale of the railroad of this defendant by or on account of said Dutch bondholders was and is illegal and in violation of the lawful rights of this defendant and should be restrained by this honorable court.

16th. This defendant, further answering, states that by reason of its railroad having been taken possession of and held for the past five or six years by the State of Florida, through its governor, as trustee of the said Dutch bondholders, and kept in the hands of receivers, that its earnings and income have been exhausted in the payment of useless salaries to enormous amounts, when in point of fact the said so called Dutch bondholders had and never had any just or legal demand whatsoever against the franchise, property, and estate of this defendant.

17th. And, further answering, this defendant says it has no
295 knowledge or information sufficient to form a belief as to whether
the complainants are or are not the lawful or equitable owners of the capital stock, estate, or franchise of this defendant, as in complainant's bill alleged, and neither admitting nor denying the same leaves the complainants to such proof as they are advised or are competent to make.

18th. And, further answering, this defendant denies all and singular the allegations of the complainant's bill not herein otherwise answered, admitted, nor denied, and denying all fraud and having fully answered so far as it is advised it is material or necessary, prays to be hence dismissed with its reasonable costs in this behalf sustained.

S. B. STEPHENS,
Solicitor for Def't, the J. P. and M. R. R. Co.

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

The Jacksonville, Pensacola and Mobile Railroad Co., by its corporate seal hereto affixed and duly attested by its secretary, certifies to the truth of all and singular the matters foregoing and above stated
295 and submits and relies upon the same and each and every part
thereof as its answer to the bill of complaint filed in the above-entitled cause.

Certified and affixed this 27th day of Sept., A. D. 1878.
{ JACKSONVILLE, PENSACOLA & MOBILE R. R. CO. } FRANKLIN W. ELY,
Secretary.

I, Franklin W. Ely, upon oath state that I am the secretary of the Jacksonville, Pensacola and Mobile Railroad Company, and as such secretary have official custody of the corporate seal of said company, and that the seal affixed to the foregoing answer is the corporate seal of the Jacksonville, Pensacola and Mobile R. Road Company, and was by me, by virtue of my office, affixed thereto.

I further state that, as secretary of said company, I have acquired a general knowledge of the matters and things alleged in its foregoing answer, and that the matters and things alleged therein within my knowledge are true, and that the matters and things therein stated upon information and advice I believe to be true.

FRANKLIN W. ELY.

297 Sworn to and subscribed to before me this 27th day of Sept., 1878.

PHILIP WALTER, *Clerk.*

Filed Sept. 27, 1878.

P. WALTER, *Clerk.*

298 In the United States circuit court, fifth circuit, northern district of Florida. In equity.

THE WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company, complainant,
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY, GEO. F. Drew, governor of the State of Florida, and others, defendants.

THE FLORIDA CENTRAL RAILROAD COMPANY, complainant,
vs.
THE WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company, Geo. F. Drew, governor of the State of Florida, The Jacksonville, Pensacola & Mobile Railroad Company, Gideon Maria Boissevain, Walter Gwynn, treasurer of the State of Florida, and others, defendants.

Answer and cross-bill of the Florida Central Railroad Company.

299 In the United States circuit court, fifth circuit, northern district of Florida. In equity.

THE WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company, complainant,
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY, George F. Drew, governor of the State of Florida, and others.

The answer of the Florida Central Railroad Company, one of the defendants, to the bill of complaint filed in the above-stated cause.

This defendant, saving to itself all manner of benefit or advantage of exception that can be had to the many errors and imperfections of the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says as follows:

As to the paragraphs of the said bill numbered 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th, this defendant, having no knowledge of the matters therein contained, neither admits nor denies them.

300 Defendant admits the allegations of the bill numbered 9th and 10th to be true.

As to the 11th paragraph, defendant says George W. Swepson was its president in the year 1869, and until May 24th, 1870. It admits that he had bonds of this defendant printed to the amount of about one million (1,000,000) dollars without authority. There is no record of such bonds in defendant's control, but it has been advised that they were signed by one H. H. Thompson, as treasurer of this defendant. But said Thompson never was an officer of this defendant, and had no authority to execute said bonds. This defendant admits that said bonds were uttered fraudulently as alleged, and were not and are not the act or deed or the obligations and bonds of this defendant.

This defendant has no information, except by hearsay, of the allegations of the 12th paragraph of the bill. It has heard, and admits, that the agreements marked Schedules C and D of the bill were made between the parties named, and the securities deposited as stated.

Defendant has heard that the agreement marked Schedule E of the bill was made, but has no knowledge thereof otherwise.

Defendant admits, upon information, the allegations of paragraphs numbered 14th, 15th, and 16th to be true.

As to the paragraphs of said bill numbered 17th, 18th, and 19th, this defendant admits, upon information, that the allegations thereof are true. But this defendant had no connection with the matters therein stated, and was a total stranger to them.

Defendant admits the facts in the paragraph numbered 20th to be true, except that any right or title in or to said bonds ever was vested in said Houstoun, which allegation this defendant positively denies, and asserts on information the fact to be that when said alleged bonds were delivered up by the governor or other officer of the State of Florida, it was for the purpose of having said bonds returned to this defendant to be destroyed.

Defendant is advised that the facts stated in the 21st and 22d paragraphs of the bill are true, and therefore admits them.

Defendant has no knowledge of the facts stated in the paragraphs of the bill numbered 23d and 24th.

Defendant admits the allegations of notice contained in the paragraphs of the bill numbered 25th, 26th, and 27th. Besides the notice mentioned in the last stated paragraphs, the fraudulent character of
said bonds was made public by a letter of E. M. L'Engle, esq.,
301 acting as counsel for this defendant, written and sent in February,
1871, to a banking house in Amsterdam, in Holland, which is hereto attached as Exhibit A, which letter was duly received by the person to whom it was addressed, and the contents thereof were communicated to other persons interested in the sale of said bonds, among others to John Collinson of London, in England, who admitted, about the month of May, 1871, as this defendant is informed, that he had read the said letter.

Like notice was also made public by a communication from T. W. Brevard, esq., of Tallahassee, Florida, a copy of which is hereto attached, marked Exhibit B.

The said communication was enclosed in an envelope, addressed as is shown therein, and sent by mail prepaid, as this defendant is informed.

Like notice was also given by resolutions of the board of directors of this defendant, hereto attached as Exhibit C, and by the following telegraphic correspondence between Gideon Maria Boissevain (one of the defendants) and Harrison Reed, governor of the State of Florida, which took place about the 18th of December, 1870, as follows:

Boissevain to Reed.

Being negotiating four million bonds issued by your State to the Jacksonville, Pensacola and Mobile Railroad Company, beg to know by telegraph from you whether provision made for payment of interest, whatever result of railroad traffic. Is financial position of State really sound, and bonds undoubted security?

BOISSEVAIN.

Reed to Boissevain.

Bonds recently recalled by the company. No provision will therefore be made for interest.

REED, *Governor.*

Defendant has no knowledge, except from hearsay, of the allegations contained in the 28th paragraph of the bill.

This defendant has no knowledge of the facts stated in the paragraphs of said bill numbered 29th, 30th, 31st, 32d, 33d, and 34th; but admits and charges that none of the papers called bonds, of this defendant, were issued by or under the authority of this defendant, and that they are absolutely void.

Defendant admits the allegations of paragraphs of said bill numbered 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42d, 43d, and 44th to be true.

302 As to the paragraph numbered 45th, this defendant admits that at the time of the institution of this suit, and for some years previous thereto, different and conflicting boards of directors claimed the right at the same time to manage and control this defendant's affairs. And it admits that during said period it has been a prey to controversies and litigations, and has been held by receivers, and has, in consequence thereof, been impoverished and exhausted. But this defendant is now managed and controlled by its own officers, elected by its bona fide stockholders, although the litigations still continue with unabated energy.

Defendant admits the allegations of the paragraph numbered 46th to be true.

And as to the 47th and last numbered paragraph of said bill, this defendant makes for itself the same offer therein contained.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf sustained.

THE FLORIDA CENTRAL RAILROAD COMPANY,
By CHAS. B. FENWICK, *Secretary and Treasurer.*

JAS. M. BAKER,
Solicitor for Def't.

Charles B. Fenwick, being duly sworn, deposes and says that he is the secretary and treasurer of the Florida Central Railroad Company, and the custodian of its corporate seal. That the foregoing answer of the Florida Central Railroad Company is signed by this affiant, and that the seal affixed thereto is the corporate seal of said railroad company.

CHAS. B. FENWICK.

Sworn to and subscribed before me the 19th day of July, 1877.
[L. S.] PHILIP WALTER, *Clerk,*
By SIMON BAER,
Deputy Clerk.

303 In the United States circuit court, fifth judicial circuit, northern district of Florida.

To the honorable the judges of said court:

The Florida Central Railroad Company, a citizen of the State of Florida, brings this its cross-bill of complaint in the case of "The Western Division of the Western North Carolina Railroad Company vs. George F. Drew, the Florida Central Railroad Company, and others," and complains against the Western Division of the Western North Carolina Railroad Company, George F. Drew, governor of the State of Florida; the Jackonville, Pensacola and Mobile Railroad Company, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, John Collinson, Milton S. Littlefield, Walter Gwynn and Thomas B. Coddington, F. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Field, J. Borzo, Edward Isaac Asser, Nicholas Jacob Den Tex, and Adolph Engle, trustee, defendants.

Your orator, humbly complaining, says that the Florida Central Railroad Company is a citizen of the State of Florida, and exists as a body corporate under its charter, granted by an act of the legislature of Florida, passed on the 29th day of July, 1868. That its railroad extends from the city of Jacksonville to Lake City, a distance of about sixty miles. That the said railroad was completed some time in the year 1860 under and in accordance with the terms of the charter granted to the Florida, Atlantic and Gulf Central Railroad Company, and under the provisions of the internal improvement act, approved January 6th, 1855, said company having duly accepted the terms and conditions and received the aid provided in such cases by said act.

That the section or line of railroad between Lake City and Tallahassee was built about the same time by the Pensacola and Georgia Railroad Company, and by that company subsequently extended to Quincy, and afterwards by the Jacksonville, Pensacola and Mobile Railroad Company to the Chattahoochee River.

304 That on the 4th day of March, 1868, the said Florida, Atlantic and Gulf Central Railroad was sold by the "trustees of the internal improvement fund" for non-compliance with the terms and con-

ditions of said "internal improvement act," and the railroad and franchise were purchased by the individuals who were afterwards organized and chartered as a body corporate under the name of the Florida Central Railroad, as aforesaid, and were authorized by their charter to exercise all the powers and privileges conferred by the original charter granted to said Florida, Atlantic and Gulf Central Railroad Company.

Your orator further shows, that its capital stock was fixed at 5,500 shares of $1,000 each, amounting to $555,000. That since said stock has been issued much dispute and litigation has arisen about the right, title, interest, and control of a large part of the same between claimants, so that it has sometimes been difficult to effect an election of officers of the company at the annual meeting. That the defendant, M. S. Littlefield, claims to own a large majority of the said stock, and the defendant, the Western Division of the Western North Carolina Railroad Company, now comes into court and claims that the stock so claimed by the said Littlefield is the property of that company, and that it has the right to control and vote the same. That other parties, to wit, Robert J. Washington, Lawrence P. Bayne, Henry J. Rogers, T. B. Coddington, George P. Nichols, and others, claim that they have the right to control the said stock (or some part thereof) and seek to control the same through the different courts, making this company a party, and causing great hinderance, annoyance, and expense. It is, therefore, asked that all of said parties may be permitted to come into court and assert their rights, if any they have, against this company, the said Littlefield, and the said Western Division of the Western North Carolina Railroad Company, and all others claiming stock-interest therein, that their respective rights may be settled and determined by decree of this court, and this company be thereby relieved from further difficulty, annoyance, and hinderance and litigation by and on account of such conflicting claims.

Your orator further shows, that one thousand bonds, purporting to have been issued by this company under the provisions of the act of January 28th, 1870, entitled "An act to amend an act entitled 'An act to perfect the public works of the State,'" for the sum of $1,000 each, a copy of one of which is hereto attached, marked Exhibit A,
305 are now in the possession of the defendant Walter Gwynn, treasurer of the State of Florida.

That said described bonds are not the bonds of this company. They were not executed by this company, nor by its authority, and are fraudulent and void.

Your orator charges, on information and belief, that the said fraudulent bonds were signed by George W. Swepson, as president of this company, and by one H. H. Thompson, as treasurer, whereas, in truth, the said Thompson was not at the time, and never was, the treasurer of this company, and had no authority to act as such, or to sign said bonds. That F. H. Flagg was at that time the treasurer of this company, and the only person who had any right or authority to represent this company as such officer. That the seal of this company was at one time in the possession of said Flagg, and was, as this complainant is informed, secretly and without his knowledge taken from his office by some person unknown, and fraudulently used to attest said bonds.

Your orator further shows, that the said act of January 28th, 1870, under which it is pretended that said bonds were issued, creates or attempts to create a statutory contract between the State of Florida and the Jacksonville, Pensacola and Mobile Railroad Company for the exchange of State for railroad bonds of the company, at the rate of $16,000 per mile, upon the certain conditions therein stated, but the said statute was not intended to apply to this company, and did not affect its charter. Said act conferred no powers or privileges on this company, and imposed upon it no additional burdens, obligations, or sacrifices. That this company had no authority in law under the said act or under its charter, or otherwise, to issue said bonds as claimed for the use and benefit of the Jacksonville, Pensacola and Mobile Railroad Company. Such an act would have had no legal or binding force, and created no lien upon said railroad or company's property. That to issue bonds to the amount of $16,000 per mile, drawing interest at eight per cent., and to deliver the same to the said company without consideration or benefit, either given or promised, would have resulted in the utter ruin and bankruptcy of this company.

Your orator further shows, that the said act was not a valid law, and would have had no binding force on this complainant, if it had been applicable, and if it had been accepted and acted upon in the issue of bonds in accordance with its provisions. That the agreement and undertaking to exchange bonds with the State for the purposes 306 mentioned in said act has been declared to be unconstitutional by the supreme court of the State, and the said bonds, had they been free from all other objections, were null and void, and could constitute no lawful consideration for any agreement or undertaking whatever. And had the said bonds been legally issued, their exchange for the bonds of the State, adjudged to be unconstitutional and void by the supreme court, would have been a transfer of said bonds without consideration, and hence a void contract. But this complainant denies that any bonds or pretended bonds of the State were issued by it in exchange for any bonds whatever. That any bonds or pretended bonds of this company were ever delivered by this company or by its authority to the Jacksonville, Pensacola and Mobile Railroad Company, for the purpose of being exchanged for State bonds, or for any other purpose; and further, upon information, denies that the Jacksonville, Pensacola and Mobile Railroad Company ever received any bonds of the State, or any obligations purporting to be bonds of the State, in exchange for any bonds or pretended bonds of this company.

Your orator further shows that the said bonds signed by Swepson, as president, and said Thompson, as treasurer, were not issued as pretended, under the said act of January 28th, 1870, for the use and benefit of the Jacksonville, Pensacola and Mobile Railroad Company, but were issued under an agreement made and entered into between Milton S. Littlefield and Edward Houstoun, on the 30th day of May, 1870, for their benefit, and that of George W. Swepson, who jointly claimed to be owners of the majority of the stock in this company.

That in said contract they mutually covenanted and agreed that they would cause to be issued one million dollars of first-mortgage bonds of the Florida Central Railroad Company, of like denomination and effect and condition as the first-mortgage bonds of the Jacksonville, Pensacola and Mobile Railroad Company, * * * to be placed in the hands of the said Edward Houstoun, as additional security for the payment of the said draft of $163,026.76, to be held by the said Houstoun, in addition to the securities aforesaid; that is to say, to be held in addition to 4,400 shares of the stock of this company, and one hundred and three thousand dollars of the bonds of the Pensacola and Georgia Railroad Company. That the said Houstoun was fully authorized by said contract, upon failure or default in the payment of said draft, to offer said million dollars of bonds on the Florida Central Railroad, so signed, 307 to be issued, for sale at public outcry in the city of New York, upon giving ten days' notice of such sale, all which will appear by reference to said contract herewith filed, marked Exhibit B, to which reference is prayed, also to copies of contracts explanatory thereof, and carrying out the same object, marked Exhibit C and E.

Your orator further shows that the said one million dollars of bonds purporting to be the bonds of this company were issued, signed, and executed in manner aforesaid, and were delivered to the said Houstoun (but not by this complainant or by its authority), as covenanted and agreed by the terms of said contract. That, on the 11th day of January, 1871, the said Houstoun, with the approval and consent of the said Littlefield, delivered the said bonds to one T. B. Coddington, to be held and disposed of by him for the benefit of said Houstoun, in the payment of said draft, and for other purposes and trusts specified in the receipt of the said Coddington, given for said bonds, a copy of which is herewith filed, marked F, to which reference is prayed.

Your orator charges that said bonds were not intended to be given in aid of the Jacksonville, Pensacola and Mobile Railroad Company, to be exchanged for the bonds of the State, as fraudulently and falsely expressed in the face or body of said bonds, but that they were intended to be in accordance with the terms of the said contract, and to be given to the said Houstoun to secure a personal debt of said Littlefield.

Your orator further shows that said bonds, the copy of one of which is herewith filed, were never completed as intended. The printed certificate attached thereto, that the bonds were "issued in accordance with the provisions of the act of the legislature," has not been signed by the governor of the State (then Harrison Reed), showing that at the time he did not recognize or regard said bonds as having been issued under said act for the aid of said company, but the said Harrison Reed, governor of the State, did collusively endorse said bonds to enable the said Houstoun and said Coddington to use said bonds for the benefit of said Houstoun, as agreed in said contract.

Your orator further shows that, at a meeting held on the 21st day of November, 1870, the directory of this company, by its resolution rescinded a resolution previously passed, adopting said issue of bonds, and ordered said bonds to be destroyed, as will more fully appear by a copy of said proceedings herewith filed, marked Exhibit G, to which reference is prayed.

Your orator further shows that the bonds of the State of Flor- 308 ida, authorized to be issued under the said act of January 28th, 1870, to be exchanged for the bonds of the Jacksonville, Pensacola and Mobile Railroad Company, were executed, countersigned, and placed in the hands of Harrison Reed, then governor of the State of Florida, being 4,000 bonds of $1,000 each, and numbered from 1 to 4000 inclusive.

Your orator, upon information, says that after the action had by this company, recalling said bonds and ordering them to be destroyed, the said Harrison Reed, governor, with full knowledge of the fact, did unlawfully and fraudulently exchange one million dollars of the bonds of the State for one million dollars of the bonds of this company, so illegally issued and so revoked and ordered to be destroyed by this company, and delivered said State bonds to the said T. B. Coddington, not as the agent, or in any way representing or pretending to represent the Jacksonville, Pensacola and Mobile Railroad Company, but as the agent and trustee of said Houstoun, under said contract, and the receipt of said Coddington.

That the said bonds of this company thus exchanged were received by the said governor, and were deposited or filed in the office of the treasurer of the State, and are now in the possession of Walter Gwynn, at present treasurer, and a party defendant to this suit.

Your orator further shows that George F. Drew, now governor of the State of Florida, claims the right, and has threatened and attempted to seize the Florida Central Railroad, and sell the same to satisfy and pay certain bonds of the State, claimed to have been issued in exchange for the bonds of this company in manner aforesaid, amounting to 206 in number, of $1,000 each, alleged to have been sold in Europe, and to be now in the possession of defendants to this suit. But your orator denies that any of the bonds of the State, so exchanged, have been sold to bona fide purchasers, and if sold denies that this company is in any way responsible for or liable to payment thereof. That the bonds issued and exchanged for said State bonds were not the bonds of this company, and were not executed by this company or by its authority. That the company had no legal power or authority to issue said bonds, either under the terms of its charter or under the provisions of the act of January 28, 1870, to secure the completion of the public works of the State. That the company's railroad was long before that time a completed road, and the issuing of such bonds was not within the legitimate powers granted this company, and was not for the interest or improvement of
the company's railroad. That said bonds were not delivered
309 to the Jacksonville, Pensacola and Mobile Railroad Company,
and were not exchanged for the State bonds either by or for that company.

Your orator further shows, that the said defendants, the pretended holders of said bonds, had due notice of the illegality of said bonds and the fraudulent means used to secure them. That they had notice by a suit then and still pending in the county of Leon, in which R. H. Gamble and J. D. Wescott, jr., were complainants, and Edward Houstoun, et al., defendants, in which the illegality of said bonds was charged and an injunctional order restraining the delivery of the said bonds to the State was granted.

That the defendants, the holders of said bonds, had notice by a dispatch sent to Europe in reply to inquiries made in relation to said bonds, by one Boissevain, a banker in Amsterdam, agent for the sale of said bonds, and one of these defendants; which telegram was sent by Harrison Reed, governor of Florida, dated 18th day of December, 1870, as follows:

"Bonds recently recalled by the company; no provision will therefore be made for interest."

That they received further notice by a letter written to Boissevain, a banker, and defendant to this suit, by E. M. L'Engle, and signed by him as counsel for this company, dated February 8, 1871, a copy of which is hereto attached, marked Exhibit H, to which reference is prayed.

Your orator further shows, upon information, that none of the State bonds exchanged for said pretended bonds of this company are claimed to have been sold prior to July, 1872, more than one year after said notices had been sent to the persons in Europe interested in like bonds, charging that the said bonds were illegally issued and were void. That in consequence of such notices complainant alleges that no bona fide sale was made of the State bonds exchanged for the said bonds of this company.

Your orator further shows, that in the suit of the State of Florida et al. vs. The Florida Central Railroad Company et al., instituted in Duval County, Florida, for the collection of interest due on said bonds, it became a material question whether any of the bonds of the State, exchanged for said company's bonds had been sold, upon which issue was joined and trial and judgment had in the circuit court, and upon appeal to the supreme court it was adjudged and determined that there was no evidence that any of said State bonds had been sold, and the suit was, therefore, by order of said court, dismissed.

310 Your orator therefore says that the question of liability of this company to the State for payment of said bonds has been fairly put in issue before a court of competent jurisdiction and, after a full trial and appeal, has been decided in favor of your orator, and is now res adjudicata.

That neither the State nor the governor of the State has any further right or authority to assert in court, or otherwise, any claim against this company on account of interest on said bonds.

Your orator further shows, that the act of January 28th, 1870, which authorizes the governor of the State to seize and sell certain railroads on failure to pay interest on bonds exchanged by the railroad companies for State bonds gave to the governor such extraordinary power, in order to protect the State in its sovereign capacity from loss on the bonds so exchanged. But the State bonds having been declared unconstitutional and void such right of seizure no longer exists, the State having incurred no liability by reason of said exchange of bonds. That no power of seizure has been given to the governor or any State officer for the protection of private rights as trustee or otherwise.

Your orator further states, upon information, that the said governor still claims the right to seize and sell this company's railroad, and it has good reason to believe that he would endeavor to do so if relieved of the injunction heretofore issued by this court, to obtain which was one of the principal objects of said original bill, and the prayer for which was the most important in said bill.

Your orator further charges, upon information and belief, that certain of the defendants, claiming to be bondholders, and the Western Division of the Western North Carolina Railroad Company, the plaintiff in the said original suit in which this cross-bill is filed, and other persons, have collusively combined and confederated together against this complainant, for the purpose of dismissing said original suit in which said injunction has been issued, in order that they may thereby have an opportunity to secure the seizure of complainant's railroad, which by the order of this court has been restrained as being contrary to law and equity.

That in pursuance of said collusive combination attempts have actually been made to procure the dismissal of said suit without the order of this court, and your orator charges that they will continue their unlawful efforts to avoid the restraining force of said injunction by the
dismissal of the said suit, that they may procure the seizure of
311 your orator's railroad and thereby inflict irreparable injury upon
your orator.

Your orator hereby tenders and offers to pay, or cause to be paid, to the said defendants, or to any holder of the said 206 bonds, the interest that may be due thereon, whenever the same is adjudged a debt of the

Florida Central Railroad Company, in such manner as this court may direct.

Inasmuch as your orator is without remedy at law, and can only have adequate protection and relief in a court of chancery, your orator prays that the United States writ of subpœna may be issued from this court to George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer; the Jacksonville, Pensacola and Mobile Railroad Company, Gideon Maria Boissevain, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, John Collinson, Thomas B. Coddington, J. Fred Schutte, Jem Prins, Adrianus Prins, Henrich Ulrici, Elias Field, J. Borzo, Edward Isaac Asser, Nicholas Jacob due Tex, and Adolf Engler, trustee, the Western Division of the Western North Carolina Railroad Company, and Milton S. Littlefield, commanding them, and each of them, to appear on a certain day and under a certain penalty to answer the premises, and that they, and each of them, under their respective corporate oaths, be required to make true and perfect answers to all and singular the allegations in this bill as fully and completely as if separately interrogated thereto.

Your orator further prays, that it may be protected against all combinations that have been made, or which may hereafter be made, to injure your orator, by dismissal of said original bill. That the injunction issued in the said suit, restraining the seizure and sale of said railroad, may be continued for the protection of your orator, and all others interested, and that the same be made perpetual at the final hearing.

Your orator further prays, that the said pretended bonds of your orator, issued and exchanged in the manner herein alleged, may be deemed to be illegal and void.

That they be delivered by the said Walter Gwynn, treasurer, to your orator to be cancelled, and it be adjudged that the holders of the State bonds have no claim against your orator, and that said bonds constitute no lien whatever upon your orator's railroad.

Your orator further prays, that said claimants to stock in the Florida Central Railroad Company may be permitted to come into court and assert their respective claims, and that the right to possess and control said stock may be settled and determined by decree of this court.

312 Your orator further prays, that the said John Collinson, Thomas B. Coddington, Gideon Maria Boissevain, Joseph Zaddock, Adrian Stoop, and all others holding bonds of like character, their agents and attorneys, be perpetually injoined from using or uttering said State bonds, and from further demanding of, or sueing your orator for payment thereof.

Your orator further prays, that it may have such other relief in the premises as to this honorable court may seem meet and proper.

JAS. M. BAKER,
Solicitor for Florida Central Railroad.

Personally appeared before me Charles B. Fenwick, secretary and treasurer of the Florida Central Railroad Company, who, being duly sworn, says that he has read the foregoing bill of complaint, and knows the contents thereof, that his knowledge is derived from the inspection of records, and from intelligent and well advised sources known to deponent. That the matters stated within deponent's own knowledge are true, and that the matters stated upon information he believes to be true.

CHAS. B. FENWICK,
Secretary and Treasurer.

Sworn to and subscribed before me this 20th day of July, 1877.

PHILIP WALTER, *Clerk*,
By SIMON BAER, *Deputy Clerk*.

313 The Florida Central Railroad Company, complainant in this bill, by its corporate seal hereto attached and duly tested, certifies to the truth of all and singular the allegations in the above cross-bill of complaint.

Attest:
[SEAL OF COMPANY.]

CHAS. B. FENWICK,
Secretary.

314 EXHIBIT A.

In the U. S. circuit court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Answer of the Florida Central Railroad Company.

JACKSONVILLE, FLA., *February 8th*, 1871.

Messrs. HOLJE BOISSEVAIN,
Bankers, Amsterdam, Holland:

GENTLEMEN: On December 18th, 1870, Governor Harrison Reed, of Florida, received a telegraphic dispatch from you substantially as follows:

"Being negotiating four million bonds issued by your State, the Jacksonville, Pensacola and Mobile Railroad, beg to know by telegraph from you whether provision made for payment interest, whatever result railroad traffic. Financial position of State really sound, and bonds undoubted security?"

To this dispatch Governor Reed replied as follows:

"Bonds recently recalled by the company; no provision will therefore be made for interest."

315 It was hoped that Governor Reed's telegram would have the effect of causing the bonds to be returned, as the railroad companies desired they should be. This has not been done, but, on the contrary, more bonds than were then out have been sent to Europe for negotiation, though no money, I infer, has yet been realized. I feel it to be my duty, therefore, to make a statement of facts to you, which I hope that you will lay before others who may be interested with you in the negotiations.

When the legislature of Florida enacted the laws under which the bonds your telegram inquired about were issued, it was believed by the two railroad companies hereafter named that the proceeds of the State bonds when sold would be honestly and legitimately applied to the extension through the western portion of this State of the lines of railroad already built from the eastern to the middle portion. That extension was so much desired by the two companies owning the completed railroads that they were willing to mortgage, and did mortgage, their roads to the State in order to secure the issuing of State bonds upon which

to raise money to enable the newly organized company to build said extension. The railroads which so pledged their mortgage bonds to the State were the Florida Central Railroad, sixty miles long, and the Tallahassee Railroad, one hundred and fifty miles long. The former gave its mortgage bonds to the amount of one million dollars, the latter to the amount of three million dollars, and this latter road consolidated its line with that proposed to be built westward from the completed road, and the two companies became one, under the name of the Jacksonville, Pensacola and Mobile Railroad Company. But the Florida Central Railroad, commencing at Jacksonville, and running westward sixty miles, was not included in the consolidation. Subsequently, and after three million of the State bonds had been sent to Europe, it was discovered that the president of the Jacksonville, Pensacola and Mobile Railroad, who had been active in procuring the legislation, and inducing the completed roads to give to the State their bonds in exchange for the State bonds which were issued to him, had made, even before he got the bonds, secret contracts with some of his creditors, by which the larger portion of the proceeds were to be diverted from the purposes for which the bonds were issued, and were to be applied in payment of individual debts. This produced such dissatisfaction, and caused such investigations by the companies which had mortgaged their roads to the State, as resulted in both of the companies, through their several directories, rescinding the action by which their roads were mortgaged, and recalling the bonds. The million of bonds issued by the State, on the security of a like amount pledged to the State by the Florida Central Railroad, had not then gone into the hands of the president of the Jacksonville, Pensacola and Mobile Railroad, but were held by a party till certain conditions precedent were performed before delivery to the president of the Jacksonville, Pensacola and Mobile Railroad. That million of bonds then were returned to the State, and the bonds of the company, upon the security of which the others were issued, were withdrawn from deposit with the State, and were in the hands of the party already referred to, to be returned to the company for cancellation,
when they were by that party, without the authority or knowledge
316 of the railroad company, or of any of its officers, and in
violation of the company's resolutions of recall and rescission, delivered to an agent of the president of the Jacksonville, Pensacola and Mobile Railroad, who by influences best known to himself effected with the governor of the State their re-exchange for the State bonds, which latter were hurriedly and secretly sent out of the State and to Europe before any legal process could be obtained for their detention. This re-delivery to the governor of Florida of the Florida Central Railroad Company's million of bonds is a gross fraud on that company, and none who are advised of it, and buy or advance money on the State's bonds, for which they were exchanged, will have any legal or moral right to ask that they receive any benefit or advantage from the security so wrongfully obtained.

The same may be said of the three million of State's bonds issued on the pledge of the same amount of bonds of the Tallahassee or Jacksonville, Pensacola and Mobile Railroad. No one, who, having notice of that company's rescission of its action and recall of its bonds, advances money on, or buys the State's bonds for which the others were pledged, will have legally, or morally, any locus standi in curia as against that railroad company. The creditors and stockholders of the railroad companies will assert their right, resist the wrongs that have been perpetrated and attempted, and seek, successfully, redress in the judicial tribunals. You have had the above mentioned action of the railroad companies brought to your notice by the telegram from Governor Reed, who sent it after consulting with the said companies, and at their instance, and you have incurred all the legal disqualifications to urge against the railroad companies any claim based on their supposed suretyship for any bonds of the State.

An examination of the law under which the State's bonds were issued discloses that the governor has caused half a million more of bonds to be issued than the law provides for. The law allows the issue of $16,000 per mile upon so much of said roads as may be completed and in running order; only 210 miles were, when the bonds were issued, completed, and only a mile and a half have been completed since, and no more is being completed. This would allow of an issue at the time it was made of only $3,360,000. Add the liberal allowance of ten miles for side-tracks, &c., if such unreasonable construction of the law be claimed, and it legalizes only $3,520,000 of the bonds.

To secure the principal and interest of the Jacksonville, Pensacola and Mobile Railroad Company's bonds (but not of the bonds of the Florida Central Railroad), the law gives the State of Florida a statutory lien, valid as a first-mortgage, on that company's road and property, and authorizes the governor, on failure of the company in any payment of principal or interest, to seize and sell the road at auction, and authorizes the State to purchase and to pay for it with any evidence of indebtedness the State may hold against the road, while every other bidder would, in case of purchase, have to pay cash. This summary process is not applicable to the Florida Central Railroad; but to the other road only. What would be the result in case of failure of the Jacksonville, Pensacola and Mobile Railroad to pay principal or interest on its bonds? The State, if no resistance, or if unsuccessful resistance through
317 the courts were had, might seize, sell, and buy, paying for the purchase with the road's obligations, while the State might not, perhaps could not, or would not, pay her own; nor is there any way known to our system of government by which a State can be compelled to pay its obligations. You will thus perceive the character of the securities offered you, and the taints of fraud that affected them from their first issue, and that still do, and will act advisedly. This communication is made in the interests of the stockholders of the companies whose bonds have, by misrepresentation and bad faith, been obtained and exchanged with the State of Florida for the State's bonds, which you have been, and may still be, negotiating for. The stockholders do not intend to submit to the fraud which has been attempted on them. They seek to have the State's bonds brought back, and a re-exchange effected, and it is to that end that this letter is written. Such a course will prevent litigation. Persistence in the wrong will insure it. Attempts may be made to give credit to the bonds by professional and perhaps by judicial opinions from this State, but the facts that I state are incontestable, and I can give you much more and more detailed information concerning the worthlessness of the securities that you are negotiating for, and I will do so if desired. But I have said enough to make discreet men repudiate the securities and abandon negotiations.

I will say further, that since the mortgage of the railroads to the State, 128 miles of the completed road, being all except twenty-two miles on which the State has any statutory lien, have been sold by the United States under a judicial process in their favor, issued from a United States court; thus divesting the company's title, and vesting it in the individual purchaser. That sale, of course, relieves that much of the road of the lien created in favor of the State of Florida by the mortgage before mentioned. You are at liberty to show this letter to whom you please, and to give it the widest publicity, and will oblige me by acknowledging its receipt. I will presume, on a very slight acquaintance, to refer you, touching myself, to Hon. H. S. Sanford (late U. S. minister to Belgium), at Brussels.

Respectfully,

E. M. L'ENGLE,
Of Counsel for the Florida Central Railroad Company.

318 EXHIBIT C.

In the U. S. circuit court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Answer of the Florida Central Railroad Company.

At a meeting of the directors of the Florida Central Railroad Company, held November 21, 1870, upon motion of Mr. Papy, a committee was appointed to take in consideration the past issue of bonds, and also to report upon the policy of issuing bonds of the company and the amount.

The president appointed Messrs. Papy, Baker, and Huling said committee.

The board then adjourned to 4 p. m.

4 p. m.—The directors convened pursuant to adjournment, Colonel Sanderson, president, in the chair.

Mr. Papy presented the following report:

The committee finding that the bonds signed by G. W. Swepson, president, and countersigned by H. H. Thompson, treasurer, are in such form as that they cannot be used to carry out the intention of their
319 issue when they were adopted, report the following resolution in respect thereto:

Resolved, That the resolution adopting the bonds to be issued by the company, signed by George W. Swepson, president, and H. H. Thompson, treasurer, at a meeting of the board of directors, held on the 2d of June, A. D. 1870, be and the same is hereby rescinded, and that said bonds be destroyed.

M. D. PAPY,
Chairman.

On motion the report was received and adopted.

On motion of Mr. Foster, the resolution was unanimously adopted.

Mr. Papy made the following report:

The committee report the following resolutions in reference to the issue of bonds of the company and the securing the same:

Resolved, That the president cause bonds, payable to bearer, to be prepared, signed, and executed in due form, which shall be issued for purposes of the company, not exceeding seven hundred thousand dollars in amount, with interest at seven per centum per annum, not having more than thirty years to run, with coupons for interest attached, payable in New York semi-annually.

Resolved, That said bonds and the interest thereon shall be a first lien or mortgage on the Florida Central Railroad, its equipments, workshops, depots, franchises, and property of every kind; and that the president cause to be prepared and executed such deed of trust or other necessary instrument of writing, under the seal of this company, as may be needful to make the first lien or mortgage in favor of said bonds and the interest thereon effectual to all intents.

M. D. PAPY,
Chairman.

On motion, the report was received and adopted.

On motion of Mr. Huling, the resolutions were unanimously adopted.

Adjourned to 4 o'clock next day, at which time the following resolution was adopted:

Resolved, That this board approve of the form of the trust-deed read to the directors to secure the first lien or mortgage of the bonds, and interest thereon, authorized to be issued, and that the president of this company is authorized to select the trustees to whom said deed is to be made, not to exceed three in number.

Adopted.

I hereby certify that the foregoing is a true and correct copy from the records of the board of directors.

[SEAL.] F. H. FLAGG,
Secretary.

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EXHIBIT D.

In the U. S. circuit court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

At a meeting of the directors of the Jacksonville, Pensacola and Mobile Railroad Company, held December 10th, A. D. 1870, the following preamble and resolutions were offered and adopted:

"Whereas bonds of the Jacksonville, Pensacola and Mobile Railroad Company have been issued according to the provisions of the act incorporating this company, and the amendments thereto, which bonds have been exchanged for bonds of the State of Florida, according to the provisions of said act; and whereas said bonds of the State of Florida were delivered by the governor to the president of this company; and whereas, though previous to the consolidation of the Tallahassee Railroad Company with this company, authority was granted by the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company to its president to issue, negotiate, dispose of, and apply the bonds for the purpose authorized by the act of incorporation, no action was had thereon after such consolidation either by the stockholders or directors, then newly elected, authorizing the issue or disposal of bonds; and whereas, though no such action was formally taken, yet the stockholders and directors were advised that bonds had been issued and exchanged for an equal amount of State bonds, and were in the hands of the president to be disposed of and applied, as they supposed, according to the law authorizing their issue, and they were satisfied therewith if a proper application was to be made thereof; and whereas the directors are now advised that a contract was made by the president and George W. Swepson, as president of the Florida Central Railroad Company, and certain persons as commissioners appointed by an act of the legislature of North Carolina, which contract was executed in April last, by which the bonds of the State of Florida, taken in exchange for the bonds of this company, were to be disposed of, and the proceeds to be divided, according to the terms of said contract, between the above-named Florida railroads and the commissioners aforesaid, dollar for dollar, until an amount of over one million of dollars, with interest, should be paid to said commissioners;

"And whereas said contract was unknown to the directors, and is in violation of the law of this State authorizing the issue of said bonds, and is a misapplication of said bonds or their proceeds; therefore be it

320½ "Resolved, That all authority in the president of this company to dispose of or negotiate said bonds is hereby withdrawn.

"Resolved further, That a demand be made upon the president, or whomsoever else may have possession, control, or custody of said bonds, to return the same to the treasurer of this company forthwith.

"Resolved further, That a copy of the foregoing preamble and resolutions be communicated by the secretary to S. W. Hopkins & Co., 71 Broadway, New York, and 58 Broad street, London, and to the president of this company, and whomsoever else may have said bonds, or any part thereof, in their hands or control."

I hereby certify that the foregoing is a true copy from the minutes of the board.

[SEAL.] F. H. FLAGG,
Secretary.

Filed this 19th day of July, A. D. 1877.

PHILIP WALTER, *Clerk,*
By SIMON BAER, *D. C.*

321 (Indorsed:) Exhibits to the answer of the Florida Central Railroad Company. In the U. S. circuit court. The Western Division of the Western N. C. Rail R. Company vs. The Florida Central R. R. Company et al. Filed this 19th day of July, A. D. 1877. Philip Walter, clerk. By Simon Baer, D. C.

322 EXHIBIT H.

In the U. S. circuit court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Cross-bill of the Florida Central Railroad Company.

JACKSONVILLE, FLA., *February 8th*, 1871.

Messrs. HOLJE BOISSEVAIN, *Bankers, Amsterdam, Holland:*

GENTLEMEN: On December 18th, 1870, Governor Harrison Reed, of

Florida, received a telegraphic dispatch from you, substantially as follows:

"Being negotiating four million bonds issued by your State, the Jacksonville, Pensacola and Mobile Railroad, beg to know by telegraph from you whether provision made for payment interest, whatever result railroad traffic. Financial position of State really sound, and bonds undoubted security?"

To this dispatch Governor Reed replied as follows:

"Bonds recently recalled by the company; no provision will therefore be made for interest."

323 It was hoped that Governor Reed's telegram would have the effect of causing the bonds to be returned, as the railroad companies desired they should be. This has not been done; but, on the contrary, more bonds than were then out have been sent to Europe for negotiation, though no money, I infer, has yet been realized. I feel it to be my duty, therefore, to make a statement of facts to you, which I hope that you will lay before others who may be interested with you in the negotiations.

When the legislature of Florida enacted the laws under which the bonds your telegram inquired about were issued, it was believed by the two railroad companies hereafter named that the proceeds of the State bonds when sold would be honestly and legitimately applied to the extension, through the western portion of this State, of the lines of railroad already built from the eastern to the middle portion. That extension was so much desired by the two companies owning the completed railroads that they were willing to mortgage and did mortgage their roads to the State, in order to secure the issuing of State bonds upon which to raise money to enable the newly organized company to build said extension. The railroads which so pledged their mortgage bonds to the State were the Florida Central Railroad, sixty miles long, and the Tallahassee Railroad, one hundred and fifty miles long. The former gave its mortgage bonds to the amount of one million dollars; the latter to the amount of three million dollars; and this latter road consolidated its line with that proposed to be built westward from the completed road, and the two companies became one under the name of the Jacksonville, Pensacola and Mobile Railroad Company. But the Florida Central Railroad, commencing at Jacksonville and running westward sixty miles, was not included in the consolidation. Subsequently, and after three million of the State bonds had been sent to Europe, it was discovered that the president of the Jacksonville, Pensacola and Mobile Railroad, who had been active in procuring the legislation, and inducing the completed roads to give to the State their bonds in exchange for the State's bonds which were issued to him, had made, even before he got the bonds, secret contracts with some of his creditors, by which the larger portion of the proceeds were to be diverted from the purpose for which the bonds were issued, and were to be applied in payment of individual debts. This produced such dissatisfaction and caused such investigations by the companies which had mortgaged their roads to the State, as resulted in both of the companies, through their several directories, rescinding the action by which their roads were mortgaged, and recalling the bonds. The million of bonds issued by the State, on the security of a like amount pledged to the State by the Florida Central Railroad, had not then gone into the hands of the president of the Jacksonville, Pensacola and Mobile Railroad, but were held by a party till certain conditions precedent were performed before delivery to the president of the Jacksonville, Pensacola and Mobile Railroad. That

million of bonds then were returned to the State, and the bonds of the company, upon the security of which the others were issued, were withdrawn from deposit with the State, and were in the hands of the party already referred to, to be returned to the company for cancellation,
when they were by that party, without the authority or knowl-
324 edge of the railroad company or of any of its officers, and in
violation of the company's resolutions of recall and rescission, delivered to an agent of the president of the Jacksonville, Pensacola and Mobile Railroad, who, by influences best known to himself, effected with the governor of the State their re exchange for the State bonds, which latter were hurriedly and secretly sent out of the State and to Europe before any legal process could be obtained for their detention. This redelivery to the governor of Florida of the Florida Central Railroad Company's million of bonds is a gross fraud on that company, and none who are advised of it and buy or advance money on the State's bonds for which they were exchanged will have any legal or moral right to ask that they receive any benefit or advantage from the security so wrongfully obtained.

The same may be said of the three million of State's bonds issued on the pledge of the same amount of bonds of the Tallahassee or Jacksonville, Pensacola and Mobile Railroad. No one who, having notice of that company's rescission of its action and recall of its bonds advances money on or buys the State's bonds for which the others were pledged, will have, legally or morally, any locus standi in curia as against that railroad company. The creditors and stockholders of the railroad companies will assert their right, resist the wrongs that have been perpetrated and attempted, and seek, successfully, redress in the judicial tribunals. You have had the above-mentioned action of the railroad companies brought to your notice by the telegram from Governor Reed, who sent it after consulting with the said companies, and at their instance, and you have incurred all the legal disqualifications to urge against the railroad companies any claim based on their supposed suretyship for any bonds of the State.

An examination of the law under which the State's bonds were issued discloses that the governor has caused half a million more of bonds to be issued than the law provides for. The law allows the issue of $16,000 per mile upon so much of said roads as may be completed and in running order. Only 210 miles were, when the bonds were issued, completed, and only a mile and a half have been completed since, and no more is being completed. This would allow of an issue at the time it was made of only $3,360,000. Add the liberal allowance of ten miles for side-tracks, &c., if such unreasonable construction of the law be claimed, and it legalizes only $3,520,000 of the bonds.

To secure the principal and interest of the Jacksonville, Pensacola, and Mobile Railroad Company's bonds (but not of the bonds of the Florida Central Railroad), the law gives the State of Florida a statutory lien, valid as a first mortgage, on that company's road and property, and authorizes the governor, on failure of the company in any payment of principal or interest, to seize and sell the road at auction, and authorizes the State to purchase and to pay for it with any evidence of indebtedness the State may hold against the road, while every other bidder would, in case of purchase, have to pay cash. This summary process is not applicable to the Florida Central Railroad, but to the other road only. What would be the result in case of failure of the Jacksonville, Pensacola and Mobile Railroad to pay principal or interest

on its bonds? The State, if no resistance, or if unsuccessful re-
325 sistance through the courts were had, might seize, sell, and buy,
paying for the purchase with the road's obligations, while the State might not—perhaps could not, or would not—pay her own; nor is there any way known to our system of government by which a State can be compelled to pay its obligations. You will thus perceive the character of the securities offered you, and the taints of fraud that affected them from their first issue, and that still do, and will act advisedly. This communication is made in the interests of the stockholders of the companies whose bonds have, by misrepresentation and bad faith, been obtained and exchanged with the State of Florida, for the State's bonds, which you have been, and may still be, negotiating for. The stockholders do not intend to submit to the fraud which has been attempted on them. They seek to have the State's bonds brought back, and a re-exchange effected, and it is to that end that this letter is written. Such a course will prevent litigation. Persistence in the wrong will insure it. Attempts may be made to give credit to the bonds by professional and perhaps by judicial opinions from this State, but the facts that I state are incontestable, and I can give you much more and more detailed information concerning the worthlessness of the securities that you are negotiating for, and I will do so, if desired; but I have said enough to make discreet men repudiate the securities and abandon negotiations.

I will say further, that since the mortgage of the railroads to the State, 128 miles of the completed road, being all except twenty-two miles on which the State has any statutory lien, have been sold by the United States under a judicial process in their favor, issued from a United States court, thus divesting the company's title, and vesting it in the individual purchaser. That sale, of course, relieves that much of the road of the lien created in favor of the State of Florida by the mortgage before mentioned. You are at liberty to show this letter to whom you please, and to give it the widest publicity, and will oblige me by acknowledging its receipt. I will presume, on a very slight acquaintance, to refer you, touching myself, to Hon. H. S. Sanford (late U. S. Minister to Belgium), at Brussels.

Respectfully,

E. M. L'ENGLE,

Of Counsel for the Florida Central Railroad Company.

326 EXHIBIT G.

In the U. S. circuit court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Cross bill of the Florida Central Railroad Company.

At a meeting of the directors of the Florida Central Railroad Company, held November 21, 1870, upon motion of Mr. Papy, a committee was appointed to take in consideration the past issue of bonds, and also to report upon the policy of issuing bonds of the company and the amount.

The president appointed Messrs. Papy, Baker, and Huling said committee.

The board then adjourned to 4 p. m.

4 p. m.—The directors convened pursuant to adjournment, Colonel Sanderson, president, in the chair.

Mr. Papy presented the following report:

The committee, finding that the bonds signed by G. W. Swepson, president, and countersigned by H. H. Thompson, treasurer, are in such form as that they cannot be used to carry out the intention of 327 their issue when they were adopted, report the following resolution in respect thereto:

Resolved, That the resolution adopting the bonds to be issued by this company, signed by George W. Swepson, president, and H. H. Thompson, treasurer, at a meeting of the board of directors, held on the 2d of June, A. D. 1870, be and the same is hereby rescinded, and that said bonds be destroyed.

M. D. PAPY,
Chairman.

On motion, the report was received and adopted.

On motion of Mr. Foster, the resolution was unanimously adopted.

Mr. Papy made the following report:

The committee report the following resolutions in reference to the issue of bonds of the company, and the securing the same:

Resolved, That the president cause bonds, payable to bearer, to be prepared, signed, and executed in due form, which shall be issued for purposes of the company, not exceeding seven hundred thousand dollars in amount, with interest at seven per centum per annum, not having more than thirty years to run, with coupons, for interest, attached, payable in New York semi-annually.

Resolved, That said bonds and the interest thereon shall be a first lien or mortgage on the Florida Central Railroad, its equipments, workshops, depots, franchises, and property of every kind; and that the president cause to be prepared and executed such deed of trust or other necessary instrument of writing, under the seal of this company, as may be needful to make the first lien or mortgage in favor of said bonds, and the interest thereon, effectual to all intents.

M. D. PAPY,
Chairman.

On motion, the report was received and adopted.

On motion of Mr. Huling, the resolutions were unanimously adopted.

Adjourned to 4 o'clock next day, at which time the following resolution was adopted:

Resolved, That this board approve of the form of the trust deed read to the directors to secure the first lien or mortgage of the bonds, and interest thereon, authorized to be issued, and that the president of this company is authorized to select the trustees to whom said deed is to be made, not to exceed three in number.

Adopted.

I hereby certify that the foregoing is a true and correct copy from the records of the board of directors.

[SEAL.] F. H. FLAGG,
Secretary.

328 **EXHIBIT F.**

In the U. S. circuit court.

THE WESTERN DIVISION OF THE WESTERN
North Carolina Railroad Company
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY
et. al.

Cross-bill of the Florida Central Railroad Company.

TALLAHASSEE, *January* 11, 1871.

Received from Edward Houstoun, esq., in trust and for his account, one thousand Florida Central Railroad Company first-mortgage bonds, payable to the State of Florida, for one thousand dollars each, which I hereby undertake to arrange with General M. S. Littlefield and other parties interested, and collect from him or them the amount which it is admitted is now due to said Houstoun, viz: one hundred and sixty-three thousand and twenty-six dollars and seventy cents, with interest thereon, at seven per cent., from the time M. S. Littlefield's draft on S. W. Hopkins & Co. for said amount fell due, and in addition thereto the sum of five thousand dollars for costs and expenses incurred by said Houstoun in suits brought by parties against said Houstoun in relation to those bonds or other bonds, and the stock of the Florida Central Railroad Company, it being understood that all proceedings at law, or otherwise, are to be discontinued, or if that be impossible, he is to be indemnified by responsible parties against all damages or costs arising out of said proceedings; it being further understood that said Houstoun shall, when paid, transfer and assign to said Littlefield all the stock of the Florida Central Railroad Company, or other securities which he holds, or which were given him as collateral security, to secure the above amounts due to said Houstoun.

And it is further understood and agreed, that said Coddington is to collect the further sums of money and pay to said Houstoun for account of the parties named below, which, it is understood, are a lien subsequent and inferior to said Houstoun's lien on these bonds, viz:

Colonel R. H. Gamble, the sum of fifteen thousand dollars, who is to
surrender to said Littlefield three hundred shares of stock in the
329 Florida Central Railroad Company, and seventeen hundred dol-
lars in the bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, at par.

J. P. Sanderson, esq., the sum of fifty thousand five hundred and sixty dollars, and said J. P. Sanderson is to surrender to said Littlefield seventy shares of stock in the Florida Central Railroad Company, and comply with his agreements with said Littlefield, for which a part of said sum is in consideration.

F. H. Flagg, esq., the sum of four thousand dollars, for which he is to surrender the Central Railroad Company stock and the Pensacola and Georgia Railroad bonds which he holds to said Littlefield, and also to pay for seventy shares of stock now or lately held by J. D. Westcott, jr., esq., the sum of thirty eight hundred and forty-five dollars and thirty-three cents, when said stock is to be delivered to said Littlefield.

This arrangement is based on the assumption that the money will be paid from the proceeds of bonds negotiated by S. W. Hopkins & Co., of

New York. The remainder of said proceeds is to be disposed of as directed by the parties interested.

T. B. CODDINGTON.

I approve and assent to the same.

M. S. LITTLEFIELD,
President Jacksonville, Pensacola and Mobile Railroad Company.

330 EXHIBIT E.

In the U. S. circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Cross-bill of the Florida Central Railroad Company.

The agreement made between Milton S. Littlefield and Edward Houstoun, dated 30th May, 1870, is hereby modified, changed and altered as follows, to wit:

First. In lieu of one million dollars of first mortgage bonds of the Florida Central Railroad Company, which by said agreement were to be placed in the hands of said Houstoun, as security for the payment of the draft in said agreement mentioned, there shall be placed in the hands of said Houstoun, as security for the payment of the draft in said agreement mentioned, the same amount of bonds of the State of Florida, to be exchanged for the said bonds of the Florida Central Railroad Company.

Second. If said draft be not paid at maturity, the said Houstoun is authorized and empowered to sell said bonds of the State of Florida at public outcry, giving the notice of sale as provided for in said agreement, and said Houstoun may become a purchaser at said sale.

Third. After first paying said draft and expenses of sale, said Houstoun shall, out of the balance of the proceeds arising from the sale of said bonds, if sufficient for this purpose, pay to John P. Sanderson the sum of fifty-seven thousand five hundred and sixty dollars; to M. D. Papy, sixteen thousand dollars; to T. W. Brevard, attorney of certain holders of bonds of the Pensacola and Georgia Railroad Company, if certain negotiations now pending for their purchase be consummated, the sum of fifty thousand dollars; to John P. Sanderson, president of the Florida Central Railroad Company, three hundred and forty thousand dollars; after these payments the balance, if any, to be paid to said Littlefield.

331 Fourth. When said drafts shall mature said Houstoun, instead of selling said bonds of the State, shall have the option and choice of returning the same to the State, and receiving in lieu thereof the one million dollars of first-mortgage bonds of the Florida Central Railroad exchanged for the State bonds aforesaid.

Fifth. If, under the option and choice given the said Houstoun, he returns the bonds of the State of Florida, aforesaid, to said State and receives in lieu thereof the bonds of the Florida Central Railroad Company as aforesaid, provided said Houstoun, upon delivering said bonds of the Florida Central Railroad Company, received from the State as aforesaid, to the president of said company, shall receive and have executed and delivered to him in lieu thereof other first-mortgage bonds of said company, which said bonds shall be made payable to bearer, and shall be good, effectual and first lien on said road.

Sixth. Upon receiving said first mortgage bonds of the Florida Central Railroad Company from the president thereof, as above provided for, the said Houstoun shall hold the same as security for the payment of said draft, and is authorized and has the power at any time after giving thirty days' previous notice to the president of said company, to sell the said bonds so received from the president of said company at public outcry in the city of New York, at which said Houston may become a purchaser; and said Houstoun, after paying said draft and the expenses of said sale, dispose of and pay over the rest and residue of the proceeds of the sale of said bonds, if any, to the persons named and for the amounts named as provided in the third clause hereof.

Seventh. If said Littlefield shall pay said draft at or before its maturity, said Houstoun shall deposit said bonds of the State of Florida placed in his hands under the first clause hereof with S. W. Hopkins & Company, No. 71 Broadway, New York, with the stipulation and agreement that they, the said Hopkins & Company, shall, in disposing of said bonds, hold the proceeds of said sale subject to the claims and for the amounts mentioned in the third clause hereof, to wit: John P. Sanderson the sum of fifty-seven thousand five hundred and sixty dollars; M. D. Papy, sixteen thousand dollars; T. W. Brevard, attorney for certain holders of Pensacola and Georgia Railroad bonds, if negotiations now pending for their purchase shall be consummated, the sum of forty thousand dollars; John P. Sanderson, president of the Florida Central Roilroad Company, the sum of three hundred and forty thousand dollars; said Hopkins & Company, after first paying the amounts above named to the parties above named out of the proceeds of the sale of said bonds, shall pay the rest and residue, if any, of the proceeds of the sale of said bonds to said Littlefield.

Witness our hand and seal this the seventh day of June, A. D. 1870, at Tallahassee, Florida.

M. S. LITTLEFIELD. [L. S.]
E. HOUSTOUN. [L. S.]

Signed, sealed and executed in our presence:
CHAS. H. COLLINS.
J. P. SANDERSON.

332 EXHIBIT C.

In the U. S. circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Cross-bill of the Florida Central Railroad Company.

This memorandum of contract and agreement, made and entered into this day between Edward Houstoun, party of the first part, and Milton S. Littlefield, party of the second part, witnesseth:

That Edward Houstoun has this day sold to Milton S. Littlefield four drafts drawn by George W. Swepson on Milton S. Littlefield, dated August 2, 1869, and accepted by said Littlefield, one for twenty-six thousand five hundred and twenty dollars ($26,520), due at six months; one for twenty-seven thousand and thirty dollars ($27,030), due at nine months; one for twenty-seven thousand five hundred and forty
333 dollars ($27,540), due at twelve months; one for twenty-eight thousand and fifty ($28,050) dollars, due at fifteen months; and that said Houstoun has this day sold to said Littlefield one thousand three hundred shares of stock in the Florida Central Railroad Company. In payment for said drafts and said stocks, said Littlefield has paid said Houstoun ten thousand dollars in cash and the drafts of said Littlefield, of this date, on S. W. Hopkins & Co., of 71 Broadway, N. Y., for one hundred and sixty-three thousand and seventy and twenty-hundredths dollars, due sixty days from date. To secure the payment of said draft of $163,070 20-100, it is agreed that said Houstoun shall retain possession of said four drafts by George W. Swepson on said Littlefield, and also the one hundred and ten bonds of the Pensacola and Georgia Railroad Company, and the Tallahassee Railroad Company, now in his possession as collateral, and in addition thereto said Littlefield hereby obligates himself immediately to deposit with F. H. Porter, of the banking house of Soutter & Co., 53 William street, New York, certificate of stock for 3,110 shares of the stock of the Florida Central Railroad Company, with directions to said Porter to hold said certificates till said draft of $163,070 20 100 shall fall due, and then if said draft is not promptly paid within ten days after it falls due, to deliver said certificate to said Houstoun, or his order, and in the event said certificate shall be so delivered to said Houstoun, he is hereby authorized to sell the said three thousand one hundred and ten shares of the stock of the Florida Central Railroad Company at public auction to the highest bidder, on mailing to the address of M. S. Littlefield, Tallahassee, Florida, and to the address of George W. Swepson, Haw River, North Carolina, and to the address of S. W. Hopkins & Co., No. 71 Broadway, New York, notice of the time and place of such sale in the city of New York, ten days previously to day of sale, and said Houstoun may become a purchaser at said sale.

On the payment of said drafts, said Houstoun hereby obligates himself to transfer the said shares of stock hereby sold, to deliver to said Littlefield the said 1,300 shares of stock sold, and also the one hundred and ten bonds of the Tallahassee Railroad Company, which Houstoun now holds as collateral security for the payment of said four drafts, together with all the coupons on said bonds falling due from and after the 20th of March, 1869.

This is understood and intended to be a full, complete, and final settlement of all matters between either George W. Swepson or M. S. Littlefield and Edward Houstoun.

In testimony of all which, the parties aforesaid have hereunto set their hands and seals, at Tallahassee, Florida, the thirteenth day of May, A. D. 1870.

E. HOUSTOUN. [SEAL.]
M. S. LITTLEFIELD. [SEAL.]

Signed, sealed, and delivered in presence of
ROLLIN STEWARD.
D. J. WALKER.

334 **EXHIBIT B.**

In the U. S. circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Cross-bill of the Florida Central Railroad Company.

STATE OF FLORIDA,
Leon County:

This agreement, made and entered into at the city of Tallahassee, in the county and State aforesaid, between Milton S. Littlefield, party of the first part, and Edward Houstoun, party of the second part, witnesseth:

That whereas the said Edward Houston owns and holds a certain draft, which is in the words and figures following, to wit:

$163,026.70-100.] TALLAHASSEE, *May* 13, 1870.

Sixty days after date pay to the order of Edward Houstoun, one hundred and sixty-three thousand and twenty-six 70-100 dollars, value received, and charge the same to account of—

Acceptance waived.

M. S. LITTLEFIELD,
President J., P. & M. R. R. Co.

To Mess. S. W. HOPKINS & CO.,
71 *Broadway, N. Y.*

For the payment of which the said Edward Houstoun has and holds as security the following securities: 103 first-mortgage bonds of the Pensacola and Georgia Railroad Company, and of the Tallahassee Railroad Company, amounting to one hundred and three thousand dollars of said bonds; one thousand three hundred shares of the capital stock of the Florida Central Railroad; four (4) drafts of George W. Swepson on M. S. Littlefield—accepted by said Littlefield—one draft for $26,520,
335 due at six months; one draft for $27,030, due at nine months;
one draft for $27,540, due at twelve months; one draft for $28,050, due at fifteen months; all of said drafts being dated August 2, 1869, and amounting, in the aggregate, to the sum of one hundred and nine thousand one hundred and forty dollars, exclusive of interest thereon. And whereas the said draft of $163,026 70-100 was given to the said Houstoun for value received in the various transactions between the parties relative to the Jacksonville, Pensacola and Mobile Railroad Company, and the Florida Central Railroad Company, growing out of the late Pensacola and Georgia Railroad Company, and said Florida Central Railroad Company, and the Tallahassee Railroad Company. And whereas it is to the great interest of said parties of the first and second parts that moneys should be raised to promote the interests of said Florida Central Railroad Company, to extend and provide for the business of said company, and to pay said draft when due; and whereas the said parties of the first and second parts are owners and proprietors of more than a majority of the capital stock of said Florida Central Railroad:

Therefore, know all men by these presents, that the said parties of the first and second parts do hereby covenant and mutually agree, each with the other, that they do cause to be issued one million dollars of the first-mortgage bonds of the Florida Central Railroad Company of like denomination and effect and condition as the first-mortgage bonds of the Jacksonville, Pensacola and Mobile Railroad Company, which said one million of dollars of said bonds are to be placed in the hands of the said Edward Houstoun as additional security for the payment of said draft for one hundred and sixty-three thousand and twenty-six dollars and seventy cents, to be held by the said Houstoun, in addition to the securities aforesaid, for the faithful payment of said draft at maturity.

And it is further agreed that, if the said draft is not paid at maturity, then and in that event, the said Edward Houston is hereby authorized and fully empowered to cause said one million of dollars of the bonds of said Florida Central Railroad Company, placed in his hands as security for said draft as aforesaid, to be sold at public outcry in the city of New York, after default of payment of said draft, upon giving ten days' notice of said sale of said bonds and of the time and place of said sale to Milton S. Littlefield, by mail, to his residence, at Tallahassee, Florida, and by giving like notice to Messrs. S. W. Hopkins & Co., No. 71 Broadway, New York City, by delivering said notice at their office, and by giving ten days' notice of said sale in the New York Herald, by advertisement, at which sale of said bonds the said Edward Houstoun may become the purchaser. And in the event of the sale being made as aforesaid, the said Edward Houstoun, after first paying said draft and the expenses of said sale of bonds, shall pay over all the other moneys arising from said sale and all the securities now in his hands, and heretofore set forth and enumerated, to the said Milton S. Littlefield, and the said Houstoun shall only retain of or from said sale of bonds and securities aforesaid sufficient to pay said draft and expenses of selling said bonds."

In witness whereof the said parties have hereunto interchangeably set their hands and seals this 30th day of May, A. D. 1870.

MILTON S. LITTLEFIELD,
EDWARD HOUSTOUN.

336 **EXHIBIT A.**

In the United States circuit court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Cross-bill of the Florida Central Railroad Company.

No. 501.] UNITED STATES OF AMERICA, [$1,000

STATE OF (Florida coat of arms) FLORIDA.

Bond of the Florida Central Railroad Company.

Cut of train of cars.] [Cut of steamship

Know all men by these presents that the Florida Central Railroa

Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars, for value received, which sum the said Florida Central Railroad Company promises and agrees to pay to the State of Florida on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the first days of July and January in each year on the presentation and delivery of the proper coupons hereto attached.

This bond is one of a series of like tenor, limited to sixteen thousand dollars per mile, issued in accordance with an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled an act to perfect the public works of the State," approved June 24th, eighteen hundred and sixty-nine, and given in exchange for bonds issued 337 by the State of Florida to aid the Jacksonville, Pensacola & Mobile Railroad Company to complete, equip, and maintain its road for an equal amount, in accordance with said act.

In witness whereof the said company has caused this bond to be signed and attested in its behalf by its president and its common seal affixed at its office in , this first day of January, in the year 1870.

{ FLORIDA CENTRAL RAILROAD CO., 1868. } GEO. W. SWEPSON. *President.*

H. H. THOMPSON, *Treasurer.*

Issued in accordance with the provisions of an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine.

January 1st, 1870.

Governor's certificate.

EXECUTIVE OFFICE,
Tallahassee, January 31, 1877.

I, George F. Drew, governor of Florida, hereby certify that the within is a true and correct copy of original bond No. 501 now on file in the office of the State treasurer.

GEO. F. DREW, *Governor.*

Filed this 20th day of July, 1877.

PHILIP WALTER. *Clerk,*
By SIMON BAER, *D. C.*

JAS. M. BAKER, *Sol'r.*

338 (Indorsed:) Exhibits to cross-bill of the Florida Central Railroad Company. In the U. S. circuit court. The Western Division of the Western N. C. R. R. Company vs. The Florida Central R. R. Company et al. Filed this 20th day of July, 1877. Philip Walter, clerk, by Simon Baer, D. C. Jas. M. Barker, sol'r.

357 (Pages 339 to 356 inclusive omitted per stipulation.)

Answer of the trustees of the internal improvement fund.—Filed Jan'y 2, 1878—P. Walter, clerk

U. S. circuit court, northern district of Florida. In equity.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, ET AL.

358 In the circuit court of the United States, fifth circuit, northern district of Florida. In equity.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, ET AL.

The answer of George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer of said State; Columbus Drew, comptroller of said State; Hugh A. Corley, commissioner of lands and immigration of said State; and George P. Rainey, attorney-general of said State, who are trustees of the internal-improvement fund of Florida, to the bill of complaint filed in the above-stated cause by the Western Division of the Western Northern Carolina Railroad Company against these defendants and others:

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised is material or necessary for them to make answer unto, these defendants, answering, says:

In answer to the first paragraph in complainant's bill, these respondents say that they do not know that the plaintiff is a body politic and corporate, nor have they sufficient information to enable them to form a belief upon the subject, and therefore these respondents deny that such is the fact.

These respondents do not know, nor have they sufficient information to enable them to form a belief, that complainant, in the year 1868, was the owner and holder of six millions of dollars, or any other number, in bonds of the State of North Carolina, conferred upon it by the legislature of said State or otherwise, to be used in the construction of a railroad according to the terms of its acts of incorporation, and therefore respondents deny such to have been the fact.

359 These respondents do not know, nor have they sufficient information to enable them to form a belief, that Geo. W. Swepson, as president of complainants, or otherwise, became possessed in A. D. 1868 or A. D. 1869 of $6,000,000 of its bonds, as alleged in the third paragraph of complainant's bill, and therefore respondents deny that such was the case.

Respondents do not know, nor have they sufficient information to enable them to form a belief, that Swepson converted said bonds or any part of them into money, as stated in the fourth paragraph of the bill, and therefore respondents deny such to have been the case, and deny each and all the statements made in said fourth paragraph of complainant's bill.

Respondents do not know, nor have they sufficient information to enable them to form a belief, that Swepson used or invested $720,000 or any other amount of money received from the sale of said bonds, or any of them, in purchasing of $1,063,000 or other amount of the bonds of the Pensacola and Georgia and Tallahassee Railroad Companies, or either of said companies mentioned in the bill of complainant, or in the fifth paragraph of complainant's bill, and therefore these respondents deny that such was the case, and these defendants say they have no knowledge, nor have they sufficient information to enable them to form a belief, as to whether or not said purchases with said funds were made by M. S. Littlefield and Edward Houstoun, or that said parties know of the fiduciary relation stated of said Swepson to the complainant.

Respondents say that on the 20th day of March, A. D. 1869, the then trustees of the internal improvement fund of the State of Florida sold the Pensacola and Georgia and Tallahassee Railroads, including their road-beds, iron, equipments, workshops, depots, and franchise, and all their property of every kind, the said trustees acting under and making said sales under the provisions of the act of the general assembly of said State, approved January 6th, A. D. 1855, and entitled "An act to provide for and encourage a liberal system of internal improvements in this State," and that such sale was made because of non-compliance with the provisions of said act, but these defendants deny that such sale was made by the present trustees of the internal improvement fund of Florida, but these defendants do not admit that the then trustees had at the time of such sale any knowledge that any of said bonds
360 then outstanding had been purchased with money of the complainants by Geo. W. Swepson, or as stated in complainant's bill to such effect, and defendants deny each and all the allegations in complainant's bill alleging that the present trustees of the internal improvement fund of Florida sold, or had anything to do with the sale of said railroads, made March 20th, 1869, referred to in said bill of complaint.

These defendants have no knowledge, nor any information sufficient to enable them to form a belief, as to whether said Swepson purchased and held said bonds in his own name, making no record thereof in the books and records of complainants; and these defendants therefore deny all and singular the allegations thereunto made by the complainant in his bill of complaint.

And these defendants say, upon information and belief, that the sum or amount for which said Pensacola and Georgia Railroad and its property was sold was one million two hundred and twenty thousand dollars, and the sum or amount for which the said Tallahassee Railroad and its property was sold was one hundred and ninety-five thousand dollars. These defendants say that the said sum for which the said Pensacola and Georgia Railroad and its properties was sold exceeded the total amount of the principal of all the bonds then outstanding, which the Pensacola and Georgia Railroad Company issued under the provisions of said "internal improvement act," but these defendants say that the said sum or amount for which the said Tallahassee Railroad and its properties sold did not equal the amount of the principal of all the bonds then outstanding, which the said Tallahassee Railroad Company had issued under the provisions of said "internal improvement act," nor did it equal more than ninety-five per cent., if it equaled that amount or per cent. thereof. These defendants say that said outstanding Pensacola and Georgia Railroad bonds were, before and at the same time of such sale, the first lien upon said Pensacola and Georgia Railroad, its road-bed, iron, equipments, workshops, depots, and franchise, and all its property of every kind; and the said outstanding Tallahassee Railroad bonds were, before and at the time of such sale, the first lien upon the said Tallahassee Railroad, its road-bed, iron, equipments, workshops, depots, franchise, and all its property of every kind.

These defendants further say that F. Dibble and associates, who consisted of Franklin Dibble, Calvin B. Dibble, Alonzo Huling, John L. ReQua, Edward M. Cheney and others, as they are informed and 361 believe, were the highest bidders for said roads and property at said sale, they bidding the amounts aforesaid, and the same being knocked off to them at the prices or sums aforesaid, but these defendants say that the said Dibble and associates, or any one else, has not paid the purchase money for said roads and property, or for either of them. These defendants say they are informed, and believe, and they thereupon allege, that the terms of the sale of said railroads, their franchise and properties aforesaid, was cash; that possession of the same, which was then held by the then trustees of the internal improvement fund, and deeds of conveyance of the same, were not to be delivered until the purchasers of said roads paid, or caused or procured to be paid, on account of their said purchase only about nine hundred and sixty thousand dollars, which sum was paid in first mortgage bonds of the said Pensacola and Georgia and Tallahassee Railroad Companies, which have been issued under the provisions of said "internal improvement act," to wit, bonds of the said Pensacola and Georgia Railroad Company to the amount of eight hundred and six thousand dollars, which were received at par, and bonds of the said Tallahassee Railroad Company, to the amount of one hundred and fifty-three thousand and seven hundred dollars, which were received at ninety-five cents on the dollar; and these defendants say that no other or different payments have ever been made on said purchase, and they deny each and every allegation to the contrary made in complainant's bill.

These defendants, further answering, say they are informed and believe, and they thereupon allege, that after the bidding at said sale was over no cash payment was, in fact, required by the then trustees of the internal improvement fund from the purchasers; that this was on account of the alleged and pretended inconvenience of paying over and receiving so large an amount of money at that immediate time, and payment was thereupon deferred until such time as the trustees should demand it, and the possession of the railroad and properties sold was delivered to one Robert Walker, who was instructed by the said trustees to hold the same as their agent until payment of the purchase money should be completed and title deeds delivered to the purchasers. These defendants further say, they are informed and believe, and they thereupon allege, that after the sales were made, as aforesaid, and before any payment had been made by the said purchasers, George W. Swepson, mentioned in complainant's bill, who was the holder of all the first-mortgage Pensacola and Georgia and Tallahassee Railroad 362 bonds, paid on such purchases, as aforesaid, and if not all of them, nearly all of them, entered into negotiations with the said Franklin Dibble and associates, and the result of these negotiations was that the said Swepson agreed to become one of said association of purchasers, and to turn over to them, or said association, the said bonds held by him, to be used in making payment on the purchase price bid for said railroads; that on the twenty-second day of March, 1869, the said Swepson and said Dibble, and his associates, and Almon R. Meek, the then attorney-general of Florida, the said Meek being one of the said trustees, held a conference in the city of Jacksonville, Florida, in relation to the payment of the purchase money or bids for said railroads and properties, and the delivery thereof, and of the titles thereto, to the purchasers; that at said conference, as these defendants are informed and believe, it was, among other things resolved and determined by said Dibble and associates as follows: That Swepson should receive the amount actually paid out by him for bonds, and in addition thereto the sum of one hundred and fifty thousand dollars, and such other amount as may be necessary for the purchase of outstanding bonds, said amounts to be realized from the sale of new bonds to be placed for that purpose in the hands of Swepson and Calvin B. Dibble, and should alone receive one-third of the stock as his proprietary interest in the roads; that Swepson should turn over to C. B. Dibble the bonds then in his hands, amounting to about nine hundred thousand dollars, for the purpose of paying the same over to the trustee, and should furnish funds for the purchase of outstanding bonds as they might be obtained. These defendants further say they are informed and believe, and thereupon allege, that after the arrangements and agreements had been thus perfected between the said Dibble and associates and the said Swepson, it was announced to the board of trustees of the internal improvement fund of Florida, by the said Meek, in the following language, substantially:

To the board of trustees of the internal improvement fund of Florida:

GENTLEMEN: By an understanding between the members, I proceeded, on Monday last, to Jacksonville, with the purchasers of the Pensacola and Georgia and Tallahassee Railroads, and have to state that I have been requested by the purchasers of the Pensacola and Georgia and Tallahassee Railroads, F. Dibble, for himself and his associates, to say that an arrangement has been by them
363 made with George W. Swepson, who owns over a million of dollars of bonds of the said roads, by which for them he agrees to turn over to the internal improvement fund of this State all of his said bonds. Of said agreement I am personally cognizant. The said purchasers further request me to ask the trustees to execute to them, or to Mr. F. Dibble, for his associates, a deed of conveyance of said road. They further ask that this board authorize one of its members to proceed, as soon as said deed is executed, with the same to New York City, agreeing, upon their part, upon presentation of said deed in New York City, they will settle with such member for the full amount or balance of purchase price of said road, as bid by them at sale on Saturday, 20th of March, 1869. These defendants further say that the then trustees of the internal improvement fund, aforesaid, did, on the twenty-ninth day of March, A. D. 1869, at the same meeting at which said report of the said Meek, then attorney-general of said State, was made and received, adopt a resolution requesting and directing the said attorney-general to prepare a deed of conveyance of the said Pensacola and Georgia and Tallahassee Railroads to the purchasers, and submit the same, when prepared, to the consideration of the board; which resolution directed that when such conveyance should receive the approbation of said board, and be executed by them, the attorney-general and comptroller should be appointed special agents of the board to proceed with such deed to the city of New York, there to consummate the purchase and sale of the roads; and when they should have received the amount payable by the purchasers, that they deliver to the said purchasers such deed of conveyance, a copy of which resolution is hereto

annexed, marked B, and prayed to be taken as a part thereof; that afterwards, on the seventh day of April, A. D. 1869, a resolution was adopted by said board, directing that the deeds prepared by the attorney-general be executed by the members of the board, and afterwards, and on the next day, as these defendants are informed and believe, said deeds were executed, a copy of each of which is annexed to complainants' bill, marked schedule B and C, and prayed to be taken as a part hereof; that on the said last named day a resolution was adopted by said board, appointing Calvin B. Dibble, who was the brother of said F. Dibble, and said George W. Swepson, confidential agents of said board of trustees, with authority in each to take up the outstanding first mortgage bonds of the said railroad companies, and directing the attorney-general and comptroller to turn over to said C. B. Dibble
364 and Swepson, or either of them, all moneys that might be received by them for said trustees for said roads, a copy of which resolution is hereto annexed, marked A, and prayed to be taken as a part hereof.

The defendants are informed and believe, and so allege, that the said Comptroller Robert H. Gamble and Attorney-General Almon R. Meek thereupon proceeded to the city of New York, and there delivered the title deeds aforesaid for said railroads and properties to said Swepson, representing the purchasers, upon delivery by said Swepson to them of first mortgage bonds of the said Pensacola and Georgia Railroad Company to the amount of $806,600, and of the Tallahassee Railroad Company to the amount of $153,700; the Pensacola and Georgia Railroad Company's bonds being received at par, and the others at between ninety-four and ninety-five cents on the dollar; that beyond these bonds the said Gamble and Meek received nothing except a check or draft drawn by said Calvin B. Dibble, on Dibble, Worth & Co., New York, a firm or partnership of which said C. B. Dibble was then a member, and which firm is and has long since been insolvent, and the check or order, after its delivery, was immediately, as these defendants are informed and believe, delivered by said Meek to said Swepson in exchange for his receipt, said receipt acknowledging that said Swepson had received the sum of four hundred and seventy-two thousand and sixty-five dollars ($472,065), to be applied to the retirement of the outstanding bonds of the said railroad companies, no funds or cash passing between the parties, and no security being demanded of said Swepson in the premises; and these defendants further say they are informed and believe, and they so allege and charge, that the said check or order was immediately handed over by said Swepson to said Dibble, Worth & Co., without consideration, and they are informed, and believe and charge, that while these negotiations were pending in New York, the said Almon R. Meek, who was the legal adviser of said board of trustees, and was relied upon as the legal adviser of said board, and said Gamble, as a member of said board, and took the principal charge and management of said business of the settlement for and receiving the payment of the balance of said purchase money, received from, and was paid by said Swepson, and for his, said Meek's, own benefit, the sum of five thousand dollars, or other large sum of money.

And further answering, these defendants say, they are informed and believe, and so allege, that immediately after they had received said check or order, they reported and represented to the trustees of
365 the internal improvement fund in Florida, or their agents aforesaid, that the purchase money had been fully paid, and the said Robert Walker, agent aforesaid, under the direction of said trustees,

and upon their representing to him that said purchase money had been paid, delivered said railroad and properties to said Dibble and associates; and that after the said transactions in New York were over, and said railroad and properties had been delivered, and said Meek and Gamble had returned to Florida, they reported to the board of trustees, in writing, aforesaid, that they had performed the duties devolving upon them by the resolution of March 29th, A. D. 1869, aforesaid, and that they received the Pensacola and Georgia and Tallahassee Railroad bonds aforesaid, at the rate and value aforesaid, and that the difference between the sum represented by these bonds and the sum bid for said roads was turned over by them, as required by the resolution of the board, to George W. Swepson, as confidential agent of said board, to take up the outstanding bonds of said companies, they, in said report, representing that they had turned over to the treasurer of said board the receipt of Swepson for $472,065.

And these defendants, further answering, say that they are informed and believe, and therefore charge and aver that such check or order never was or has been paid, and never was intended to be paid, and that such pretended payment of the balance of said purchase money, over and above the sum paid in Pensacola and Georgia and Tallahassee Railroad bonds, was a sham payment and a preconcerted fraud and scheme, devised and entered into between said Dibble and associates and said Swepson, without authority of said trustees, to acquire possession of said railroad property without payment of the purchase money, and to cheat and defraud the trustees of the internal improvement fund and all persons beneficially interested in the payment of said purchase money, and that the said Meek assented to and favored and aided said fraud and scheme.

And these defendants charge that it never was intended by the said Calvin B. or Franklin Dibble, or Swepson, or any of their associates, who had any part in the making or getting up of the said check, that the same should be paid.

And these defendants, further answering, say they are informed and believe, and allege, that the said Almon R. Meek, in the matter of receiving said drafts or order and delivering said deed and consummating said pretended payment, and advising the trustees that said 366 purchase money had been paid, did not act in good faith nor in the scope of his authority, but that he acted in corrupt and fraudulent faithlessness to a high trust, and lent himself, knowingly and corruptly, to a scheme to defraud and cheat the trustees of the internal improvement fund and all persons interested in the purchase money of said railroads, and to enable said F. Dibble and associates to get possession of said railroads and property without paying for the same, and these defendants say that he and the said Gamble did not act within the scope of their power in delivering the said deeds, although said Gamble believed he was acting within the scope thereof, but delivered the same without authority to do so, and under circumstances in which their authority did not permit them to deliver them; that they were to deliver them only upon being paid the purchase money for said roads and property, which has never been paid to them or to the trustees of the internal improvement fund aforesaid, or any one for said trustees, or either of them; and these defendants further say that the trustees of the internal improvement fund did not act within the scope of their power or authority in delivering said railroads to said Dibble and associates, although said delivery was made upon representation from said

Meek and Gamble, or one of them, that the purchase money had been paid as aforesaid.

But these defendants do not admit, but they deny, that said bonds so surrendered were purchased with the moneys of the complainants, and they further say that they are informed and believe, and thereupon allege, that even if the same were so purchased, which they deny, that the trustees of the internal improvement fund aforesaid, at the time of the surrender and cancellation of said bonds, did not have notice of the fact that they were purchased with such funds, or that complainants pretended to have any claim to or after the same or any of them. Respondents admit, as stated in paragraph eighth of complainant's bill, that Swepson furnished to Dibble and associates the $960,300 of bonds, which he for them paid to the three trustees, but deny that said bonds were purchased with the money of complainant.

Respondents admit that not long after the said payment by said Swepson, for Dibble and associates—to wit, on the 22d day of April, A. D. 1869—the agreement and instrument marked Schedule A, annexed to complainants' bill, was executed; but these defendants, not admitting the entire effect or meaning given to said schedule by complainants in their bill of complaint, pray reference to the same for ascertaining the meaning of the same.

367 These defendants, further answering, deny that by said Schedule A, or any other agreement made and entered into between said Dibble and associates and said Swepson, the said Swepson acquired, or that there was received or secured to him, as against the trustees of the internal improvement fund of Florida, any lien or equity against, or in, or upon, or to, the Pensacola and Georgia or Tallahassee Railroads for the payment of said $960,300 of bonds, or for any moneys paid for the same, or for any money or sum whatsoever, or that any such lien has inured to the benefits of the complainant; and those defendants say that they are informed and believe, and thereupon allege, that the said Swepson had at the time of the execution of said schedule, and at all times from the 20th of March, A. D. 1869, full notice and knowledge that the balance of purchase money—to wit, $472,000—due on said sale of said railroads, had not been paid to the trustees of the internal improvement fund aforesaid, nor to any one for them, and they say that said Swepson and the complainant, and all persons claiming under him, are estopped from ascertaining or claiming any lien or equity upon said railroads for the payment of said $960,300 bonds or any moneys used in purchasing the same as against the trustees of the internal improvement fund or their lien and claim on said railroads and properties for said balance of purchase money which still remains unpaid. The defendants admit that the deeds marked Schedule B and C, annexed to the bill of complaint, were executed by the persons who were, at the date of the same, trustees of the internal improvement fund of Florida, but deny that they were executed by these defendants, and further deny that it was the purpose of the trustees who executed said deeds that said Dibble and associates should obtain from the legislature of Florida an act of incorporation as stated in the tenth paragraph of complainant's bill, or that the obtaining of such act was any consideration influencing the execution of said deeds.

These defendants, further answering, say, whereas they are informed and believe, and so allege, that the draft used in said fraudulent pretence and pretended payment of said balance of purchase money was a draft of C. B. Dibble, as hereinbefore stated, yet they admit that if it was in fact a draft of the said Swepson, as alleged in complainant's bill of

complaint, that it was a mere sham pretence and fraudulent contrivance gotten up to cover the $472,000 balance of purchase money and outstanding Pensacola and Georgia and Tallahassee Railroad
368 bonds, and that the same never has been paid, and it never was intended by said Swepson or Dibble and associates that it should be paid. And these defendants are informed and believe that said Meek, the then attorney-general of Florida, co operated with Dibble and associates, including said Swepson, in said fraudulent arrangement, but these defendants have no knowledge, nor have they any information, sufficient to justify them in believing or saying that the other three trustees of the internal improvement fund were parties to or concerned at said fraudulent check arrangement; these defendants therefore deny that they were parties to such arrangement, and demand that the complainants be held to strict proof as to all and singular the allegations in complainant's bill thereunto made.

These defendants admit that the legislature of Florida did pass the act referred to in the thirteenth paragraph of complainant's bill, incorporating the said F. Dibble and associates into a body corporate, under the name and style of the Tallahassee Railroad Company, and that Schedule D, annexed to complainant's bill, is a true copy of said act, but these defendants are informed and believe, and so allege, that the allegation in said bill that the said incorporation of said F. Dibble and associates was made by said legislature in part fulfilment of the trust referred to in said paragraph is untrue, and these defendants deny the same and each and every allegation thereunto made in said bill of complaint, and demand that complainants be required to make full proof of the same.

These defendants, further answering, admit that there is in said act represented by Schedule D the proviso, as set forth in said schedule, but none other, but these defendants do not admit, but they deny that the authority to issue bonds, given by said act, was given for the purpose of authorizing the Tallahassee Railroad Company to issue bonds to pay and discharge the trust referred to in the fourteenth paragraph of complainant's bill, if by the allegations in said paragraph or bill of complaint it is meant that the legislature had such pretended trust in favor of complainants, or any claim or pretended claim of complainants, upon said railroads, or Pensacola and Georgia and Tallahassee Railroad bonds so surrendered, or upon the moneys with which they were bought, in view, or gave such authority for any such purpose, and these defendants deny that the State of Florida, or the trustees of the internal improvement fund of Florida, who sold said roads and cancelled said surrendered bonds, had any notice in law or equity before
369 the surrender or cancellation of said bonds of the complainants, said pretended claim to said bonds, or the funds with which the same were purchased, or of any trust in favor of complainant, as alleged in said paragraph, or that said act or proviso referred to in said paragraph was any such notice; and these defendants deny that by said act any statutory reservation of rights or priority of lien was created, and was or is notice to the State of Florida or any officers or trustees mentioned in said fourteenth paragraph, or to any person whatever, of complainant's pretended claim.

These defendants, answering the sixteenth paragraph of complainant's bill, say they are informed and believe, and they thereupon allege, that the Jacksonville, Pensacola and Mobile Railroad Company acquired the railroads therein mentioned by virtue of and under a consolidation of the Tallahassee Railroad Company, into which said Dibble and associates were organized with the Jacksonville, Pensacola and Mobile Railroad Company, as created under the act entitled "An act to perfect the public works of the State," approved June 24th, 1869, and an act entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved January 24th, 1870, said act being chapters 1,716 and 1,732 of the Laws of Florida.

That such consolidation of such companies was made under the provisions of said last named acts of the legislature of Florida, and was, as these defendants are informed and believe, made after the 28th day of January, A. D. 1870.

And these defendants, further answering, deny each and every allegation in complainant's bill to the contrary hereof.

These defendants, further answering, say that although they do not admit, but deny, that the complainant has ever had any interest in said Pensacola and Georgia and Tallahassee Railroad bonds paid to the trustees of the internal improvement fund of Florida as aforesaid, or any interest in the said railroads and properties sold as aforesaid as against these defendants or their predecessors as trustees of the internal improvement fund, or any interest at all therein, or any interest in the stock or bonds, or pretended State bonds, or any other property or thing mentioned in the seventeenth paragraph of the bill of complaint, respectively submit and contend that the complainant cannot claim both said bonds and said other property mentioned in said paragraph, or any part of said other property, but that the complainant is estopped to claim or assert any interest, right, or title in said bonds, as will
370 be hereinafter shown, and that if the said complainant has any interest in said railroads and property so sold on the 20th day of March, A. D. 1869, that such interest is subject and subordinate to the claim of these defendants upon said property for said balance of purchase money still remaining unpaid.

These defendants, further answering, say that if the assignment to Littlefield, mentioned in the eighteenth paragraph of complainant's bill, was made, that the complainant adopted, recognized, and looked to the same for its final reimbursement for any claim it may have had, and that the same is subject to the claim and lien of these defendants for said balance of purchase money.

These defendants, answering the twenty-first paragraph, say that they are unable to ascertain from said paragraph or bill of complaint, when the suit therein referred to as having been brought by complainants against Sidney W. Hopkins & Co., was brought, nor are these defendants able, nor have they sufficient knowledge or information to enable them to say what suit is referred to; these defendants therefore pray that complainant may be required to prove fully, and according to the rules of evidence in such cases, when said suit was brought, and the effect and purpose of the same; and defendants deny that said suit was in law or equity notice to the trustees of the internal improvement fund of anything set up thereon, or in the bill of complaint in this cause.

These defendants, further answering, deny that the resolution referred to in the twentieth and twenty-second paragraphs of complainant's bill has or is of the effect or meaning given to it by complainants in the said bill of complaint, and these defendants pray reference to the copy thereof annexed to complainant's bill for the purpose of ascertaining the true meaning and effect of the same.

These defendants, further answering, say that the Pensacola and Georgia and Tallahassee bonds, mentioned in the twenty-third paragraph of complainant's bill, were, to the best of their knowledge, information, and belief, burnt on or about the 26th day of February, A. D. 1872, and, as these defendants are informed and believe, without remonstrance or protest from complainants, or complainants having made any claim to the same upon the said trustees of the internal improvement fund. And these defendants deny that such destruction of said bonds was made without authority of law, but allege and charge that the 371 same was altogether legal and proper, and should have been made in the year A. D. 1869, soon after they were received from said Dibble and associates. Defendants file herewith a list of the bonds so destroyed.

These defendants, answering the twenty-fourth paragraph of complainant's bill, deny that the complainant has or ever had any right to said bonds therein named or to the enforcement of the same, and further charge that if it ever had any such right that the same is barred by the lapse of time, and also that the complainant is estopped by its own conduct from ever claiming any interest in or right through the same as against these defendants. That the same were received by the trustees of the internal improvement fund on the delivery of said deeds in the month of April or May, A. D. 1869, on part payment for said railroads, and without any notice of any interest or claim of complainants in or upon the same, if any they have, or have ever had, which defendants deny.

These defendants, further answering, deny that complainant has any lien on said roads and properties so sold; but say that if they have any it is subordinate to the lien of the defendants for said balance of purchase money.

These defendants, answering the thirtieth paragraph of the bill of complaint, deny that complainants ever had any right to said Pensacola and Georgia and Tallahassee bonds mentioned therein, and deny that the State of Florida is a party to any contract with complainant.

Defendants knew nothing as to the "reconvention" and other matters mentioned in the thirty-second paragraph of complainant's bill.

These defendants, further answering the forty-fourth and forty-ninth paragraphs, and all and singular the allegations in said bill of complaint, as to the moneys therein referred to as the earnings, receipts, and income of the Jacksonville, Pensacola and Mobile Railroad Company, say that the said moneys are not, and never have been, held by the State of Florida; that these were turned over on the 5th day of January, A. D. 1876, to the then treasurer of Florida by the register of the Supreme Court of the United States, as these defendants are informed and believe, $32,496.85 in a draft on the Treasury of the United States, and the sum of twenty-three hundred and eight dollars in two comptroller's certificates or warrants of the State of Florida.

And these defendants further say that on the 13th day of February, 1877, the said Treasurer Foster did turn over to Walter Gwynn, treasurer of the State of Florida, the sum of $32,137.53, as part of 372 the proceeds of said draft in United States currency, and also the aforesaid comptroller's warrants, amounting to $2,308, as aforesaid; the said Foster having, as these defendants are informed and believe, retained and paid out of the proceeds of said draft the sum of $359.32 on account of expenses and his compensation in the custody, care, and management of said funds.

And these defendants, further answering, say that the moneys in the hands of the treasurer of Florida were paid to the treasurer by the register of the United States Supreme Court, in the cause of the State of Florida vs. E. C. Anderson et al., in the United States Supreme Court; and are, as defendants are informed and believe, the earnings and fruits of the said railroads sold on the 20th day of March aforesaid; that the same were turned over to said treasurer under an order of said court made in said cause, a copy of which, with explanatory opinion of said court annexed thereto, is filed herewith, marked D, and prayed to be taken as a part hereof. That the said order directs that the same shall be disposed of according to the trusts that have been or may be declared of and concerning the same by the supreme or other courts of Florida having jurisdiction of the premises.

And these defendants, further answering, say that in February last one H. Bisbee, jr., who was attorney and solicitor for said State of Florida, filed a bill in chancery in the circuit court of the second judicial circuit of Florida, in and for the county of Leon, against Geo. F. Drew, the governor of Florida, and these defendants, the trustees of the internal improvement fund, and Walter Gwynn, treasurer of Florida, claiming that he has a lien on said funds, and should be paid out of the same, for a claim of about twenty-four thousand dollars for fees as attorney and solicitor for the State, or the State and trustees of the internal improvement fund, for services rendered in said causes in the United States Supreme and circuit courts aforesaid, and in a case in the circuit court of the fourth judicial circuit of Florida, in and for Duval County, wherein the State and trustees of the internal improvement fund were complainants and the Jacksonville, Pensacola and Mobile Railroad Company et als. defendants, involving said railroads, and for services and advice, and expenses and disbursements, rendered, given, incurred, and paid; that said cause is at issue, and testimony is being taken therein; that on or about the 29th day of May, A. D. 1877, an order was made in said cause by the honorable P. W. White, 373 judge, ordering and directing the said Gwynn, treasurer, not to pay out or part with said funds, or any of the same, until the further order of the said court, which is still of full force and effect, except as modified by a subsequent order of said court permitting said Gwynn to pay out of said fund "the necessary costs" for procuring records for evidence in defending the same against the said suit and the suit of one D. P. Holland, which is a suit in chancery commenced prior to this suit, in said Leon circuit court, against said governor and trustees of the internal improvement fund and treasurer of Florida, in which said Holland claims that the said funds should be applied to the payment of a judgment which he claims to have obtained about December, A. D. 1872, against the Jacksonville, Pensacola and Mobile Railroad Company, for sixty-odd thousand dollars, for professional services claimed by him to have been rendered said company. This suit brought by D. P. Holland is also at issue, and will very soon be ready for trial. And these defendants insist that, as said Leon circuit court thus first obtained jurisdiction of said fund, that this court should not make any orders as to or concerning the said fund, but that the complainants should be required to go into the said Leon circuit court and become parties to said suits.

And defendants further say, that although they deny that said Bisbee and Holland have any claims on said funds, they insist that no orders shall be made as to said funds without or until said Holland and Bisbee have been made parties herein, and brought into this suit by due process of law.

And defendants further say, that if this honorable court should, under any circumstances, proceed to adjudicate and decide as to said fund, that as the same are the fruits of said railroads so sold, and as said railroads are now worth in value very much less than said balance of purchase money, principal and interest, and will, when sold, not sell for enough, by a large amount, than said funds, to pay said balance of purchase money and interest, and as there is a large amount of principal outstanding of said Tallahassee Railroad bonds now past due, all of which they charge to be true. the same should be paid to these defendants to be credited on said balance of purchase money, which is the first liens on said railroads and property, sold as aforesaid. Such, these defendants submit, was the purpose and intention of said United States Supreme Court, as will appear from said order and explanatory opinion aforesaid.

And defendants further say, that on the 22d day of December,
374 A. D. 1877, the honorable P. W. White, judge aforesaid, made an order in said cause, wherein H. Bisbee, jr., is complainant, authorizing said Gwynn, treasurer, aforesaid, to lend out said money, a copy of which order is hereto annexed, marked B, as a part of this answer.

And these defendants further say that the said F. Dibble and associates did not, nor has any one for them, paid the full amount of purchase money aforesaid, but that the said balance of four hundred and seventy-two thousand and sixty-five dollars, and interest thereon from the said 20th day of March, A. D. 1869, still remains due and unpaid; and these defendants have, as vendors, a lien on said railroads and property so sold for the same, and the holders of said bonds have demanded that the trustees of the internal improvement fund shall enforce it against said property so sold.

And these defendants further say they are informed and believe that at the time of the consolidation of said Tallahassee and Jacksonville, Pensacola and Mobile Railroad Companies, the stockholders of said companies had full knowledge and notice of the fraudulent manner in which the deed and possession of said railroads and their properties were acquired without the payment of the said balance of purchase money, and that the same had not been paid.

These defendants, further answering, say that on the 20th day of March, A. D. 1872, the trustees of the internal improvement fund of Florida brought an action in the circuit court of the second judicial circuit of Florida, in and for Duval County, against the Jacksonville, Pensacola and Mobile Railroad Company and others, to recover said balance of purchase money and interest thereon, and that the pleading and complaint to said suit, all the facts and circumstances of said fraudulent and pretended payment of said balance of purchase money and illegal delivery of the deeds for and the possession of said railroads, and other matters and things relating thereto, were fully set forth, and on the 4th day of April, A. D. 1874, a judgment was rendered and entered against said Jacksonville, Pensacola and Mobile Railroad Company in favor of said trustees of the internal improvement fund for the balance of said purchase money, the amount of said judgment being $661,845.55, with costs and disbursements, and in and by said judgment, which was rendered in said suit, the same being an action commenced under the Code of Procedure, it was adjudged that the aforesaid sum of money should be held and deemed as against the Jacksonville, Pensacola and Mobile Railroad Company, and all persons or bodies corporate claiming
375 by, through, or under said company a lien upon the real and personal and mixed property owned by said company on the 20th day of March, 1872, and a lien upon all the railroads situated between

Lake City, in Columbia County, and Quincy, in Gadsden County, and the branches to St. Mark's and Monticello, and upon the iron, roadbed, and depots thereon or connected therewith, from March 20th aforesaid.

And defendants further say that said deed is still in full force and effect. Defendants say they are informed and believe that in the summer of A. D. 1870, a suit was brought in the United States circuit court, northern district of Florida, by the holders of the then and now outstanding Pensacola and Georgia and Tallahassee bonds to subject said railroads to sale to pay the same to the extent of said balance of purchase money, and another suit was *to* the year 1872 brought by other holders of the same of said bonds in the same court for the same purpose, and that in both of said suits all the facts and statements aforesaid as to said fraudulent and pretended payment of said balance of purchase money and illegal delivery of the deeds for and the possession of said roads and other matters and things connected therewith are fully set forth.

Defendants further say that in the year A. D. 1873 a suit was brought in the United States Supreme Court by the State of Florida against Edward C. Anderson, jr., et als., in which all such matters are fully set forth and the question of the sale of said roads for the payment of the balance of said purchase money fully involved, which suit was not finally decided till the latter part of 1876 and early in A. D. 1877, and by the decision and decrees in which the prior lien of their defendants on said railroads is recognized and affirmed.

Defendants are informed, and upon such information allege and state that the complainants, the Western Division of the Western North Carolina Railroad Company, united with said Littlefield, said Swepson, and said S. W. Hopkins & Co., in procuring the governor, Harrison Reed, to issue and deliver to said J., P. &. M. Co. the said State bonds (so called) and in all the acts and representations done and made by said J., P. & M. Co., its officers, and agents, and in the sale which said S. W. Hopkins & Co. made of said bonds; and that said North Carolina corporation received a portion of the proceeds of such sale on account of its pretended claim, and contracted with said Swepson and said Littlefield, and with authorized agents of said J., P. & M. Co., for the payment to said North Carolina corporation, by the parties
376, 377 to said contract, of the sum of six hundred thousand dollars and
upwards, such payment to be made on its said claim set up in the bill of complaint, and out of the money to be received by said S. W. Hopkins & Co. from the sale of said bonds, to enforce which payment, said North Carolina corporation brought suit in a court of the State of New York against said Hopkins & Co. and said J., P. & M. Co., and that the said complainant has otherwise participated in and recognized the issue and sale of said pretended State bonds, and recognized and ratified the sale and purchase of said Pensacola and Tallahassee Railroads and properties, and the ownership thereof, by Dibble and associates, and the Tallahassee and J., P. & M. Railroad Company, and ratified the payment of said Pensacola and Georgia and Tallahassee bonds, so claimed by it, and paid or surrendered to the trustees of the internal improvement fund. And these defendants submit and charge that the complainant is estopped by its action in the premises from claiming any interest in said bonds so surrendered, or any right against said railroad and property so sold, or against the trustees of the internal improvement fund, by, through, or on account of said bonds or any pretended interest therein.

And these defendants refer to and adopt as a part of the answer all and singular the statements made in an affidavit of George F. Drew, governor of Florida, filed May 19th, A. D. 1877 (the same being in the form of an answer), in the case in this honorable court, wherein the complainant herein is complainant, and George F. Drew, governor, and the Florida Central Railroad Company et al. are defendants, as to the acts and doings of complainants in participating in the issuing of said State bonds and the sale thereof, and receiving pay on its pretended claim from the proceeds of such bonds, and in ratifying and confirming the payment of said Pensacola and Georgia and Tallahassee bonds by said Dibble and associates and Swepson on said purchase of said roads, and in recognizing the ownership of said railroads by said Dibble and associates, Tallahassee Railroad Company, and Jacksonville, Pensacola and Mobile Railroad Company, recognizing and adopting the acts and doings of said Swepson in connection with the surrender of such bonds to the trustees aforesaid.

And these defendants, further answering, say that if the complainants ever had any right or cause of action, for or on account of anything set forth in the said bill of complaint, that the same has become old and stale by reason of the great lapse of time since the same occurred; and that by reason of such lapse of time, and the peculiar
378 circumstances set forth and stated in the bill of complaint and this answer, that a court of equity should not and will not enforce such claim, if any it ever had, as against these defendants.

And these defendants, further answering, say that the said claim or cause of action accrued, if at all, more than four years previous to the commencement of this suit, and is barred, and that the same did not accrue within four years before the commencement of this suit. And these defendants, having fully answered, pray your honor to dismiss, with their costs in this behalf expended.

GEO. P. RAINEY.

D. S. WALKER, SR.,
Solicitor for Trustees Internal Improvement Fund.

UNITED STATES OF AMERICA,
Northern District of Florida:

Personally appeared Geo. F. Drew, governor; Columbus Drew, comptroller; Walter Gwynn, treasurer; Hugh A. Corley, commissioner of lands and immigration, and Geo. P. Rainey, attorney-general of Florida, and they, being duly sworn, say that the above answer is true, except as to those matters stated on information and belief, and these they believe to be true.

C. DREW, *Comptroller.*
WALTER GWYNN, *Treasurer.*
HUGH A. CORLEY,
Commissioner of Lands and Immigration.
G. P. RAINEY,
Attorney-General.

Sworn to and subscribed before me this first day of January, A. D. 1878, at Tallahassee.

CHAS. H. FOSTER,
Clerk U. S. Circuit Court, Northern District of Florida.

Sworn to before me by Geo. P. Rainey this 2d day of January, 1878.
[L. S.] PHILIP WALTER, *Clerk.*

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EXHIBIT A.

TALLAHASSEE, *April* 8, 1869.

The board met. All members present.

Resolved by the trustees of the internal improvement fund of the State of Florida, That Calvin B. Dibble, of the firm of Dibble, Worth & Co., of New York City, and Geo. W. Swepson, of Raleigh, N. C., be and they are hereby appointed confidential agents of said trustees, with authority in each to take up the outstanding mortgage bonds of the Pensacola and Georgia and the Tallahassee Railroad Companies, and that the attorney-general and comptroller are hereby directed to turn over to said Dibble & Swepson, or either of them, all the moneys that may be received by them in behalf of said trustees for said roads for the purpose set forth.

The board there adjourned.

FRANK W. WEBSTER,
Secretary.

EXHIBIT B.

The petition of Walter Gwynn respectfully sheweth to the Hon. P. W. White, judge of the second judicial circuit of the State of Florida, that he has in his hands, subject to the order of your honor, the sum of about $34,340.73; that said sum is claimed by H. Bisbee, jr., the trustees of the internal improvement fund of Florida, D. P. Holland, the Western Division of the Western North Carolina Railroad Company, and a large number of other persons, amounting in all to twenty or thirty; that there is a protracted litigation going on in your honor's court as to the proper disposition to be made of said money which your petitioner fears may extend through many months; that during this litigation said money will be idle in the hands of your petitioner, bearing no interest, unless your honor shall otherwise direct. That should your honor authorize him to do so, your petitioner believes he could loan said money at eight per cent., secured by bonds of the State of Florida, taken as security at twenty per cent. below their market value. Your petitioner represents that said bonds taken at said rates would be ample security. Your petitioner represents that said money has been idle in his hands since 13th of February, 1877, so that at least two thousand dollars of interest have been already lost. To prevent further loss your petitioner prays that your honor will authorize him to loan out said money, on the terms above stated, for such length of time as your honor may direct.

WALTER GWYNN.

On reading the petition of Walter Gwynn—

It is ordered, That said Gwynn be, and is hereby, authorized to loan out the money mentioned in his said petition, at eight per cent., to be repaid on call upon one month's notice, and that said Gwynn take as security for said loan United States bonds, or State of Florida bonds at twenty per cent. below their market value.

380 It is further ordered, That said Gwynn's said petition be filed with the clerk of Leon circuit court, and kept with the files in the case of H. Bisbee, jr., vs. The Trustees of the Internal Improvement Fund et al.

Done and ordered at Chambers this December 22d, 1877.

P. W. WHITE,
Judge Second Judicial Circuit of Florida.

STATE OF FLORIDA,
Leon County:

I, Council A. Bryan, clerk of the circuit court in and for the county aforesaid, do hereby certify that the above and foregoing two pages are true copies of the petition of Walter Gwynn and the order made upon the same.

Witness my hand and seal this 22d day of December, A. D. 1877.

[SEAL.] COUNCIL A. BRYAN, *Clerk.*

H. Bisbee, jr., vs. Internal Improvement Fund et al. In re of the petition of Walter Gwynn.

EXHIBIT C.

Supreme Court of the United States. No. 3 (original). October term, 1876. Bill in equity.

THE STATE OF FLORIDA, COMPLAINANT,
vs.
EDWARD C. ANDERSON, JR., AND OTHERS, DEFENDANTS.

Mr. Justice **BRADLEY** delivered the opinion of the court:

Application has been made to the court by various parties in this case for the balance of the fund which *occurred* from the operations of the railroad whilst in the hands of the receiver, and which is now in the registry of this court. This fund grew out of and was the immediate fruit of the property itself, and should be handed over to the same parties to whom this was properly deliverable, as we have decided that the property should be delivered to the complainant, the State of Florida, for the purpose of observing the liens and trusts to which it is subject in the hands of the State according to the disposition thereof to be made by the
State courts in the principal litigation. We think that the fund
381 on hand, after paying such sums as are properly chargeable thereon
under our decree, should be disposed of in the same way.
We are of opinion that the claim presented in behalf of Lyhs & Gelson should, under the circumstances, be paid before the fund is paid over; also two small bills for supplies, which were reported by the receiver as having come to his hands, and the additional costs that have been incurred, including one per cent. commission to the register.

A decree will be made accordingly.

Final decree.

Supreme Court of the United States. No. 3 (original). October term, 1876.

THE STATE OF FLORIDA, COMPLAINANT,
vs.
EDWARD C. ANDERSON, JR., AND OTHERS, defendants.

Application being made in this case in behalf of a co-partnership firm by the name of Lyhs & Gilson for the payment of a bill for supplies furnished for the railroads in charge of Robert Walker, the receiver, shortly before his appointment, and which supplies came to his hands and possession as such receiver by the consent of Sherman Conant, to whom the said supplies had been consigned, and said bill having never been paid, and it seeming equitable and just, and the consent of the counsel for complainant being given thereto, it is ordered that the register do pay said bill to said firm of Lyhs & Gilson, or their attorney, amounting to the sum of fifteen hundred and ninety-five dollars and ninety-five cents.

And whereas the said receiver, in his twelfth annual report, states that a few days before he took possession of said railroad John C. Clark and S. B. Hubbard severally furnished to Jonathan C. Greely, former receiver, certain supplies, which all, or nearly all, came into the hands of said Walker and were used by him in repairs, said Clark's bill amounting to fifty-eight dollars and seventy-five cents and said Hubbard's to sixty-six dollars and ninety six cents; and said bills having never been paid, it is ordered that the register pay said bills to the said parties or their attorneys respectively.

It is further ordered that the register do also pay such additional costs of the officers of this court as have been incurred since the decree made on the first day of May last and not yet paid, and that he be authorized to retain one per cent. of all moneys received for his commission upon the same.

It is further ordered that the balance of moneys in the registry of the court be paid by the register to the treasurer of the State of 382 Florida, to be disposed of according to the trusts that have been or may be declared of and concerning the same by the supreme court of Florida or other court of said State having jurisdiction of the premises.

It is further ordered that the application of Daniel P. Holland for the said balance and surplus be denied.

Filed and entered December, 1876.

383 *Amendment to bill of complaint.—Filed this 26th day of May*, 1879, *Phuys Walter, clerk.*

Circuit court of the United States, northern district of Florida.

THE WESTERN NORTH CAROLINA RAILROAD Company, complainant,
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida; the Florida Central Railroad Company; the Jacksonville, Pensacola & Mobile Railroad Company; Gideon Maria Boissevain, Adrian J. Mildens, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin—claiming to be the authorized agent of the four parties last named—John Collinson, Milton S. Littlefield, Walter Gywnn, and Thomas B. Coddington; and now by way of amendment, vs. J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, Dr. Nicholas Jacob Den Tex, J. Borzo, Edward Isaac Asser, and Adolph Engler, trustee, defendants.

Jos. B. Stewart, E. M. Thompson, solicitors for defendants.

384 Circuit court of the United States, northern district of Florida,

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant,

vs.

GEORGE F. DREW, GOVERNOR OF THE STATE of Florida; the Florida Central Railroad Company; the Jacksonville, Pensacola & Mobile Railroad Company; Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, claiming to be the authorized agents of the four parties last named—John Collinson, Milton S. Littlefield, Walter Gwynn, and Thomas B. Coddington; and now, by way of amendment, vs. J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, Dr. Nicolaas Jacob Den Tex, J. Borzo, Edward Isaac Asser, and Adolph Engler, trustee, defendants.

To the honorable the judges of the circuit court of the United States for the northern district of Florida:

Your orator, The Western Division of the Western North Carolina Railroad Company, being a corporation and body politic, created by and under the laws of the State of North Carolina, and a citizen of the State of North Carolina, brings this its bill of complaint against George F. Drew, governor of the State of Florida; the Florida Central Railroad Company; the Jacksonville, Pensacola & Mobile Railroad Company, corporations and bodies politic, created by and under the laws of the State of 385 Florida, and citizens of the State of Florida; and Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddocks, and Adrian Stoop, citizens of Amsterdam, and subjects of the Kingdom of Holland; and Frank R. Sherwin, a citizen of New York, who claims to be the authorized agent of the four parties last named; John Collison, a citizen of London, England, and a subject of the Queen of Great Britain; and Thomas B. Coddington, a citizen of New York; and Milton S. Littlefield, and Walter Gwynn, treasurer of the State of Florida, citizens of the State of Florida; and, by way of amendment, pursuant to leave prayed and granted, against J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, Edward Isaac Asser, Dr. Nicolaas Jacob Den Tex, citizens of Amsterdam, and subjects of the Kingdom of Holland; and Adolph Engler, trustee, a citizen of the State of New York, residing in the city of New York. And further complaining, your orator says:

1st. That your orator, now and at all times averring, and hereby reaverring, all and singular, the matters in its said original bill alleged, with the like effect as if the said matters and things were each and severally hereby repeated verbatim and in detail, states and charges that the said last above named defendants, now made parties, claim to be the owners and holders of a certain portion of the bonds alleged to have been issued by the State of Florida under said act of the 28th of January, numbered above 3000, but which your orator, upon information, charges is not true, but, on the contrary, that none of said bonds numbered above 3000 ever were sold, and are not held by bona fide holders thereof for value.

2d. That the said defendants and each of them had full and due notice that said bonds, numbered above 3000, were illegally and fraud-
386 ulently put in circulation, and were used in violation of and contrary to law, and that no good and valid title was acquired to any of said so-called bonds of the State of Florida.

3d. That the said defendants never had any dealings with, or gave any credit to, the Florida Central Railroad Company, or paid or advanced any money on its bonds, and never bought the so-called bonds of the State of Florida in faith of the same being secured by the bonds of the Florida Central Railroad Company, but bought the said so-called bonds on the credit of the State of Florida, which were declared to be issued to or for the use of the Jacksonville, Pensacola & Mobile Railroad Company, and not otherwise; and that all pretense or claim that said defendants or either of them ever dealt with, purchased, or paid for any bonds of the State of Florida, which were a charge upon or secured by the Florida Central Railroad Companies, is wholly and absolutely false.

4th. Your orator further states that it is advised, and so charges the facts to be, that the claims set up and pretended by the said defendants, as the holders of the said Florida State bonds, as against the said Florida Central Railroad Company is the result of a scheme and conspiracy entered into by and between one W. H. Gleason, Frank R. Sherwin, and Charles D. Willard, during the year 1876, who sought the said defendants in Amsterdam, in the Kingdom of the Netherlands, and inspired said defendants with the belief that they, the said Gleason, Sherwin, and Willard, could influence the governor of Florida to seize and make a forced sale of the said Florida Central Railroad together with the Jacksonville, Pensacola & Mobile Railroad, for the benefit of said holders of repudiated State bonds, provided they, the said
387 Gleason, Sherwin, Willard, and their associates were permitted to organize a scheme for that purpose.

5th. That pursuant thereto, the said Frank R. Sherwin, by a false and fraudulent petition, wherein he falsely and corruptly alleged himself to be the agent of the said holders of said Florida State bonds, and especially to be the agent of the defendants, Boissevain, Mildeus, Zaddocks, and Stoop, did, on the 30th day of December, 1876, by such false oath and fraudulent means, induce the governor of Florida to seize the said Florida Central Railroad, and that just thirteen days thereafter, to wit, the 12th day of January, 1877, the said Sherwin, Willard, and Gleason, but acting in the name of Sherwin, together with Henry R. Jackson and Charles H. Simonton, at the city of Savannah, Georgia, entered into a scheme "for the reorganization of the Florida Central Railroad Company, and the Jacksonville, Pensacola & Mobile Railroad Company," wherein, among other things, it was agreed that the governor of Florida should make a forced sale of said railroads for the benefit of said combination, who should be at liberty to bid the said repudiated State bonds at such sale to be made by the governor, who was bound and required by the terms of said agreement, scheme, and adventure to accept in payment for said roads the said repudiated State bonds to the full amount of the principal and interest thereof, as cash, and to give such purchasers a complete title to said road and place them in actual possession thereof, as will more fully appear by a copy of said scheme called the "Memorandum plan," made part hereof, marked Schedule N.

6th. That pursuant to the purposes of said plan, the said governor recognized the said Sherwin and Willard and their associates as

388, 398 authorized to speak and act for such defendants as such bondholders as will better appear by the correspondence which transpired between said parties, or some of them, and the said governor and Geo. P. Rainey, attorney-general of Florida, dated the 10th, 12th, 19th, 20th, and 23d days of January, 1877, copies of which said letters are made part hereof, marked Schedule O, P, Q, R, and S.

7th. But your orator states the fact to be that at the date of the executing of said memorandum plan, which was a mere scheme for "wrecking" said railroads for the benefit of the parties thereto, and at the date of said correspondence neither the said Sherwin or Willard or either of them had any right or authority whatever from the said defendants or parties residing in Amsterdam, or either of them, to speak or act or make any oath for them, but on the contrary sought and procured said seizure by the governor so as to use the evidence thereof duly certified in an imposing form to lead the said so-called bondholders to believe that they, the said Sherwin and Willard, had great influence with and could control the action of the governor of Florida, and used such evidence of influence to induce a subsequent procuring of certain powers of attorney from said defendants herein named, residing in Amsterdam, which they did by the use of printed circulars, coupled with representations of the utter loss of everything on the part of said alleged holders of the repudiated Florida State bonds, unless they entered into the said "memorandum plan" so executed on the 12th day of January, 1877, but none of said powers of attorney were procured till about the 1st of March, 1877, and then were coupled with conditions and obligations not apparent on the face of such powers of attorney, but which your 399 orator is advised and so charges were to the effect that the said Sherwin, Willard, and their associates were to pay and defray all the expense and outlay of said proceeding, while they, the said so-called bondholders, were to be content to receive but about one-third of the par value of said bonds, without interest, out of a bond issue of twelve thousand dollars per mile to be put upon said railroads, after such forced sale of said roads should be made by the governor of Florida, who was to receive in payment therefor said repudiated State bonds as aforesaid, all of which proceedings was a mere scheme to appropriate the franchise and estate of said railroad to the utter destruction of said Florida Central Railroad Company and the great and irreparable injury of your orator as the lawful and equitable owner of a large majority of the capital stock thereof.

8th. Your orator is further advised and so charges that the said defendants or some of them are not the original purchasers of so-called Florida State bonds, but are engaged in a scheme of speculation therein, together with said Sherwin, Willard, and their associates, expecting to derive great profit therefrom by the forced sale of said railroad by the means and for the purposes aforesaid.

Wherefore, the premises considered, and inasmuch as your orator is without relief, save through the interposition of this honorable court sitting as a court of equity, your orator prays that a United States writ of subpœna may issue requiring the said J. Fred Schutte, Adrianus Prins, Jan Prins, Elias Fuld, J. Borzo, Edward Isaac Asser, Dr. Nicolaas Jacob Den Tex, Heinrich Ulrici, and Adolph Engler to appear at a day named under a suitable penalty, and each upon his or their separate corporate oaths true and perfect answer make to all and singular the allegations of this bill of complaint.

400 And your orator prays, as in its said original bill it has prayed and prays, for all general and special relief, with a decree for its costs expended in this suit.

UNITED STATES OF AMERICA,
Northern District of Florida:

Joseph B. Stewart, being duly sworn, says that he is the attorney in fact of the western division of the Western North Carolina Railroad Company; that said company is a citizen of the State of North Carolina, having its business office and corporate seal at Ashville, in said State, and that neither its president nor any of its officers are within this district, and, therefore, cannot subscribe to or certify to this amended bill of complaint; that deponent has read the foregoing amended bill of complaint, and knows the contents thereof and the matter therein alleged; that his knowledge is derived from the inspection of records and from information from intelligent and well-advised sources known to the deponent; that the matters stated within deponent's own knowledge are true, and that the matters stated upon information he believes to be true.

JOS. B. STEWART,
Attorney in fact for the W. D. W. N. C. R. R. Co.

Subscribed and sworn to this day of , 1877.

Clerk.

401 SCHEDULE N.

To his excellency Hon. M. L. STEARNS,
Governor of the State of Florida:

The undersigned respectfully represents:

That he is the duly authorized and accredited agent in this country of the committee of foreign bondholders in the city of Amsterdam, in the kingdom of Holland, having in charge the interest of Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddocks, Adrian Stoop, and others of said kingdom, who are bona-fide purchasers and holders for a valuable consideration to a very large amount, to wit, to the amount of more than three million two hundred thousand dollars of the bonds of the State of Florida, issued by said State in aid of the Jacksonville, Pensacola & Mobile Railroad Company and the Florida Central Railroad Company of said State, which bonds bear date the first day of January, 1870, payable on the first day of A. D. 1900, which were issued by the said State of Florida in pursuance of an act of the legislature thereof passed June 24th, 1869, and the act amendatory thereof, approved January 28, 1870, in which act and amendment it was and is, among other things, provided that in exchange for the bonds so issued by the said State the said companies should execute and deliver to the said State its own first-mortgage bonds, embracing all and singular its railroad property and appurtenances, and which latter-named bonds were so issued and delivered to the said State in compliance with the laws aforesaid, and are now held by the said State as a trustee for the benefit of the purchasers of the said State bonds as an additional security for the payment of the same.

The undersigned further represents, in the name and on behalf of the said committee of foreign bondholders and the holders of the said bonds of the State of Florida, that the said State has failed to pay the interest thereon at maturity, according to the tenor of its obligation, and has so failed to pay said interest for a period of more than twelve (12) months thereafter, or, that is to say, for the period of about five (5) years on all of said bonds.

The undersigned further represents that your excellency has, in pursuance of the said acts of the legislature of said State, taken possession of and advertised for sale the said the Jacksonville, Pensacola & Mobile Railroad, together with all its property and appurtenances.

The undersigned further represents that as yet no provisions have been made, as required by law, for the payment of the bonds of said State issued in exchange for the said bonds of the said the Florida Central Railroad Company; that your petitioner further says he has recently arrived in this country from Amsterdam, in the said kingdom of Holland, for the purpose hereinbefore referred to; that before so doing he spent much time in consultation with the said committee of foreign bondholders and its *consul* and various holders of the said bonds of the said State of Florida, and in the examination of the books, correspondence, and other data in the possession of said committee and its counsel pertaining to this subject, and your petitioner, from his own personal knowledge derived from such examination, says that there is now held and owned in the said kingdom of Holland more than three million two hundred thousand dollars of the said bonds of the State of Florida, 402 purchased and held for a valuable consideration, of which said amount more than two hundred thousand dollars of said bonds were issued by the said State in exchange for the bonds of the said The Florida Central Railroad Company, and that the said State has failed to pay any part of the interest thereon for a period of about five years.

Your petitioner further represents that he received a cablegram from the said Gideon Maria Boissevain, J. Wertheim, the latter being counsel for the said committee of foreign bondholders, and Charles Mueller, the American consul, dated at Amsterdam, in the said kingdom of Holland, on the 20th day of September, eighteen hundred and seventy-six, which states the number of said State bonds sold absolutely in the said kingdom of Holland to be at least three million two hundred and six thousand dollars ($3,206,000), which said cablegram your petitioner begs leave to attach herewith as a part of his said petition.

Your petitioner further says that all of said State bonds were sold in the market through the said Gideon Maria Boissevain, one of the late leading and principal banking houses in the said city of Amsterdam, and that the said Charles Mueller, now and for many years past the American consul at the said city of Amsterdam, has extensive knowledge of the sale in said market of said bonds of the State of Florida by reason of having been selected to make an examination of the books, papers, and other data in the possession of the said banking house of the said Boissevain relating to the sale of the same. Your petitioner, in the name and on behalf of the holders and owners of the said bonds of the said State to the extent of two hundred thousand dollars or more, issued in exchange for the bonds of the said The Florida Central Railroad Company, therefore demands that your excellency shall, with due diligence, make provision for the prompt payment of said bonds and overdue coupons thereon, and to this end that your excellency shall enter upon and take possession of the Florida Central Railroad, together with all of its appurtenances and franchise, and sell the same at public auction for the benefit of the holders and bona-fide owners of said bonds, in pursuance of the said acts of the legislature hereinbefore referred to.

Your petitioner further represents to your excellency that he will hold himself ready at any and all times to maintain and make proof in such manner as your excellency shall see fit to indicate as to the holders and owners of said bonds of the said State of Florida; and your petitioner will ever pray.

FRANK R. SHERWIN.

DISTRICT OF COLUMBIA,
County and City of Washington, ss:

I, Jos. T. K. Plant, a commissioner of the State of Florida for said District, certify that before me personally came Frank R. Sherwin, who, being first duly sworn, says the facts set forth as of his own knowledge in the foregoing petition are true, and those stated on information and belief he believes to be true.

Witness my hand and official seal Sept 22, 1876.

[L. S.] JOS. T. K. PLANT,
Commissioner of the State of Florida.

403 Received at Washington, Sept. 20, 1876, 14, 8.26 a. m. Cable five. Sherwin, Washington. Up to eighteen seventy-three absolute sale here known of Florida bonds thirty-two hundred six. Boissevain, Wertheim, Mueller, American consul, aiteen, Amsterdam.

I certify that the foregoing is a correct and true copy of the original on file in my office.

GEO. P. RAINEY,
Attorney-General, Florida.

404 SCHEDULE O.

STATE OF FLORIDA:

EXECUTIVE OFFICE,
Tallahassee, Fla., Jan. 10, 1877.

SIR: The Jacksonville, Pensacola & Mobile Railroad having been seized and advertised for sale under the act of February, A. D. 1870, entitled an act to alter and amend an act entitled "An act to perfect the public works of the State, approved June 24th, A. D. 1869," and the act of June 24th, 1869, so amended, it is my intention to sell the same according to the present advertisement, and such intention will be carried out unless, upon representation of the bondholders, it should be shown that such sale should be postponed for a very short time. It is not the intention of this office to encumber its administration with the operation or management of a road which it is the purpose of the law it should seize only for the purpose of selling.

As to the Florida Central Railroad, I am without sufficient testimony of there being any bona fide holders for value of State bonds issued to the Jacksonville, Pensacola & Mobile Railroad Company in exchange for bonds of the Florida Central Railroad Company, and shall not seize the Florida Central Railroad and property by the lien of its bonds held by the State until such evidence of bona fide ownership as would at least satisfy a judicial tribunal has been presented by such bona fide owners for value of such State bonds or their duly authorized agents.

I must respectfully say that the affidavit made by yourself, filed as to your being the representative of the foreign bondholders, is not sufficient evidence of such agency. I would not be willing to act on such evidence in such matters coming from any one claiming to be such agent.

Should I seize the Florida Central Railroad, I shall sell it just as soon as the law permits. All evidence of any matters involving the roads, their seizure or sale, must be submitted in writing.

It is my desire that the State be released as soon as possible of all railroad trusts and complications, and my disposition shall be to perform all my duties promptly.

Governor of Florida.

TO FRANK R. SHERWIN, Esq.,
Tallahassee, Fla.

I, George P. Rainey, do hereby certify that the foregoing is a correct copy of the original on file in my office.

GEO. P. RAINEY,
Attorney-General Florida.

MAY 19, 1877.

405 SCHEDULE P.

SAVANNAH, GA., *January* 12, 1877.

To his excellency GEORGE F. DREW,
Governor of Florida :

SIR: The undersigned beg leave to call your attention to the fact that they are the attorneys in fact of a very large majority of the holders of the bonds of the Pensacola and Georgia Railroad Company of Florida, and that a plan has been agreed upon between the holders of said bonds and Frank R. Sherwin, the agent of the holders of the bonds of the State of Florida, issued in aid of the Jacksonville, Pensacola & Mobile Railroad Company, which it is believed can and will be carried into effect, thereby resulting in the return to the State of its bonds now held in Europe, and the speedy settlement of the litigation, and place the railroad upon a substantial business basis. We are gratified to learn that it is your intention, as trustee for the holders of said State bonds, to sell the said railway property at as early a day as practicable for the benefit of all concerned, thus rendering a great public service to the State as well as an act of justice, long deferred, to both classes of bondholders.

With consideration of high respect, we remain, sir, very respectfully,

HENRY R. JACKSON,
CHARLES H. SIMONTON.

I certify that the foregoing is a correct and true copy of the original on file in my office.

(Signed) GEO. P. RAINEY,
Attorney-General.

406 SCHEDULE Q.

NEW YORK, *January* 19, 1877.

To his excellency GEORGE F. DREW,
Governor of Florida :

SIR: I have the honor to enclose herewith the affidavit of Gideon Maria Boissevain, of Amsterdam, Holland, explicitly stating the number of Florida bonds purchased and now held there by bona fide holders. It confirms my affidavit in all details except that the number of bonds which are a lien upon the Florida Central Railroad, proves to be 208 instead of 206. Mr. Willard will also transmit you from Washington the certificate of the American consul at Amsterdam, corroborating the affidavit of Boissevain, which I trust, when received by you, will be deemed sufficient evidence to warrant the seizure and advertisement of the Florida Central Railroad and the postponement of the sale of the Jacksonville, Pensacola & Mobile Railroad to take place on the same day.

I remain, with great respect, your obedient servant.

FRANK R. SHERWIN.

P. S.—I would request that your reply to this be addressed to me, care of Mr. Willard, at Washington, who will read and forward it.—F. R. S.

I certify that the foregoing is a correct and true copy of the original on file in my office.

GEO. P. RAINEY,
Attorney-General.

MAY 19, 1877.

407 SCHEDULE R.

(Personal.)

NEW YORK, *January* 20, 1877.

To his excellency GEORGE F. DREW:

DEAR GOVERNOR: I desire before sailing to reiterate to you personally, in writing, the assurance which I have verbally given, that the railroads reorganized by me will be managed in a liberal spirit, with the view, so far as may be consistent with business principles, of fostering and developing State interests. To be explicit, it is my belief that the permanent prosperity and increasing value of the road can be best secured by competing sharply with all rivals for the Gulf and up river trade, and by favoring Jacksonville and Fernandina as our outlets, and discriminating in their favor, if at all, as between them and Georgia ports. I have said as much to Gen. Jackson, and he recognizes it as impossible that I should favor Savannah. My plans for the development of the State are comprehensive, and render me not less earnest than yourself in the desire and determination to advance the material prosperity by every legitimate means, and I am confident you will find the endeavors of my associates and myself, to that end, a valuable aid to your administration, under which, I predict, Florida will enjoy great prosperity.

With every assurance of esteem and support,
I am, sir, faithfully yours,
FRANK R. SHERWIN.

I certify that the foregoing is a correct and true copy of the original on file in my office.

(Signed.) GEO. P. RAINEY,
Attorney-General Florida.

MAY 19, 1877.

407½ SCHEDULE S.

WASHINGTON, D. C., *January* 23, 1877.

Hon. GEO. P. RAINEY,
Attorney-General, Tallahassee, Fla.:

DEAR SIR: The enclosed certificate of Charles Mueller, U. S. consul at Amsterdam, previously referred to, states of his own knowledge that "Boissevain and co-operators had, in good faith and at fair prices, purchased of one John Collinson, 3,206 of above named bonds of Florida." This, in connection with the sworn statement of Boissevain, previously mailed to you by me from New York, would now seem to be full and explicit enough to establish the fact that there are 208 of the State bonds now in the hands of bona fide holders, and I therefore trust you may seize the Central Road and advertise the same for sale on the first Monday in May, and postpone the sale of the J., P. & M. R. R., to take place at the same time.

Hoping that I may hear from you upon this subject at your earliest convenience, I remain, very respectfully,

C. D. WILLARD.

I certify that the foregoing is a correct and true copy of the original on file in my office.

GEO. P. RAINEY,
Attorney-General, Florida.

MAY 19, 1877.

408 U. S. circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Jacksonville, Pensacola & Mobile Railroad Company et al.

To the honorable the judges of the circuit court of the United States for the northern district of Florida:

Your orator, the Western Division of the Western North Carolina Railroad Company, a body corporate, created by the laws of the State of North Carolina, and a citizen of said State, brings this its amended and sup'lemental bill of complaint, leave having been granted against the defendants George F. Drew, governor of the State of Florida, an ex-officio trustee for the defendants, Gideon M. Boissevain, Adri-
409 an J. Meldens, Joseph Zadok, Adrian Stoop, J. Fred. Schutte, Jans Prins, Elia Fuld, and others, subjects of the king of the Netherlands, and Adolph Engler, trustee, &c., a citizen of the State of New York, the Jacksonville, Pensacola and Mobile Railroad Company; Milton S. Littlefield, Walter Gwynn, citizens of the State of Florida, and by way of sup'lement and amendment your orator complaining, says:

1st. Your orator affirms and reavers all and singular the matters and things in its original bill filed in this cause and relief therein prayed, except as hereinafter modified or amended.

2d. That since filing your orator's said original bill it first came to its knowledge, and it so charges the fact to be, that no conveyance or transfer of the franchises, properties, or estates of said Pensacola and Georgia and Tallahassee Railroad Companies, which were sold on the 20th day of March, 1869, by the trustees of the internal improve-
410 ment fund of the State of Florida, and purchased by F. Dibble and associates, as in your orator's said original bill set forth ever was made or executed to the said Tallahassee Railroad Company or the Jacksonville, Pensacola & Mobile Railroad Company, or either of them; and that no title to said roads ever vested in said companies last named or either of them; on the contrary your orator alleges and charges the fact to be that by a deed executed by said F. Dibble and associates on the 22d day of April, 1869, the said Pensacola and Georgia and Tal-

lahassee Railroads, together with the two deeds conveying said roads by the trustees of the internal improvement fund to said Dibble and associates, dated April, 1869, were conveyed, transferred, and delivered to George W. Swepson, the trustee of your orator, in whom the title still vests for the use and benefit of your orator; and that the said Tallahassee Railroad Company or the Jacksonville, Pensacola & Mobile Railroad Company have not now and never had any title or estate
411 which could be charged with the bonds alleged to have been exchanged by said last named company for the alleged bonds of the State of Florida, set forth and described in your orator's original bill & claimed to be held or owned by the defendants, or some of them.

Wherefore your orator prays that this honorable court may decree and adjudge that the title to said Pensacola and Georgia and Tallahassee Railroads is still vested in said Swepson, as trustee for the use and benefit of your orator, and for the payment of the said $472,065; and that there was no title or estate conveyed or vested in the said Jacksonville, Pensacola & Mobile Railroad Company, which could be charged with or held subject to the bonds delivered by said last named company in exchange for the alleged bonds of the State of Florida, which are held or claimed to be held by the defendants or some of them.

412 Your orator further prays that the said original bill may be further amended by striking out subdivisions F and G of the tenth prayer of said original bill on page 46.

Your orator prays as in its original bill it has prayed and for all general and special relief.

JOS. B. STEWART,
Sol. for Comp't.

Filed May 21, 1879.

PHILIP WALTER, *Clerk*,
By L. PHILLIP, *D. C.*

413 In the circuit court of the United States, northern district of Florida, in equity.

The joint and separate answer of J. Fred. Schutte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J. Brunnekruff, J. H. Grem, Willenmier Van Tyer Van Taar, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopy, Jan Tichelaar, jr., Jacobus Wertheim, P. Van Reysen, Mey de Benedithy Beer, Gerard A. Heinekan, T. Colom, Charles Gosewinckel, Boon Hartsink, Van Tyen, N. J. Franket, Johannes, Willem Donk, Vander Stoop & Berg, defendants to the bill of complaint of the Western Division of the Western North Carolina Railroad Company complainant against them, the Florida Central Railroad Company and others, defendants.

These defendants saving and reserving unto themselves all and all manner of benefit and advantage of exceptions to the many errors, uncertainties, and insufficiencies of the said bill in complaint, for
414 answer unto so much and such parts of said bill of complaint as they are advised is or are material for them to make answer unto, answering say:

That each and every alligation, statement, matter, and thing in said bill of complaint stated or set forth is untrue, and these defendants expressly deny the same.

These defendants, further answering, say that on the 23rd day of

May, A. D. 1877, these defendants exhibited their bill of complaint in this honorable court against the Jacksonville, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company, two corporations created by and existing under the laws of the State of Florida, and others, defendants, a copy of which bill of complaint is hereto attached and marked Exhibit No. 1.

And these defendants, further answering, say that all alligations, statements, matters, and things alleged stated and set forth in their said bill of complaint are true; and these defendants pray that
415 the copy of said bill of complaint hereto attached may be taken and considered as a part of this their answer, with the same effect as if the said matters, allegations, and things therein contained were herein, here and now repeated and set forth in proper and apt language in that behalf. Without this that there is any other matter or thing in the said complainant's said bill of complaint contained, and not herein and hereby well and sufficiently answered unto, is true to the knowledge and belief of these defendants; and these defendants humbly pray to be hence dismissed with their costs most unjustly and unreasonably sustained.

(S'g'd) W. G. M. DAVIS,
Solicitor for Defendants.

Filed May 23rd, 1879.
(S'g'd) PHILIP WALTER, *Clerk.*

416 EXHIBIT NO. 1.

Circuit court of the United States, northern district of Florida. In equity.

To the honorable the judges of the circuit court of the United States for the northern district of Florida.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, J. H. Brunnekruff, J. H. Grem, Willenmier Van Tyer Van Taer, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaar, jr., Jacobus Wertheim, P. Van Reysen, May de Benedithy Beer, Gerard A. Heineken, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyen, N. J. Franket, Johannes Willem Donk, Vander Stoop & Berg, who are aliens and subjects of the King of the Netherlands, bring this, their bill of complaint, in their own behalf, and in behalf of such other persons, having like claims, who may come in and be made parties plaintiffs herein, and contribute to the expenses thereof,

against

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, a corporation created by and existing under the laws of said State, and a citizen thereof, the Jacksonville, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company, corporations created by and existing under

the laws of the State of Florida, and citizens thereof, Edward Lewis, Patrick Houstoun, Robert H. Gamble, Charles E. Dyke, sr., Edward M. L'Engle, Robert Walker, Clayton A. Cowgill, George W. Betton, directors in said last mentioned corporation, and who are citizens of the State of Florida; James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, who are citizens of the State of Florida, and Joseph B. Stewart, who is a citizen of the
417 State of New York, claiming to be directors in said Florida Central Railroad Company; Francis Vose, who is a citizen of the State of New York; M. K. Jessup & Co., who are citizens of the same State; Chandler H. Smith, S. A. Smith, sr., Smith Simkins, B. C. Lewis, D. Griffith Ambler, W. J. Hines, trustee, Mrs. A. F. Finlayson, James G. Gibbes, who are citizens of the State of Florida; Edward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Falligant, Lewis F. Nicoll, George Robertson, J. A. Hunnicutt, who are citizens of the State of Georgia; the Peoples' Bank, a corporation created by and existing under the laws of the State of South Carolina, and a citizen of said State; William McBurney, Winthrop B. Williams, who are citizens of the State of South Carolina; George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer of the State of Florida; Hugh A. Corley, commissioner of lands and immigration of the State of Florida; George P. Raney, attorney-general; Walter Gwynn, treasurer; Columbus Drew, comptroller; George F. Drew, governor, which officers are trustees of the internal improvement fund, and herein sued as such; Milton S. Littlefield, in his own right; Robert J. Washington, who is a citizen of the State of Virginia.

And thereupon your orators complain and say:

I. That on the 20th of March, 1869, the trustees of the internal improvement fund, acting under the powers conferred upon them by an act of the general assembly of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, 1855, took possession of and sold at public auction the railroads and property which belonged to and were used by the Pensacola and Georgia and Tallahassee Railroad Companies, which railroads extended from Lake City to Quincy, with a branch to Monticello, and from Tallahassee to St. Marks. Said sale was made because of non-compliance with the third section of said law.

II. That said sale was fairly conducted, and made in strict com-
418 pliance with the provisions of said law; that the aggregate amounts

for which said roads were sold was the sum of one million four hundred and fifteen thousand dollars, which sum exceeded the total amount of the principal of all the bonds then outstanding, which were issued by said corporations under the said law.

III. That F. Dibble and associates purchased said roads at said sale, and paid the purchase-money, and the said trustees made deeds under their seals, by which they conveyed said property to said purchasers, reciting therein the payment of the purchase-moneys, which deeds they delivered to said Dibble, and immediately placed him in possession of said railroads and property.

IV. That complainants have been informed within a short period that part of said purchase-money was accepted by said trustees in said bonds issued by the said corporations, which they immediately cancelled, and the balance was placed by said trustees in the hands of Geo. W. Swepson, as agent of said trustees, with directions to purchase and deliver to them for cancellation the outstanding of said bonds of said companies, which were entitled to payment out of said fund; that said Swepson was a man in good credit, reputed to be worth at least a half million of dollars, and had that amount in Florida; that the said trustees acted in the premises within the scope of their authority and in good faith, and to carry into execution the powers with which they were vested by law.

V. That said Dibble and associates afterward became incorporated by an act of the legislature of Florida, under the name and style of Tallahassee Railroad Company, for the purpose of operating the said railroads, to which they had so acquired titles. Afterwards the said Tallahassee Railroad Company and said Dibble and associates conveyed the said railroads to The Jacksonville, Pensacola and Mobile Railroad Company, of which Geo. W. Swepson and Milton S. Littlefield owned nearly the entire stock.

VI. That in the year 1870, the last named company, which will
419 hereafter be spoken of as the J. P. & M. Co., obtained from the governor of Florida, Harrison Reed, four thousand bonds of one thousond dollars each, which were issued by said governor in accordance with the laws incorporating said J. P. & M. Co., and which bonds purported to obligate the State of Florida to pay to the bearer thereof one thousand dollars on each bond, with interest at the rate of eight per cent. per annum, a copy of one of which bonds is hereto annexed, marked A, and prayed to be referred to.

VII. The said J. P. & M. Co. delivered to the governor of said State, in exchange for said four thousand bonds which he received from him, a like amount of bonds, three thousand of which were executed by the said J. P. & M. Co., and one thousand by the Florida Central Railroad Company. Said bonds were for the sum of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable to the State of Florida. Copies of each description of said bonds are filed herewith, marked B and C, and prayed to be referred to. The execution and delivery of said bonds was done by said companies in order to comply with the terms of the laws incorporating the said J. P. & M. Co.

VIII. That when the said bonds were executed by the Florida Central Company, Milton S. Littlefield owned a large majority of its stock, and he had contracted to buy from Edward Houstoun, J. P. Sanderson, and others, stock owned by them, which, added to his own, constituted all the shares of said company, except about four hundred. The whole number was 5,500. That such purchases were made by said Littlefield for the purpose of making a consolidation of the Florida Central with the J. P. & M. Co., which object was known to the parties from whom

Littlefield purchased said stock, and they sold to aid therein; that the one thousand bonds issued as bonds of the Florida Central Railroad Company, and delivered to the governor, were caused to be executed and delivered by the joint action of said Houstoun and said other stockholders, in order to enable the said J. P. & M. Co. to obtain from the governor the Florida State bonds (so-called), and with the understanding 420 and agreement that said bonds should be sold, and said Littlefield should make payment for the stock purchased from said Houstoun and said other stockholders out of the proceeds, which he in fact did, with the exception of the stock which he purchased from said Gamble, for which he paid in part only; that the holders of some shares of stock in said Florida Central Company, other than those beforementioned, although they had notice of the acts and intentions of said Littlefield, Houstoun, and said other stockholders in the foregoing paragraph set forth, took no steps to prevent the execution thereof, and remained inactive and acquiescent until long after the sale which was made of the Florida State bonds (socalled), as is hereinafter set forth; that the said Littlefield and the others who were connected with him in the management of the J., P. & M. Co., immediately after the issuance of the Florida State bonds (socalled), took possession of and operated the line of railroads which formerly belonged to the Florida Central, which lies between Jacksonville and Lake City, and treated it as constituting, with the roads formerly belonging to the Pensacola & Georgia and Tallahassee Railroad Company, and which had become the property of the J., P. & M. Co., in the manner before stated, as the line of railroads of the said J., P. & M. Co., and took and disposed of the earnings of the whole. In the year 1871 said J., P. & M. Co. conveyed the whole of said roads, by deed, to trustees to pay debts due by the J., P. & M. Co., in which deed the line of railroad from Jacksonville to Lake City was treated and conveyed as the property of the J., P. & M. Co. The said trustees took possession of and operated the said road conveyed to them for a considerable space of time, and without any interference on the part of any bona-fide stockholders of the said Florida Central Company.

IX. That the said J., P. & M. Co. sent the bonds which they obtained from the governor of Florida to England and sold nearly all through an agent in the city of London. Such sale was made to a banker in said city at the price of about one hundred and thirty-eight pounds sterling per bond. The said buyer afterwards resold the said bonds through bankers in the city of Amsterdam, Holland, by whom they were 421 offered for sale to the public in said city and in other parts of the Netherlands, and which said bonds were dealt in on the stock exchange of Amsterdam as other public securities were, in full reliance by all purchasers upon the representations which were made in respect to such bonds, which are hereinafter set forth and stated; that said bonds bore a good price so long as the interest was paid thereon, bringing at one time as high as eighty-one per cent. gold in United States coin.

X. The said J., P. & M. Co., through its agents in London, represented to the public in England, Holland, Germany, and France, that the said bonds were veritable and lawful obligations of the State of Florida; that the interest thereon would be punctually paid by said State; that there was provided by law of said State as security for the payment of said bonds a lien on the whole line of railroad from Jacksonville west; which line was represented to be owned by the J., P. & M. Co. alone. That the banker by whom they were purchased in London repeated the same representation to the bankers in Amsterdam, and they to the public in the Netherlands, and to complainants, as well as to others who purchased, sold, and dealt in said bonds.

XI. That complainants are the owners of a large number of the said bonds issued by Governor Harrison Reed to the said J., P. & M. Co., and sold by its agents as before set forth, which bonds are numbered between number one and number three thousand two hundred; the numbers belonging to each of complainants are stated in affidavits made by them before the American consul in Amsterdam, which affidavits are filed herewith and are prayed to be referred to as a part of this bill. Complainants are ready to produce said bonds when required, and will be able to produce them upon their arrival in the United States, they being on the way from Amsterdam to New York, to which latter place they have been sent by complainants to Adolphe Engler, as agent of complainants, entrusted by them to deal with said bonds as may be determined to be for the interest of complainants by their agent, Charles D. Willard, and their counsel. That interest from the 1st day of January, 1873, is due and unpaid on said bonds, and they 422 have applied to the governor of the State of Florida to enter upon and seize and take possession of the line of railroads and property thereto pertaining, before described, as belonging to the said J., P. & M. Co., including an extension of said railroad, which has been constructed by the said company from Quincy to the Apalachicola River since the year 1870; and complainants say they have a right to have said railroads seized and sold for the payment of the principal and interest of the bonds held by them; and in case they should desire to become purchasers at said sale they should be permitted to make payment with their said bonds as far as they may be sufficient therefor.

That interest was paid on said bonds after they were sold up to January 1st, 1873, semi-annually, by a trust company in the city of New York, which was appointed by the governor of Florida as the fiscal agent of the State to pay such interest; that the said governor gave notice to the holders of such bonds of such appointment; that it was represented to the persons who dealt in said bonds, including complainants, that the money for the payment of such interest was provided by the State; that owing to such an occurrence and such information, the belief that such bonds were lawfully issued by the governor of Florida was greatly strengthened, and full faith was also given to all that had been represented by said J., P. & M. Co. as to the extent of its own line of railroads.

XII. Complainants are informed that defendants, Francis Vose, M. K. Jessup & Co., Chandler H. Smith, S. A. Smith, sr., Smith Simpkins, B. C. Lewis, D. Griffith Ambler, W. J. Hines, trustee, Mrs. A. F. Finlayson, James G. Gibbs, Edward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Falligant, Louis F. Nicoll, George Robertson, the People's Bank, William McBurney, and Winthrop B. Williams, together with other persons whose names and citizenship are to complainants unknown, allege that they are the holders of the outstanding and unpaid bonds which were issued by the Pensacola and Georgia and Tallahassee Railroad Companies under the provision of the 3d section of the internal improvement act of 1855, and that there is a subsisting lien on the railroads which were sold by said trus- 423 tees to F. Dibble and associates for the payment of said bonds, and said defendants at times assert that the original lien and power of sale given by the act aforesaid is still in force; and other times they assert that the said F. Dibble and associates did not pay to said trustees the full amount of said purchase money, and that there remains

due on such account the sum of $472,065 and interest. And that said trustees, as vendors, have in equity a lien on said railroad and property for such sum of money, and they have demanded of said trustees that they proceed to enforce such lien irrespective of the paramount lien which complaints herein assert to exist for payment of their bonds. All of which pretenses and claims, made by the holders of said Pensacola and Georgia and Tallahassee bonds, complainants allege to be without support in fact, and they are advised that they are not well-founded in law. Complainants insist that the holders of said bonds are bound by the acts of said trustees; that such acts were done in the exercise of powers conferred upon them by the law of 1855, and that even if they acted in bad faith and corruptly when they executed and delivered the said deed of said property to said F. Dibble, and entrusted said Swepson with said money and accepted his obligation to purchase for them said outstanding bonds, complainants, as bona fide purchasers, as they allege themselves to be, without actual notice of any wrong or fraud on the part of said trustees or of said Dibble and associates, or of said Swepson, and claiming, as they do, under the title created by the contract made between the said Dibble and associates and the J., P. & M. Co., and the subsequent contract and trust created by the acts of the legislature which incorporated the said J., P. & M. Co., are not affected thereby, nor liable to be postponed to any vendor's lien in favor of said trustees, such as is asserted to exist by said P. & G. and Talla. bondholders; that the complainants' right to subject said railroad to payment of their bonds arises out of conveyances of the legal title made by the purchasers from the said trustees and those to whom they conveyed, and that there is no privity of contract between complainants and the said trustees. Complainants claim under the legal title, and therefore have a higher and better equity to payment out of said railroad and property than any which can be set up by the holders
424 of said unpaid P. & G. and Talla. bonds, and complainants insist that the P. & G. and Talla. bondholders have failed to cause the said trustees to sue the said Swepson to recover the amount due by him, and for which said trustees hold his written obligation, and complainants insist that until such proceeding has been taken and has proved to be ineffectual, and until it appears that said trustees have not lost their remedy against said Swepson by reason of any laches on their part, the said bondholders who assert that they are entitled to a lien on said railroad superior to the equities which are by complainants stated herein to exist in their favor, should be enjoined from maintaining or asserting any such lien.

Complainants insist that no such claim, as is attempted to be set up by said bondholders, should be entertained in a court of equity, because of the time which has elapsed since the happening of the events and the doing of the acts by said trustees and said Dibble and associates and said Swepson, upon which the said bondholders rely to sustain their claim, all of which transactions took place in the year 1869, and as to which the persons by whom the outstanding bonds of the P. & G. and Talla. Co's. were owned at the time had full notice, and that said Vose and many of said defendants, having like securities, have purchased within a short time for the purposes of speculation and litigation with full notice. That the persons who held said bonds in March, 1869, had notice of the transactions herein stated in relation to said railroads, which were done by said Dibble and associates, and also of the passage of the laws disposing of and transferring the said railroads, the creation of said Tallahassee and of said J., P. & M. Co's., and the authority

given by law to the latter company to create a lien on said railroads and under which lien it is that complainants seek payment of their bonds. That as such persons had such knowledge and information and did not take any proceedings, such as they might have taken, to prevent the J., P. & M. Co. from doing what they were authorized to do by their charter, they, the said holders of P. & G. and Talla. bonds, have no right now to object to any of the acts that were done by said corporation under such authority of law, but that they are estopped to deny the legal consequences which arise out of such acts. Complainants state that
425 they are advised that the said P. & G. and Talla. bonds never constituted a lien on the roads owned by said companies for any sum of money other than the principal of such bonds; that the interest thereof was secured by the land trust fund created by the act of 1855, and complainants are informed, and therefore allege, that said fund is ample security for such interest, and they insist that the holders of said bonds, whatever claim they may have, should be required to exhaust such fund before resorting to a security such as the railroad, which is not common to them and to complainants. Complainants are advised that the said bondholders had the right to have the sinking fund, which was provided by the act of 1855, collected and invested in the manner specified in said act, and in case of any loss of any part thereof by the acts of the trustees, that they had a remedy against them and also a right to have the loss made good to them out of the proceeds of the sale of the land conveyed to the trustees by the State, and complainants insist that said bondholders should be restricted to such sinking fund and to such remedies for the collection and restoration thereof as are herein stated to exist and open to be pursued by them.

XIII. That the defendants, the Western Division of the Western North Carolina Railroad Company, Milton S. Littlefield, James M. Baker, Charles B. Fenwick, Edward M. L'Engle, falsely pretending that they were bona fide holders of stock in the Florida Central Railroad Company, and claiming that they were legally authorized to elect a president and directors of said company, held an illegal meeting and chose Edward M. L'Engle president, and James M. Baker, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Joseph B. Stewart, Charles B. Fenwick, and George R. Foster, directors, none of whom were stockholders in said corporation; and they appointed Charles B. Fenwick secretary, and George R. Foster treasurer thereof; that immediately after they issued a large number of certificates of stock represented to be stock of Florida Central Railroad Company in favor of themselves and sundry other persons who have combined with them to defraud the State and the public at large, and especially to vex, harrass, and
426 injure complainants; that they have formed a plan, and are about to make and issue bonds in the name of the Florida Central Railroad Company, and to execute a mortgage of the railroad and property which was formerly owned by said corporation, and intend sharing such bonds among themselves with the intention to dispose of them for money; that said George W. Swepson has some interest in said scheme, and is to receive a large number of said bonds.

That said defendants, Littlefield, L'Engles, Sawyer, Stewart, Baker, Lawton, and others, pretend that they formed such organization and held such election under a judgment rendered by the judge of the fourth judicial circuit court of the State of Florida. Complainants are informed, and so allege, that the judgment of said court was procured by fraud. That the Western Division of the Western North Carolina Railroad Company, an insolvent corporation, acting by one Jos. B. Stew-

art, filed a petition for mandamus in said court, and by collusion with Milton S. Littlefield and said last named defendants, and others to complainants unknown, alleged said North Carolina corporation to be a stockholder in said Florida Central Railroad Company; and that said Littlefield and others were made defendants in such mandamus proceeding, and who owned no stock in said Florida Central Railroad Company, and they made no resistance to the prayer of the petition, but falsely answered that they were such stockholders; that no persons who were bona fide stockholders in said Florida Central Railroad Company were parties to such proceedings; that the persons who participated were not holders of bona fide certificates of shares of stock in said corporation, as will fully appear by the entries on the transfer book and stock ledger of said company up to the tenth day of April, 1872. And complainants insist that said judgment of said State court should be adjudged and held to be void because of the fraud in procuring the same. And the said defendants, Milton S. Littlefield, Joseph B. Stewart, N. K. Sawyer, James M. Baker, W. J. Lawton, J. C. L'Engle, Edward M. L'Engle, and the Western Division of the Western North Carolina Railroad Company should be enjoined from asserting themselves to be stockholders in or officers of said company, and that they be ordered to refrain from issuing any of the bonds, and from the execution of
427 the mortgage before alleged to be in course of preparation, and if any such papers have been executed that they should be directed to deliver them to an officer of this court to be designated herein; that the said defendants should be also required to deliver to said officer any seal in their possession which has been used by them or by any one under their authority as the seal of the Florida Central Railroad Company.

XIV. That the governor of the State of Florida has seized the whole line of railroad and the property thereunto pertaining, which was formerly owned by the Florida Central Railroad Company, as well as that from Lake City to the Apalachicola River, with the branches to Monticello and St. Marks, and has advertised the same for sale; but he has described in the advertisement the railroad from Jacksonville to Lake City as the property of the Florida Central Railroad Company, and has stated that said road is seized, and that he will sell the same for default made by said company on bonds delivered by it to the governor of the State. Complainants are satisfied that the now governor of the State deems such proceedings proper; but complainants are advised that so far as they are concerned they have the right to demand that the said railroad between Jacksonville and Lake City should be seized by the governor and sold as forming with the railroad west of Lake City an entire line, and as the property of the said J., P. & M. Co.

XV. That the governor of Florida declares in the advertisement made by him, in which he gives notice of the intended sale of the railroad from Lake City to Quincy and the branch to Monticello, and that from Tallahassee to St. Marks, that such sale will be made subject to a prior lien thereon for unpaid purchase money claimed to be due by the holders of the said bonds issued by the Pensacola and Georgia and Tallahassee Railroad Companies, and which they claim are secured as is hereinbefore set forth. Complainants insist that the governor has erred in declaring that such lien exists, and that it was his duty to make sale of said railroads and property clear of all lien or claim of any kind, and as being bound solely to pay the said bonds which complainants own and
428 which they seek in this proceeding to obtain payment of; and that the governor should be instructed by this honorable court so

to proceed in the exercise of the power of sale vested in him by the acts which incorporated the J., P. & M. Co. Complainants are satisfied that the governor is ready and willing so to do when directed by the decree of this honorable court.

XVI. That the complainants being averse to litigation, and fearing that if driven to assert what they are advised are their full rights in a court of equity, they would be subjected to great cost and delay, and being informed that said railroads and property thereto pertaining were greatly dilapidated and in bad condition to carry freight and passengers, and that no means of placing said property in proper condition by suitable construction and repair existed, sought, by making concessions to the persons by whom the said bonds issued by the Pensacola and Georgia and Tallahassee Railroad Companies are owned, to have a speedy sale of said last-mentioned railroads, and to that end they authorized an agent to act for them in the United States and to join in a plan, a copy of which is hereto annexed, marked D. And that a majority of the holders of said bonds have assented to said plan of settlement, but the said defendant, Francis Vose, combined with a minority of said bondholders and took such legal proceedings as prevents such compromise settlement from being carried into execution. Complainants are willing to consent that a decree be made and entered in this cause, making provision for the sale of the said railroads and property upon the basis in said plan contained, provided that the said trustees of the internal improvement fund, and the holders of the said bonds issued by the said Pensacola and Georgia and Tallahassee Railroad Companies, agree that such decree be made.

XVII. Complainants are informed that some time in the year eighteen hundred and seventy-five, the persons who held a majority of the shares of the stock in the Florida Central Railroad Company at the time when said transactions took place, whereby the railroad from Jacksonville to Lake City became consolidated with that owned by said J., P. & 429 M. Co., and by which means such railroad became pledged for the payment of complainants' bonds, met in Tallahassee and elected certain persons, viz, said Edward Lewis, B. Williams (now deceased), Patrick Houstoun, R. H. Gamble, C. E. Dyke, sr., E. M, L'Engle, R. Walker, C. A. Cowgill, and G. W. Betton as directors of the said Florida Central Railroad Company; that such persons took upon themselves such offices and acted therein; that no president of said corporation was attempted to be elected, but that Robert Walker was authorized to act in lieu of such president. Complainants are advised that it is not material to them whether said corporation was dissolved by the proceedings which are hereinbefore set forth, as to the consolidation of said railroads, and they do not, therefore, ask in this their bill that such dissolution be declared to have taken place, unless the same be necessary to enable the said complainants to obtain payment of their bonds; and complainants allege that if such Florida Central Railroad Company is still in existence as a corporation that the persons before mentioned are the only persons who can by law represent said company, because, as complainants are informed, there has been no meeting of the persons who held said stock in said company since that last before stated.

XVIII. That said persons acting in said capacities were parties in a certain suit commenced in the State circuit court, and finally determined in the supreme court of the State, wherein the State of Florida and trustees of the internal improvement fund were complainants in the first court, in which suit questions of law and fact were presented for

adjudication, and which were determined by said supreme court touching the liability of the line of railroad and property between Jacksonville and Lake City for the payment of the bonds delivered by the governor of the State to the J., P. & M. Co., before mentioned, and as to whether the said Florida Central Railroad Company was or not, by the acts done by its stockholders and directors, estopped from denying such liability as against the claim which complainants have hereinbefore alleged in respect to such line of railroad for payment of said bonds. The said supreme court, by its judgment rendered in said
cause, determined such questions of law and fact in favor of
430 the claim so made by complainants, and they are advised and
insist that they are entitled to rely upon, and they do herein
claim and rely upon said judgment of said supreme court as a conclusive judgment in their favor as to such matters, and as binding on the Florida Central Railroad Company, if there be such corporation, and upon all persons who claim to be owners of stock therein.

XIX. That Daniel P. Holland, who was likewise a defendant in the said case in the State circuit court, prosecuted an appeal to the supreme court from a judgment rendered by said circuit court in said cause, adverse to said Holland, which appeal was finally heard and determined by the said supreme court; that among other questions of law and fact therein made and decided, the said supreme court by its judgment determined that the acts incorporating the said J., P. & M. Co., the issuance of said bonds by Governor Reed to it, the sale thereof by said company to the complainants and others, created a trust in favor of the bona fide holders of said bonds that a lien on the railroad and property for the payment of said bonds existed, and that a power of sale by said acts of incorporation conferred on the governor of the State must be executed by him for the purpose and in the manner in said acts specified; and complainants are advised and insist that thay are entitled to and do plead and rely on such judgment in support of the claim which they herein allege to exist as to such lien, to the existence of such trusts, and as to their right to have the line of railroad, which formerly belonged to the Pensacola and Georgia and Tallahassee Railroad Company, sold by the governor in the manner and for the purposes which they have hereinbefore alleged in respect thereof. And complainants produce herewith the judgments of the said supreme court in said several cases, and pray leave to refer thereto as a part of their bill of complaint.

XX. That the said J., P. & M. Co. was a party to said suit, so brought by the State and the trustees aforesaid, and that they appear' therein, and answered the complaints filed in said suit, and admitted the issu-
ance of said bonds by the governor of the State, and did not deny
431 its liability to pay said bonds, nor that there was a lien existing
thereof, such as was determined to exist by said supreme court;
said answer was sworn to by said Milton S. Littlefield, as the president of said company; that complainant produces herewith a true copy of said answer, and prays leave to refer thereto, when necessary.

XXI. Complainants have procured the whole of said line of railroad, its workshops, depots, and rolling stock, to be examined by a competent and skillful railroad engineer, who reports that the said property is not fit for the safe transportation of passengers and freight, and cannot be profitably operated therefor; that the iron rails are badly worn, the cross-ties decayed; that the rolling stock is insufficient and old, and inadequate; that it will cost a large sum to put such property in proper condition, more than the net earnings of said railroad will furnish, and that if said road is put in good working order, a large increase of such

net earnings may be reasonably expected. Complainants are assured that money and material to put such road and property in good working order can be obtained, provided that such means when advanced by any persons can be secured to be paid out of the money arising from the sale of said road, and the same made a lien, as costs in this cause by an order of this honorable court directing the doing of such work, and authorizing the procurement of the necessary material and money therefor. Complainants are advised that the governor of the State has not the power to make any contract for such purposes, and that in consequence he cannot procure the necessary material and money; and complainants submit to this honorable court whether or not the governor of the State should be invested by an order made in this cause with the powers of a receiver to this court, and with authority and power to obtain money and purchase material for the purposes before stated, and provision made in said order providing for the needful security for payment of the liabilities to be incurred in such behalf. Complainants are informed that there is now in the hands of the treasurer of the State of Florida a sum of money amounting to about thirty thousand dollars, paid to him by Robert Walker, receiver, by order and direction of the Supreme Court of the United States, made in the cause
432 decided in said court, in which E. C. Anderson et al. were defendants, and the State of Florida plaintiff; such money is the balance of the earnings of the line of road from Lake City west, which came to the hands of said receiver, and which money the said court directed should be held by the said treasurer subject to the order of a court of competent jurisdiction; and complainants are advised that said sum of money is proper fund to be applied to the repair of said railroad and property, and they insist that they have the right to have the same so applied by order of this court.

XXII. Complainants are informed, and upon such information allege and state that the defendant, the Western Division of the Western North Carolina Railroad Company, united with said Littlefield, said Swepson, and said S. W. Hopkins & Co., in procuring the governor, Harrison Reed, to issue and deliver to said J., P. & M. Co. the said State bonds (so called) and in all the acts and representations done and made by said J. P., & M. Co., its officers and agents, and in the sale which said S. W. Hopkins & Co. made of said bonds, and that said North Carolina corporation received a portion of the proceeds of such sale, and contracted with said Swepson and said Littlefield, and with authorized agents of said J., P. & M. Co., for the payment to said North Carolina corporation, by the parties to said contract, of the sum of six hundred thousand dollars and upwards, such payment to be made out of the money to be received by said S. W. Hopkins & Co. from the sale of said bonds, to enforce which payment said North Carolina corporation brought suit, in a court of the State of New York, against said Hopkins & Co. and said J., P. & M. Co. Complainants are informed that said North Carolina corporation now alleges that the bonds held by complainants and others, which said corporation in part contributed to induce the present holders thereof, or those from whom they purchased, to take and pay for, as the bonds of the State of Florida, are not legal and valid obligations, and that the holders thereof are not entitled to the payment of the same in the manner and from the source which complainants herein assert themselves to be entitled to, and are seeking to obtain in this, their bill of complaint, all of which pretences, set
433 up by said North Carolina corporation, are made by them in bad faith, and in violation of equity and against good conscience;

the said corporation is, and should be, by the decree of this court, declared to be estopped from making the same by reason of the acts done by it in respect to the sale of said bonds, which are hereinbefore set forth, and that said corporation ought to be enjoined from making any interference with complainants' proceedings to subject said railroad and property to payment of their bonds, or from instituting any suit at law or equity against complainants or against the governor of the State for such purpose.

XXIII. That defendant, Edward M. L'Engle, has illegally possessed himself of the shares of stock which were sold by John P. Sanderson to Milton S. Littlefield; that payment therefor was made from funds received by S. W. Hopkins & Co. from the London banker, to whom they sold said Florida State bonds (so-called), which fact was well known to said Sanderson and to said L'Engle, who were, at the time of such transaction and afterwards, the attorneys of said Littlefield and of said railroad corporations, which he controlled. Said Sanderson was also an officer of said Florida Central Railroad Company, and assisted said Littlefield in the transactions before stated, which resulted in the consolidation of said railroads and the issuance and sale of said bonds. Said L'Engle has, since the said Florida State bonds (so-called) were sold, purchased from certain persons who formerly held stock in said Florida Central Railroad Company, their rights as such, whatever they may be; that he has, by use of such means, brought several suits in the State courts against sundry persons concerning the property which formerly belonged to said Florida Central Railroad Company, which suits he has dismissed after causing great damage and loss to said property thereby; and complainants are informed and believe that said L'Engle intends to institute further suits, founded on the title he has so acquired, or claims to have, with a view to compel complainants to pay him a large sum of money to buy their peace, and to hinder them from obtaining the relief herein sought.

434 XXIV. The said L'Engle has instituted a suit in this court in the name of Robert J. Washington, in which it is sought to obtain a decree declaring said Washington to be the lawful owner of all the shares of stock which said Littlefield purchased from said Swepson, said Houstoun and others. The title set up in said suit is derived from said L'Engle and one J. H. Miller, and is based solely on notes given to said L'Engle by said Littlefield without valid consideration, on the pretence of a payment by Littlefield to L'Engle for services pretended to have been rendered by said L'Engle to said Littlefield and the said Florida Central and Jacksonville, Pensacola and Mobile Railroad Companies. Complainants are informed and believe that said Robert J. Washington has no real interest in the subject-matter of said suit, and that his name is being used by said L'Engle in fraud of the jurisdiction of this court, the said L'Engle making use of the name of said Washington because he being a citizen of Florida is disqualified to sue in the courts of the United States.

XXV. Complainants are informed and believe that said defendant, Milton S. Littlefield, made some agreement with said George W. Swepson to perform the obligations which the latter undertook with said trustees to do, viz, to purchase said unpaid Pensacola & Georgia and Tallahassee Railroad Companies' bonds; that said Littlefield did, in fact, purchase of said Edward Houstoun one hundred and three of said bonds in performance of such contract, which bonds are now deposited in the registry of this court to the credit of a cause therein pending, in which Edward E. Anderson et al are plaintiffs, and the J., P. & M. Co.

et al are defendants; that said bonds are claimed by divers persons under some contract with said Littlefield, which persons had full knowledge that said bonds were paid for out of the money for which the bonds issued by Governor Reed to the said J., P. & M. Co. were sold as before set forth; said one hundred and three bonds have never been in the actual possession of said Littlefield. Complainants are advised that they should be delivered to said trustees of the internal improvement fund, and they should take such proceedings as may be necessary to procure the same to be done.

435 XXVI. That of the capital stock of the Florida Central Railroad Company, which consisted of five thousand five hundred shares, four thousand three hundred and seventy were held by Edward Houstoun at the time of his decease, which took place about two years since, as appears from the stock ledger of the Florida Central Railroad Company; that certificates of such stock were issued to said Houstoun by said company, which certificates are now in the hands of a receiver appointed by the superior court of Chatham County, in the State of Georgia, in a cause therein pending between the executors of said Houstoun and sundry other persons, in which suit the title to said stock is involved, and the right thereto sought to have determined. That said Milton S. Littlefield has made a conveyance to the western division of the Western North Carolina Railroad Company, by which he pretends to convey to said corporation a legal title to said stock, which title he falsely pretends he held at the date of such conveyance, and which false pretense was well known to the officers of said corporation, who took from him such invalid conveyance; that the same was made and accepted to aid the said corporation to sustain the before-mentioned claim of such corporation of interest in said railroad and property, and complainants insist that said corporation ought not to be allowed to make any claim under such conveyance, nor to derive any benefit or advantages therefrom.

In consideration of the premises, complainants pray that writs of subpœna may be issued out of this honorable court, directed to said defendants severally, viz: The Western Division of the Western North Carolina Railroad Company, the Jacksonville, Pensacola & Mobile Railroad Company, the Florida Central Railroad Company, Edward Lewis, Patrick Houstoun, Robert H. Gamble, Charles E. Dyke, sr., Edward M. L'Engle, Robert Walker, Clayton A. Cowgill, George W. Betton, James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, Joseph B. Stewart, Francis Vose, M. K. Jessup & Co., Chandler H. Smith,
436 S. A. Smith, sr., Smith Simkins, B. C. Lewis, D. Griffith Ambler, W. J. Hines, trustee, Mrs. A. F. Finlayson, James G. Gibbs, Edward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Falligant, Lewis F. Nicoll, George Robertson, J. A. Hunnicutt, The Peoples' Bank, William McBurney, Winthrop B. Williams, George F. Drew, governor of the State of Florida, Walter Gwynn, treasurer of the State of Florida, Hugh A. Corley, commissioner of lands and immigration, George P. Raney, attorney-general, Walter Gwynn, treasurer, Columbus Drew, comptroller, George F. Drew, governor, as trustees of the internal improvement fund, and Robert J. Washington, commanding them to be and appear before this honorable court on a day certain to be named therein, to answer the allegations of this bill:

1. And may it please your honors, to decree that complainants are entitled to be taken and held as bona fide holders of the bonds of the Florida Central Railroad Company.

2. That the entire line of railroad from Jacksonville to the Apalachicola River, with the branches to Monticello and St. Mark's, and all property, real and personal, thereto pertaining, may be decreed to be subject to a lien for the payment of complainants' bonds superior to the claims of any and all persons whatever, and especially said defendants.

3. That it may be declared by the decree of this court that the sale of the said bonds by the said Jacksonville, Pensacola & Mobile Railroad Company, issued by Harrison Reed, governor, to said company, and the representations made by said company and its agents to the purchasers thereof, and the actings and doings of the officers and stockholders of said company, and of the said Florida Central Railroad Company, herein stated and alleged, created a trust in favor of complainants, and entitles them to have the whole of said line of railroad made subject to the payment of complainants' said bonds, and that such entire line of railroad be proceeded against for such purpose, and treated as belonging to the Jacksonville, Pensacola & Mobile Railroad Company; and that the stockholders of the Florida Central Railroad Company, and such corporation, be declared to be bound by the representations which were made by the said Jacksonville, Pensacola and Mobile Rail-
437 road Company to the purchasers of said bonds before alleged herein to have been made; that the line of railroad from Jacksonville west constituted one entire line of road, was the property of said last-named corporation; and that the same was subject to a lien for the payment of the principal and interest of said bonds by the provisions of the acts incorporating said last named corporation.

4. May it please your honors to decree that complainants are entitled to the benefit of the provisions of the said acts of incorporation which created a lien on said railroad and property for payment of the bonds held by complainants; and that they are entitled to demand that the governor of Florida execute the power of sale vested in him by said acts, and that he be decreed to proceed therein in the manner and for the purposes which complainants have herein stated should be done.

5. That the defendants, the trustees of the internal improvement fund, and those who hold the Pensacola & Georgia and Tallahassee Railroad bonds, be decreed to have no longer any lien of any kind upon that portion of the said line of railroad which lies between Lake City and Quincy, with the branch to Monticello and the road from Tallahassee to St. Mark's; and that complainants have a superior equity as to such property for payment of their bonds over and above the vendor's lien claimed by said trustees and said last mentioned bondholders to exist in their favor.

6. That the Western Division of the Western North Carolina Railroad Company be decreed not to have any other right, title, or claim in respect of the line of railroad from Jacksonville to Lake City than that which the said Florida Central Railroad Company and its stockholders shall be decreed to possess, and to be subject, in like manner, to the right of complainants to have said portion of said line of railroad sold for payment of complainants' bonds.

7. That the pretended organization of said board of directors claimed to have been made under the authority of said judgment of Duval circuit court, in the suit instituted by said Western Division of the Western North Carolina Railroad Company, be declared fraudulent and void; that the said judgments be declared to be void because of the fraud
438 committed by the parties thereto; and that the said defendants, claiming to be president, directors, and officers of said Florida Central Railroad Company, be declared to have no lawful title to such

offices; that said defendants, Robert Walker, Robert H. Gamble, and the other defendants who were chosen directors of said Florida Central Railroad Company, as herein alleged by complainants, be declared to be the only proper representative of said Florida Central Railroad Company, or entitled as such to appear in this suit or otherwise act in respect of the interests of the stockholders of such company.

8. That defendants, Edward M. L'Engle and Robert J. Washington, be declared not to have any valid title to and stock in said Florida Central Railroad Company, and that as to any such stock which may have been acquired by said L'Engle, that he be decreed to hold the same subject to the claim herein alleged to exist in favor of complainants, and that he be held to have acquired the same with full notice of all the rights which are herein asserted by complainants.

9. That the bonds issued by the said defendants, E. M. L'Engle, as president, and said Foster, Fenwick, Stewart, Sawyer, and others, as directors of said Florida Central Railroad Company, be decreed to be null and void.

And may it please your honors to grant unto your orators writs of injunction, to be directed to said Western Division of the Western North Carolina Railroad Company, said Florida Central Railroad Company, and its stockholders, to said Edward M. L'Engle, said Robert J. Washington, enjoining them from instituting any proceedings at law, or in equity, in relation to said line of railroad from Jacksonville to Lake City, and its property, and from seeking to interfere with the possession thereof acquired by the said George F. Drew, governor, or from intermeddling therewith.

May it please you honors to make an order herein constituting and appointing George F. Drew, governor of the State of Florida, receiver of this court, with special power and authority to make purchases of railroad iron, material, and equipments suitable for use of said railroad, and to put said line of railroad in suitable condition for the carriage of freight and passengers, and to preserve the same from dilapidation 439 and destruction—for such purpose to apply the net earnings of said railroad thereto, and, if necessary, to make purchases on credit, to be reimbursed and paid by order of this court, and to constitute a charge on said property in like manner as the costs of the cause are by law provided; and that the said governor, as such special receiver, be authorized to demand and receive from said defendant, Walter Gwynn, treasurer, the said sum of money herein stated to be in his hands, under said order of said Supreme Court of the United States; and that the said treasurer deliver such money to said governor, which money the said George F. Drew, governor, as such special receiver, be directed to use for the repair and preservation of said line of railroad; and that such fund be regarded in the hands of said receiver as a separate and distinct fund, to be disposed of by the decree of this court to be made herein, and subject to all proper claims, if any there be, against the same; and that the said George F. Drew, as such special receiver, be directed to render to this court an account of his actings under this order, at such specified times as may be prescribed therein.

And may it please your honors to grant unto your orators such other and further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

W. G. M. DAVIS,
Solicitor for Complainants.

UNITED STATES OF AMERICA,
Northern district of Florida:

Charles D. Willard, sworn, says that he is the authorized agent and attorney of each and every of the complainants in the foregoing bill mentioned; that he has received from them, and each of them, power in writing, properly authenticated, giving him authority to institute this suit, and to act for them generally in the prosecution of the rights which said complainants in said bill have set up; that he has for a long time been in correspondence with Jacobus Wertheim, a counsellor at law, residing at Amsterdam, in Holland, and who is employed, as deponent is informed and believes, by complainants to advise them in 440 respect to their rights as such bondholders; that the correspondence between deponent and said Wertheim was wholly upon such subject, and deponent was thereby informed as to the circumstances under which said bonds were purchased by complainants, and that they held the same.

Deponent further says that he has read the proceedings, or the greater part of them, which were instituted by divers plaintiffs in the courts of the United States, and those of the State of Florida, as well as in the suits instituted in New York by the Western Division of the Western North Carolina Railroad Company; that he has seen and read proceedings of the stockholders and directors of the Florida Central Railroad Company, the sworn statements of S. W. Hopkins & Co., of Edward Houstoun, and has generally received information as to the matters in said bill set forth from various persons, attorneys, as well as others, who were familiar with such matters, and that from such means of knowledge he is able to swear, and does depose that the facts in the foregoing bill of complaint set forth he believes to be true; that as to the ownership by complainants of the bonds in the bill mentioned, deponent says he believes that they are owned held by said complainants, and that they purchased the same in good faith, believing them to be what they purported on their face to be, and such belief, deponent says, he asserts by reason of the statements made by said complainants, sworn to by them in Amsterdam, before the American consul, transmitted to deponent as such agent.

Deponent further says that the bonds of said complainants will shortly be received in the United States, and will be produced in this cause, of which fact deponent has been informed by a telegraphic dispatch sent by the Bank of Amsterdam to Mr. Adolphe Engler, of New York.

CHARLES D. WILLARD.

Sworn to and subscribed before me this 23d day of May, A. D. 1877.

FRED. T. MYERS,
Deputy Clerk United States Circuit Court,
Northern District of Florida.

441 SCHEDULE B.

No. 501.] UNITED STATES OF AMERICA, [$1,000.

STATE OF (Florida coat of arms) FLORIDA.

Bond of the Florida Central Railroad Company.

Cut of train of cars.] [Cut of steamship

Know all men by these presents that the Florida Central Railroad

Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars, for value received, which sum the said Florida Central Railroad Company promises and agrees to pay to the State of Florida on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon at the rate of eight per centum per annum, payable semi-annually, on the first days of July and January in each year, on the presentation and delivery of the proper coupons hereto attached.

This bond is one of a series of like tenor, limited to sixteen thousand dollars per mile, issued in accordance with an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine, and given in exchange for bonds issued by the State of Florida to aid the Jacksonville, Pensacola and Mobile Railroad Company, to complete, equip, and maintain its road, for an equal amount, in accordance with said act.

In witness whereof the said company has caused this bond to be signed and attested in its behalf by its president and its common seal affixed at its office, in , this first day of January, in the year 1870.

{ FLORIDA CENTRAL RAIL-
ROAD CO., 1868. }

GEORGE W. SWEPSON,
President.

H. H. THOMPSON,
Treasurer.

Issued in accordance with the provisions of an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine.

January 1st, 1870.

442 *Governor's certificate.*

EXECUTIVE OFFICE,
Tallahassee, January 31, 1877.

I, George F. Drew, governor of Florida, hereby certify that the within is a true and correct copy of original bond No. 501 now on file in office of State treasurer.

GEORGE F. DREW,
Governor.

SCHEDULE C.

No. 201.] UNITED STATES OF AMERICA, [$1,000.

STATE OF (coat of arms) FLORIDA.

Bond of the Jacksonville, Pensacola and Mobile Railroad Company.

Train of cars.] [Cut of steamship.

Know all men by these presents that the Jacksonville, Pensacola and Mobile Railroad Company acknowledges itself indebted to the State of

Florida in the sum of one thousand dollars, for value received, which sum the said Jacksonville, Pensacola and Mobile Railroad Company promises and agrees to pay to the State of Florida, on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon at the rate of eight per centum per annum, payable semi-annually, on the first days of July and January in each year, on the presentation and the delivery of the proper coupons hereunto attached.

This bond is one of a series of like tenor, limited to sixteen thousand dollars per mile, issued in accordance with an act of the legislature of the State of Florida, passed on the 24th of June, eighteen hundred and sixty-nine, entitled "An act to perfect the public works of the State"; also an act amendatory thereof, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine, and given in exchange for bonds issued by the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company for an equal amount, in accordance with said act.

In witness whereof the said company has caused this bond to be signed and attested in its behalf by its president, and its common seal affixed at its office in Tallahassee, this first day of January, in the year 1870.

[SEAL J., P. & M. R. R. CO.] M. S. LITTLEFIELD,
President.

443 Issued in accordance with the provisions of an act of the legislature of the State of Florida, approved the 24th of June, 1869, entitled "An act to perfect the public works of the State"; also an act amendatory thereof, approved January 28th, eighteen hundred and seventy, entitled "An act to perfect the public works and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine.

January 1st, 1870.

STATE OF FLORIDA, EXECUTIVE OFFICE,
Tallahassee, February 14, 1877.

I, George F. Drew, governor of the State of Florida, do hereby certify that the within is a true and correct copy of bond No. 201 of the J., P. & M. R. R. Co., now on file in the office of the State treasurer.

GEO. F. DREW,
Governor.

SCHEDULE D.

Memorandum plan.

(Bijlage A.)

For the reorganization of the Jacksonville, Pensacola and Mobile Railroad Company, and the Florida Central Railroad Company of Florida, to be agreed upon by and between Frank R. Sherwin, agent of the owners and holders of the bonds of the State of Florida issued in aid of said railroad companies, of the first part, and the owners and holders of the first mortgage bonds of the the Pensacola and Georgia and Tallahassee Railroad Companies of said State, issued under the provisions of the act of January 6th, 1855, generally known as the "internal improvement act," represented by Henry R. Jackson, of Savannah, in the State of Georgia, and Charles H. Simonton, of Charleston, in the State of South Carolina, of the second part.

The object to be sought in said reorganization shall be the formation, under the general incorporation laws of said State, of a new company, under the name and style of "The Jacksonville and Mobile Railroad Company," for the purpose of purchasing the present lines of constructed railroads between Jacksonville and Chattahoochee, and Tallahassee and St. Marks, with branch at Monticello Junction, together with all their rolling-stock, depots, machine-shops and all their other property, and of completing the said line of road to Mobile. in the State of Alabama.

To this end it is agreed between the said parties that the
444 line of completed railway, to wit, the roads extending from Lake
City to Chattahoochee, and from Tallahassee to St. Marks, known as the Jacksonville, Pensacola and Mobile Railroad, and the road extending from Jacksonville to Lake City, known as the Florida Central Railroad, together with all their depots, rolling-stock, machine shops, and all their other saleable property, shall be sold at public outcry, in accordance with law, so soon as the following antecedent arrangements, numbered "first" and "second," shall have been completed:

First. The said, the parties to this agreement, shall, within 30 days, select three persons, who shall act as trustees in discharge of the trusts hereinafter set out; any vacancy in their number occurring by death or otherwise to be filled by the surviving trustees.

Second. The said bonds and coupons of the Pensacola and Georgia and Tallahassee Railroad Companies, held by the said parties of the second part, and the said bonds and coupons of the State of Florida, issued in aid of the said the Jacksonville, Pensacola and Mobile Railroad Company, and the said the Florida Central Railroad Company, shall be placed in the hands or under the control of the said trustees so selected for the purpose of said trust, within thirty days from the date of the acceptance of their appointment.

The said the governor shall offer at public sale, according to law, said line of railroads, together with all their depots, rolling-stock, machine shops, and all their other property, or such portions of it as may be legally saleable; and at the said sale, the said trustees shall bid for the said property so to be exposed for sale, to the extent, if necessary, of the par value of the said bonds and past due coupons of the State of Florida so placed under their control, the aggregate amount in dollars and cents, of which said bonds and past due coupons shall be treated and received as cash at said sale by the said governor, and if such bid be the highest made at such sale or sales, the said line of railroad, together with all of its property as hereinbefore detailed, shall be struck off to the said trustees so bidding, and upon the delivery to the said the governor of the said bonds and past due coupons last mentioned, he shall immediately cause the said trustees so bidding to be placed in the actual possession of all said railroad property, and full title shall be made to said trustees by the governor, the same to be held by them subject to the following conditions, namely: In trust to be conveyed by them to the said "Jacksonville and Mobile Railroad Company," after the following arrangements and conditions shall have been perfected and complied with.

First. Such title to the line of railroad now known as the Flor-
445 ida Central, extending from Jacksonville to Lake City; and such
title to the Jacksonville, Pensacola and Mobile Railroad, which extends from Lake City to the Chattahoochee River, and from Tallahassee to St. Mark's; and such right of franchise to continue the construction of said line of railway westward to the city of Mobile, as may not be perfected in the said selected trustees, by the said sale as hereinbefore provided, shall be perfected in the said the Jacksonville and

Mobile Railroad Company, through the action and agency of the said party of the first part, and shall be so perfected as not to leave any lien or incumbrance upon said last mentioned title or property, which shall be superior to the special mortgage lien to be created as hereinafter provided. The provisions of this clause, numbered first, to be practically carried out by the said party of the first part within six (6) months from the date of this agreement.

Second. Title having been so perfected in the said the Jacksonville and Mobile Railroad Company, that company shall execute an obligation in writing to the said, the selected trustees, stipulating that immediately after conveyance made to it, the said railroad property, so to be purchased as aforesaid by them (the said selected trustees), the said the Jacksonville and Mobile Railroad Company shall cause the entire line of constructed railroads heretofore named to be bonded at the rate of not more than twelve thousand dollars ($12,000) per mile, which bonds shall be due forty years from date, bearing interest at the rate of five (5) per cent. per annum, payable semi-annually either in New York City or Amsterdam, Holland, at the option of the holders, principal and interest payable in gold, which bonds shall be a first mortgage lien upon said line of railroad, its depots, machine shops, rolling stock, and all of its other property.

That distinct provision shall be made in said mortgage for the issue, in the first place, of a series of said bonds equal in amount only to the par value of said surrendered bonds and Georgia and Tallahassee Railroad Companies, in the event that the said lines of road formerly known as the Pensacola and Georgia and Tallahassee Railroads should be bid off by the said selected trustees at a sum below or not exceeding the aggregate amount of said last mentioned bonds and past due coupons; but should the said last mentioned roads be so bid off at a sum equal to or exceeding the aggregate amount of principal of said bonds and past due coupons and interest on said coupons, then the first series of bonds to cover the full amount of said last mentioned aggregate, and this first and distinct series of bonds so issued shall constitute a prior lien upon the said line of railroad and its said property, to secure the payment of the interest and principal of the same when due; and the first
446 said series of bonds, when so issued, shall be delivered to the owners of the said surrendered bonds and coupons of the said Pensacola and Georgia and Tallahassee Railroad Companies, whereupon the said last mentioned bonds and coupons shall be held by said trustees in trust, to be delivered to the trustees of the internal improvement fund of Florida for cancellation, so soon as all of the same class of bonds now outstanding shall have been surrendered to the said selected trustees, whether in exchange for the said new first mortgage bonds or otherwise.

That provision shall also be made in said mortgage, that in case of default for one year by said new company in payment of interest on any of the bonds, foreclosure of said mortgage may be made for the entire amount of indebtedness secured by it, both principal and interest, and the said road and all of its property may be sold, and the proceeds derived from such sale shall be first applied to the payment of the said first series of bonds, principal and interest, and the surplus, if any, shall be applied toward the payment of the remaining or second series of said bonds.

That provision shall also be made in said mortgage for the creation, at the expiration of three years from the organization of said company, of a sinking-fund of one per cent. per annum in gold, payable semi-annually, upon its said bonded debt, which said sinking-fund shall be semiannually applied, as paid, to the redemption at par of the said bonds of said company, the numbers of which shall be selected by lot, and the said first series of said bonds of said company, issued as aforesaid, shall have priority of payment out of said sinking-fund.

A draft of said contemplated bonds and mortgage, to be approved by the selected trustees, shall be appended as an exhibit to the said written obligation, and also a copy of the proposed charter of the said Jacksonville and Mobile Railroad Company, showing powers in the said new corporation to issue such bonds and to execute such mortgage.

It shall be further stipulated in said written obligation that a sufficient number of the second series of said bonds shall be set apart and used for the purpose of placing said line of constructed railroad in first-class order and repair as to road-bed, rolling stock, and otherwise, and that said new railroad company shall be managed by a board of directors, consisting of not more than seven nor less than five members, who shall be named by the owners or holders of said State bonds, but who shall be acceptable to said selected trustees; and that in case of vacancy in said board of directors or officers of said company, by death, resignation, or otherwise, notice of any intended new appointment shall be given to the said selected trustees; and a protest in writing, 447 signed by the owners representing a majority of the said first series of bonds of said company, shall operate to prevent the appointment to fill said vacancy; this provision to continue in operation for the period of six years from the organization of the said new company.

It is also further stipulated and agreed that all funds necessary to meet the costs and expenditures incurred in such sale or sales, and in perfecting said titles thereafter, shall be supplied by the said party of the first part.

In witness whereof, we, the said parties to this agreement, have hereunto set our hands and affixed our seals interchangeably, this 12th day of January, A. D. 1877, at Savannah, Georgia.

FRANK R. SHERWIN.
HENRY R. JACKSON.
CHARLES H. SIMONTON.

Signed, sealed, and delivered in the presence of—
(Geteekend) VINCENT L. STARR, *N. P.*

44l2422 Ontvangen voor zegleregt Vijftig Cent.
Amsterdam, den vijftienden Februarij 1800 Zeven en Zeventig.
De ontvanger B. A. No. I.
KNIPSCHEER.

Gergistereerd to Amsterdam den Vijftienden Februari 1800 Zeven en Zeventig, Deel 108, blad 145 No. vak 1, twee bladen geen renvooi, ontvangen voor regt *f* 0.80 voor 38 opcenten *f* 0.305, te zamen een Gulden tien en een halve Cent. De ontvanger B. A. No. 1.
(Geteekend)
KNIPSCHEER.

Uitegeven voor Afschrift van vorenstaand stuk gededeponeered onder de minuten van den ondergeteekende.

Jean Charles Gerald Pollones, notaries, residerende te Amsterdam, blijkens acte den veertienden Februari 1800 zeven ze zeventig, ten zijnen overstann vereeden.

(Geteekend) J. C. G. POLLONES, *Notaris.*

Filed May 23rd, 1879.

PHILIP WALTER, *Clerk.*

W. G. M. DAVIS, *Sol.*

448 In the circuit court of United States, northern district of Florida. In equity.

The joint and separate answer of J. Fred. Schutte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J. Brunnekruff, J. H. Grem, Willenmier Van Tyer Van Taer, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaar, jr., Jacobus Wertheim, P. Van Reysen, May de Benedithy Beer, Gerard A. Heineken, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyen, N. J. Franket, Johannes Willem Donk, Vander Stoop & Berg, defendants, to the amended bill of complaint of the Western Division of the Western North Carolina Railroad Company against the Jacksonville, Pensacola & Mobile Railroad Company, J. Fred. Schutte, and others.

These defendants saving and reserving unto themselves all and all manner of benefit and advantage of exceptions to the many errors 449 uncertainties, and insufficiencies in the said amended bill of complaint contained, for answer thereunto or so much and to such parts thereof as they are advised is or are material for them to make answer unto, answering, say:

That each and every allegation, statement, matter or thing in said amended bill of complaint contained is untrue, and these defendants expressly deny the same.

These defendants, further answering, say that on the 23d day of May, A. D. 1877, these defendants exhibited their bill of complaint in this honorable court against the Jacksonville, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company, two corporations created by and existing under the laws of the State of Florida, and others, defendants, a copy of which bill of complaint is hereto attached and marked Exhibit No. 1.

And these defendants, further answering, say that all the allegations, statements, matters and things alleged, stated, and set forth in 450 their said bill of complaint are true, and these defendants pray that the copy of said bill of complaint hereto attached may be taken and considered as a part of this their answer, with the same effect as if the said matters, allegations, and things therein contained where herein and now repeated and set forth in proper and apt language in that behalf.

These defendants, further answering, say that the said complainant, the said Western Division of the Western North Carolina Railroad Company, give out and pretend that it was the owner of the said Jacksonville, Pensacola and Mobile Railroad, so called, before and at the time when the said Jacksonville, Pensacola and Mobile Railroad Company made, executed and delivered its said bonds to the State of Florida, as hereinbefore stated, and that for that reason the said bonds are not a valid lien upon said railroad.

But these defendants, further answering, say that the said 451 Western Division of the Western North Carolina Railroad Company, aided and assisted the said Jacksonville, Pensacola and

Mobile Railroad Company in obtaining from the State of Florida the bonds of said State, as hereinbefore stated, in exchange for said railroad bonds, as hereinbefore stated, and in selling and disposing of the same, and to aid in the selling thereof said complainant did hold out and represent to the purchasers of said State bonds that the same were legal and valid, and issued in exchange for said railroad bonds, as hereinbefore stated, and that said last named bonds were a valid and legal lien upon said railroad, and that the purchaser of said bonds, and especially these defendants, purchased the same on the faith and credit of said representations made by said complainant, and that the said complainant shared in and received to its own use a part of the avails of the sale of said State bonds; these defendants therefore submit and insist that the said complainant is therefore estopped to insist that said rail- 452 road company bonds are not a lien upon the said railroad, and is estopped to set up or pretend any title to said railroad as against these defendants, and these defendants, further answering, say that the Jacksonville, Pensacola & Mobile Railroad Company has been for more than seven years next before the commencement of this suit in possession of the said J., P. & M. Railroad under claim & color of title. Without this, that there is any other matter or thing in the said complainants said amended bill of complaint contained, and not herein and hereby well and sufficiently answered unto, is true to the knowledge and belief of these defendants; and these defendants humbly pray to be hence dismissed with their costs most unreasonably sustained.

W. G. M. DAVIS,
Solicitor for Defendants.

(Indorsed:) Filed May 23d, 1879. P. Walter, clerk. W. G. M. Davis, sol.

453 EXHIBIT NO. 1.

Circuit court of the United States, northern district of Florida. In equity.

To the honorable the judges of the circuit court of the United States for the northern district of Florida:

J. FRED. SCHUTTE, JAN. PRINS, ADRIANUS PRINS, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, J. H. Brunnekruff, J. H. Grem, Willenmier Van Tyer Van Taer, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaar, jr., Jacobus Wertheim, P. Van Reysen, May de Benedithy Beer, Gerard A. Heineken, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyen, N. J. Franket, Johannes Willem Donk, Vander Stoop & Berg, who are aliens and subjects of the King of the Netherlands, bring this their bill of complaint, in their own behalf, and in behalf of such other persons, having like claims, who may come in and be made parties plaintiffs herein and contribute to the expenses thereof,

against

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, a corpora-

tion created by and existing under the laws of said State, and a citizen thereof, the Jacksonville, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company, corporations created by and existing under the laws of the State of Florida, and citizens thereof, Edward Lewis, Patrick Houstoun, Robert H. Gamble, Charles E. Dyke, sr., Edward M. L'Engle Robert Walker, Clayton A. Cowgill, George W. Betton, directors in said last mentioned corporation, and who are citizens of the State of Florida; James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, who are citizens of the State of Florida, and Joseph B. Stewart, who is a citizen of the
454 State of New York, claiming to be directors in said Florida Central Railroad Company; Francis Vose, who is a citizen of the State of New York; M. K. Jessup & Co., who are citizens of the same State; Chandler H. Smith, S. A. Smith, sr., Smith Simkins, B. C. Lewis, D. Griffith Ambler, W. J. Hines, trustee, Mrs. A. F. Finlayson, James G. Gibbes, who are citizens of the State of Florida; Edward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Falligant, Lewis F. Nicoll, George Robertson, J. A. Hunnicutt, who are citizens of the State of Georgia: The Peoples' Bank, a corporation created by and existing under the laws of the State of South Carolina, and a citizen of said State; William McBurney, Winthrop B. Williams, who are citizens of the State of South Carolina; George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer of the State of Florida; Hugh A. Corley, commissioner of lands and immigration of the State of Florida; George P. Raney, attorney-general; Walter Gwynn, treasurer; Columbus Drew, comptroller, George F. Drew, governor, which officers are trustees of the internal improvement fund, and herein sued as such; Milton S. Littlefield, in his own right; Robert J. Washington, who is a citizen of the State of Virginia.

And thereupon your orators complain and say:

I. That on the 20th of March, 1869, the trustees of the internal improvement fund, acting under the powers conferred upon them by an act of the general assembly of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, 1855, took possession of and sold at public auction the railroads and property which belonged to and were used by the Pensacola and Georgia and Tallahassee Railroad Companies, which railroads extended from Lake City to Quincy, with a branch to

Monticello, and from Tallahassee to St. Mark's. Said sale was made because of non-compliance with the third section of said law.

II. That said sale was fairly conducted, and made in strict compliance
with the provisions of said law; that the aggregate amounts
455 for which said roads were sold was the sum of one million four
hundred and fifteen thousand dollars, which sum exceeded the
total amount of the principal of all the bonds then outstanding, which
were issued by said corporations under the said law.

III. That F. Dibble and associates purchased said roads at said sale, and paid the purchase money, and the said trustees made deeds under their seals, by which they conveyed said property to said purchasers, reciting therein the payment of the purchase moneys, which deeds they delivered to said Dibble, and immediately placed him in possession of said railroads and property.

IV. That complainants have been informed within a short period that part of said purchase money was accepted by said trustees in said bonds issued by the said corporations, which they immediately cancelled, and the balance was placed by said trustees in the hands of Geo. W. Swepson, as agent of said trustees, with directions to purchase and deliver to them for cancellation the outstanding of said bonds of said companies, which were entitled to payment out of said fund; that said Swepson was a man in good credit, reputed to be worth at least a half million of dollars, and had that amount in Florida; that the said trustees acted in the premises within the scope of their authority and in good faith, and to carry into execution the powers with which they were vested by law.

V. That said Dibble and associates afterward became incorporated by an act of the legislature of Florida, under the name and style of Tallahassee Railroad Company, for the purpose of operating the said railroads to which they had so acquired title. Afterwards the said Tallahassee Railroad Company, and said Dibble and associates, conveyed the said railroads to the Jacksonville, Pensacola and Mobile Railroad Company, of which Geo. W. Swepson and Milton S. Littlefield
owned nearly the entire stock.

456 VI. That in the year 1870, the last-named company, which will
hereafter be spoken of as the J., P. & M. Co., obtained from the
governor of Florida, Harrison Reed, four thousand bonds of one thousand dollars each, which were issued by said governor in accordance with the laws incorporating said J. P. & M. Co., and which bonds purported to obligate the State of Florida to pay to the bearer thereof one thousand dollars on each bond, with interest at the rate of eight per cent. per annum, a copy of one of which bonds is hereto annexed, marked A, and prayed to be referred to.

VII. The said J., P. & M. Co. delivered to the governor of said State, in exchange for said four thousand bonds, which he received from him, a like amount of bonds, three thousand of which were executed by the said J., P. & M. Co. and one thousand by the Florida Central Railroad Company. Said bonds were for the sum of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable to the State of Florida. Copies of each description of said bonds are filed herewith, marked B and C, and prayed to be referred to. The execution and delivery of said bonds was done by said companies in order to comply with the terms of the laws incorporating the said J., P. & M. Co.

VIII. That when the said bonds were executed by the Florida Central Company, Milton S. Littlefield owned a large majority of its stock, and he had contracted to buy from Edward Houstoun, J. P. Sanderson,

and others stock owned by them, which, added to his own, constituted all the shares of said company except about four hundred. The whole number was 5,500. That such purchases were made by said Littlefield for the purpose of making a consolidation of the Florida Central with the J., P. & M. Co., which object was known to the parties from whom Littlefield purchased said stock, and they sold to aid therein; that the one thousand bonds issued as bonds of the Florida Central Railroad Company and delivered to the governor were caused to be executed and delivered by the joint action of said Houstoun and said other stockholders, in order to enable the said J. P. & M. Co. to obtain from the governor the Florida State bonds (so called), and with the understanding and agreement
457 that said bonds should be sold, and said Littlefield should make payment for the stock purchased from said Houstoun and said other stockholders out of the proceeds, which he in fact did, with the exception of the stock which he purchased from said Gamble, for which he paid in part only; that the holders of some shares of stock in said Florida Central Company, other than those beforementioned, although they had notice of the acts and intentions of said Littlefield, Houstoun, and said other stockholders in the foregoing paragraph set forth, took no steps to prevent the execution thereof, and remained inactive and acquiescent until long after the sale which was made of the Florida State bonds (so called), as is hereinafter set forth; that the said Littlefield, and the others who were connected with him in the management of the J., P. & M. Co., immediately after the issuance of the Florida State bonds (so called), took possession of and operated the line of railroads which formerly belonged to the Florida Central, which lies between Jacksonville and Lake City, and treated it as constituting, with the roads formerly belonging to the Pensacola & Georgia and Tallahassee Railroad Company, and which had become the property of the J., P. & M. Co., in the manner before stated, as the line of railroads of the said J., P. & M. Co., and took and disposed of the earnings of the whole. In the year 1871 said J., P. & M. Co. conveyed the whole of said roads by deed to trustees to pay debts due by the J., P. & M. Co., in which deed the line of railroad from Jacksonville to Lake City was treated and conveyed as the property of the J., P. & M. Co. The said trustees took possession of and operated the said road conveyed to them for a considerable space of time, and without any interference on the part of any bona fide stockholders of the said Florida Central Company.

IX. That the said J., P. & M. Co. sent the bonds which they obtained from the governor of Florida to England, and sold nearly all through an agent in the city of London. Such sale was made to a banker in said city, at the price of about one hundred and thirty-eight pounds sterling per bond. The said buyer afterwards resold the said bonds through bankers in the city of Amsterdam, Holland, by whom they were
458 offered for sale to the public in said city and in other parts of the Netherlands, and which said bonds were dealt in on the stock exchange of Amsterdam as other public securities were, in full reliance by all purchasers upon the representations which were made in respect to such bonds, which are hereinafter set forth and stated; that said bonds bore a good price so long as the interest was paid thereon, bringing at one time as high as eighty-one per cent. gold in United States coin.

X. The said J., P. & M. Co., through its agents in London, represented to the public in England, Holland, Germany, and France, that the said bonds were veritable and lawful obligations of the State of Florida, that the interest thereon would be punctually paid by said State, that there was provided by law of said State as a security for the payment of said bonds a lien on the whole line of railroad from Jacksonville west; which line was represented to be owned by the J., P. & M. Co. alone. That the banker by whom they were purchased in London repeated the same representation to the bankers in Amsterdam, and they to the public in the Netherlands and to complainants, as well as to others who purchased, sold, and dealt in said bonds.

XI. That complainants are the owners of a large number of the said bonds issued by Governor Harrison Reed to the said J., P. & M. Co., and sold by its agents as before set forth, which bonds are numbered between number one and number three thousand two hundred; the numbers belonging to each of complainants are stated in affidavits made by them before the American consul in Amsterdam, which affidavits are filed herewith and are prayed to be referred to as a part of this bill. Complainants are ready to produce said bonds when required, and will be able to produce them upon their arrival in the United States, they being on the way from Amsterdam to New York, to which latter place they have been sent by complainants to Adolphe Engler, as agent of complainants, entrusted by them to deal with said bonds as may be determined to be for the interest of complainants by their agent, Charles D. Willard, and their counsel. That interest from the 1st day of
459 January, 1873, is due and unpaid on said bonds, and they have applied to the governor of the State of Florida to enter upon and seize and take possession of the line of railroads and property thereto pertaining, before described as belonging to the said J., P. & M. Co., including an extension of said railroad, which has been constructed by the said company from Quincy to the Apalachicola River since the year 1870; and complainants say they have a right to have said railroads seized and sold for the payment of the principal and interest of the bonds held by them; and in case they should desire to become purchasers at said sale, they should be permitted to make payment with their said bonds as far as they may be sufficient therefor.

That interest was paid on said bonds after they were sold up to January 1st, 1873, semi-annually, by a trust company in the city of New York, which was appointed by the governor of Florida as the fiscal agent of the State to pay such interest; that the said governor gave notice to the holders of such bonds of such appointment; that it was represented to the persons who dealt in said bonds, including complainants, that the money for the payment of such interest was provided by the State; that owing to such an occurrence and such information the belief that such bonds were lawfully issued by the governor of Florida was greatly strengthened, and full faith was also given to all that had been represented by said J., P. & M. Co. as to the extent of its own line of railroads.

XII. Complainants are informed that defendants, Francis Vose, M. K. Jessup & Co., Chandler H. Smith, S. A. Smith, sr., Smith Simpkins, B. C. Lewis, D. Griffith Ambler, W. J. Hines, trustee, Mrs. A. F. Finlayson, James G. Gibbs, Edward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Falligant, Louis F. Nicoll, George Robertson, The People's Bank, William McBurney, and Winthrop B. Williams, together with other persons whose names and citizenship are to complainants unknown, allege that they are the holders of the outstanding and unpaid bonds which were issued by the Pensacola and Georgia and Tallahassee Railroad Companies under the provision of the 3d section of the internal improvement act of 1855, and that there is a subsisting lien on the railroads which were sold by said trustees to F.
460 Dibble and associates, for the payment of said bonds, and said defendants at times assert that the original lien and power of sale given by the act aforesaid is still in force, and other times they assert

that the said F. Dibble and associates did not pay to said trustees the full amount of said purchase money, and that there remains due on such account the sum of $472,065 and interest. And that said trustees, as vendors, have in equity a lien on said railroad and property for such sum of money, and they have demanded of said trustees that they proceed to enforce such lien irrespective of the paramount lien which complainants herein assert to exist for payment of their bonds. All of which pretenses and claims, made by the holders of said Pensacola and Georgia and Tallahassee bonds, complainants allege to be without support in fact, and they are advised that they are not well founded in law. Complainants insist that the holders of said bonds are bound by the acts of said trustees, that such acts were done in the exercise of powers conferred upon them by the law of 1855, and that even if they acted in bad faith and corruptly when they executed and delivered the said deed of said property to said F. Dibble, and entrusted said Swepson with said money, and accepted his obligation to purchase for them said outstanding bonds, complainants, as bona fide purchasers, as they allege themselves to be, without actual notice of any wrong or fraud on the part of said trustees, or of said Dibble and associates, or of said Swepson, and claiming, as they do under the title created by the contract made between the said Dibble and associates and the J., P. & M. Co., and the subsequent contract and trust created by the acts of the legislature which incorporated the said J., P. & M. Co., are not affected thereby, nor liable to be postponed to any vendor's lien in favor of said trustees, such as is asserted to exist by said P. & G. and Talla. bondholders, that the complainants' right to subject said railroad to payment of their bonds arises out of conveyances of the legal title made by the purchasers from the said trustees and those to whom they conveyed, and that there is no privity of contract between complainants and the said trustees. Complainants claim under the legal title, and therefore have a higher and better equity to payment out of said railroad and property than
461 any which can be set up by the holders of said unpaid P. & G. and Talla. bonds, and complainants insist that the P. & G. and Talla. bondholders have failed to cause the said trustees to sue the said Swepson to recover the amount due by him, and for which said trustees hold his written obligation, and complainants insist that until such proceeding has been taken and has proved to be ineffectual, and until it appears that said trustees have not lost their remedy against said Swepson by reason of any laches on their part, the said bondholders, who assert that they are entitled to a lien on said railroad superior to the equities which are by complainants stated herein to exist in their favor, should be enjoined from maintaining or asserting any such lien.

Complainants insist that no such claim as is attempted to be set up by said bondholders should be entertained in a court of equity, because of the time which has elapsed since the happening of the events and the doing of the acts by said trustees and said Dibble and associates and said Swepson, upon which the said bondholders rely to sustain their claim, all of which transactions took place in the year 1869, and as to which the persons by whom the outstanding bonds of the P. & G. and Talla. Co's were owned at the time had full notice, and that said Vose and many of said defendants, having like securities, have purchased within a short time for purposes of speculation and litigation with full notice. That the persons who held said bonds in March, 1869, had notice of the transactions herein stated in relation to said railroads which were done by said Dibble and associates, and also of the passage of the laws disposing of and transferring the said railroads, the creation

of said Tallahassee and of said J., P. & M. Co's, and the authority given by law to the latter company to create a lien on said railroads, and under which lien it is that complainants seek payment of their bonds. That as such persons had such knowledge and information and did not take any proceedings, such as they might have taken, to prevent the J., P. & M. Co. from doing what they were authorized to do by their charter, they, the said holders of P. & G. and Talla. bonds, have no right now to object to any of the acts that were done by said corporation under such authority of law, but that they are estopped to deny the legal consequences which arise out of such acts. Complainants
462 state that they are advised that the said P. & G. and Talla.
bonds never constituted a lien on the roads owned by said companies for any sum of money other than the principal of such bonds; that the interest thereof was secured by the land trust fund created by the act of 1855, and complainants are informed, and therefore allege, that said fund is ample security for such interest, and they insist that the holders of said bonds, whatever claim they may have, should be required to exhaust such fund before resorting to a security such as the railroad, which is not common to them and to complainants. Complainants are advised that the said bondholders had the right to have the sinking fund which was provided by the act of 1855 collected and invested in the manner specified in said act, and in case of any loss of any part thereof by the acts of the trustees, that they had a remedy against them, and also a right to have the loss made good to them out of the proceeds of the sale of the land conveyed to the trustees by the State, and complainants insist that said bondholders should be restricted to such sinking fund and to such remedies for the collection and restoration thereof as are herein stated to exist and open to be pursued by them.

XIII. That the defendants, the Western Division of the Western North Carolina Railroad Company, Milton S. Littlefield, James M. Baker, Charles B. Fenwick, Edward M. L'Engle, falsely pretending that they were bona fide holders of stock in the Florida Central Railroad Company, and claiming that they were legally authorized to elect a president and directors of said company, held an illegal meeting and chose Edward M. L'Engle president, and James M. Baker, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Joseph B. Stewart, Charles B. Fenwick, and George R. Foster directors, none of whom were stockholders in said corporation; and they appointed Charles B. Fenwick secretary, and George R. Foster treasurer thereof; that immediately after they issued a large number of certificates of stock represented to be stock of Florida Central Railroad Company in favor of themselves and sundry other persons who have combined with them to defraud the State and the public at large, and especially to vex, harrass, and
463 injure complainants; that they have formed a plan, and are about
to make and issue bonds in the name of the Florida Central Railroad Company, and to execute a mortgage of the railroad and property which was formerly owned by said corporation, and intend sharing such bonds among themselves with the intention to dispose of them for money; that said George W. Swepson has some interest in said scheme, and is to receive a large number of said bonds.

That said defendants, Littlefield, L'Engles, Sawyer, Stewart, Baker, Lawton, and others, pretend that they formed such organization and held such election under a judgment rendered by the judge of the fourth judicial circuit court of the State of Florida. Complainants are informed, and so allege, that the judgment of said court was procured by fraud. That the Western Division of the Western North Carolina Railroad Company, an insolvent corporation, acting by one Jos. B. Stewart, filed a petition for mandamus in said court, and by collusion with Milton S. Littlefield and said last named defendants, and others to complainants unknown, alleged said North Carolina corporation to be a stockholder in said Florida Central Railroad Company; and that said Littlefield and others were made defendants in such mandamus proceeding, and who owned no stock in said Florida Central Railroad Company, and they made no resistance to the prayer of the petition, but falsely answered that they were such stockholders; that no persons who were bona fide stockholders in said Florida Central Railroad Company were parties to such proceedings; that the persons who participated were not holders of bona fide certificates of shares of stock in said corporation, as will fully appear by the entries on the transfer book and stock ledger of said company up to the tenth day of April, 1872. And complainants insist that said judgment of said State court should be adjudged and held to be void because of the fraud in procuring the same. And the said defendants, Milton S. Littlefield, Joseph B. Stewart, N. K. Sawyer, James M. Baker, W. J. Lawton, J. C. L'Engle, Edward M. L'Engle, and the Western Division of the Western North Carolina Railroad Company should be enjoined from asserting themselves to be stockholders in or officers of said company, and that they be ordered to refrain from issuing any of the bonds, and from the execution 464 of the mortgage before alleged to be in course of preparation, and if any such papers have been executed that they should be directed to deliver them to an officer of this court, to be designated herein; that the said defendants should be also required to deliver to said officer any seal in their possession which has been used by them or by any one under their authority as the seal of the Florida Central Railroad Company.

XIV. That the governor of the State of Florida has seized the whole line of railroad, and the property thereto pertaining, which was formerly owned by the Florida Central Railroad Company, as well as that from Lake City to the Apalachicola River, with the branches to Monticello and St. Mark's, and has advertised the same for sale; but he has described in the advertisement the railroad from Jacksonville to Lake City as the property of the Florida Central Railroad Company, and has stated that said road is seized and that he will sell the same for default made by said company on bonds delivered by it to the governor of the State. Complainants are satisfied that the now governor of the State deems such proceedings proper; but complainants are advised that so far as they are concerned they have the right to demand that the said railroad between Jacksonville and Lake City should be seized by the governor and sold as forming with the railroad west of Lake City an entire line and as the property of the said J., P. & M. Co.

XV. That the governor of Florida declares in the advertisement made by him, in which he gives notice of the intended sale of the railroad from Lake City to Quincy and the branch to Monticello and that from Tallahassee to St. Mark's, that such sale will be made subject to a prior lien thereon for unpaid purchase money claimed to be due by the holders of the said bonds issued by the Pensacola and Georgia and Tallahassee Railroad Companies, and which they claim are secured as is hereinbefore set forth. Complainants insist that the governor has erred in declaring that such lien exists, and that it was his duty to make sale of said railroads and property, clear of all lien or claim of any kind, and as being bound solely to pay the said bonds which complainants

465 own and which they seek in this proceeding to obtain payment of; and that the governor should be instructed by this honorable court so to proceed in the exercise of the power of sale vested in him by the acts which incorporated the J., P. & M. Co. Complainants are satisfied that the governor is ready and willing so to do when directed by the decree of this honorable court.

XVI. That the complainants being averse to litigation, and fearing that if driven to assert what they are advised are their full rights in a court of equity they would be subjected to great cost and delay, and being informed that said railroads and property thereto pertaining were greatly dilapidated and in bad condition to carry freight and passengers, and that no means of placing said property in condition by suitable construction and repair existed, sought, by making concessions to the persons by whom the said bonds issued by the Pensacola and Georgia and Tallahassee Railroad Companies are owned, to have a speedy sale of said last mentioned railroads, and to that end they authorized an agent to act for them in the United States and to join in a plan, a copy of which is hereto annexed marked D. And that a majority of the holders of said bonds have assented to said plan of settlement, but the said defendant, Francis Vose, combined with a minority of said bondholders and took such legal proceedings as prevents such compromise settlement from being carried into execution. Complainants are willing to consent that a decree be made and entered in this cause, making provision for the sale of the said railroads and property upon the basis in said plan contained, provided that the said trustees of the internal improvement fund and the holders of the said bonds issued by the said Pensacola and Georgia and Tallahassee Railroad Companies agree that such decree be made.

XVII. Complainants are informed that some time in the year eighteen hundred and seventy-five the persons who held a majority of the shares of the stock in the Florida Central Railroad Company at the time when said transactions took place, whereby the railroad from Jacksonville to Lake City became consolidated with that owned 466, 467 by said J., P. & M. Co., and by which means such railroad became pledged for the payment of complainants' bonds, met in Tallahassee and elected certain persons, viz: said Edward Lewis, B. Williams (now deceased), Patrick Houstoun, R. H. Gamble, C. E. Dyke, sr., E. M. L'Engle, R. Walker, C. A. Cowgill, and G. W. Betton, as directors of the said Florida Central Railroad Company; that such persons took upon themselves such offices and acted therein; that no president of said corporation was attempted to be elected, but that Robert Walker was authorized to act in lieu of such president. Complainants are advised that it is not material to them whether said corporation was dissolved by the proceedings which are hereinbefore set forth as to the consolidation of said railroads, and they do not, therefore, ask in this their bill that such dissolution be declared to have taken place unless the same be necessary to enable the said complainants to obtain payment of their bonds; and complainants allege that if such Florida Central Railroad Company is still in existence as a corporation, that the persons before mentioned are the only persons who can by law represent said company, because, as complainants are informed, there has been no meeting of the persons who held said stock in said company since last before stated.

XVIII. That said persons, acting in said capacities, were parties in a certain suit commenced in the State circuit court and finally determined in the supreme court of the State, wherein the State of Florida and trustees of the internal improvement fund were complainants in the first court, in which suit questions of law and fact were presented for adjudication and which were determined by said supreme court, touching the liability of the line of railroad and property between Jacksonville and Lake City for the payment of the bonds delivered by the governor of the State to the J., P. & M. Co. before mentioned, and as to whether the said Florida Central Railroad Company was or not, by the acts done by its stockholders and directors, estopped from denying such liability as against the claim which complainants have hereinbefore alleged in respect to such line of railroad for payment of said bonds.

468 The said supreme court, by its judgment rendered in said cause, determined such questions of law and fact in favor of the claim so made by complainants, and they are advised and insist that they are entitled to rely upon, and they do herein claim and rely upon, said judgment of said supreme court as a conclusive judgment in their favor as to such matters, and as binding on the Florida Central Railroad Company, if there be such corporation, and upon all persons who claim to be owners of stock therein.

XIX. That Daniel P. Holland, who was likewise a defendant in the said case in the said State circuit court, prosecuted an appeal to the supreme court from a judgment rendered by said circuit court in said cause, adverse to said Holland, which appeal was finally heard and determined by the said supreme court; that among other questions of law and fact therein made and decided, the said supreme court by its judgment determined that the acts incorporating the said J., P. & M. Co., the issuance of said bonds by Governor Reed to it, the sale thereof by said company to the complainants and others, created a trust in fovor of the bona fide holders of said bonds; that a lien on the railroad and property for the payment of said bonds existed, and that a power of sale by said acts of incorporation conferred on the governor of the State must be executed by him for the purpose and in the manner in said acts specified; and complainants are advised and insist that they are entitled to and do plead and rely on such judgment in support of the claim which they herein allege to exist as to such lien, to the existence of such trusts, and as to their right to have the line of railroad, which formerly belonged to the Pensacola and Georgia and Tallahassee Railroad Company, sold by the governor in the manner and for the purposes which they have hereinbefore alleged in respect thereof. And complainants produce herewith the judgments of the said supreme court in said several cases, and pray leave to refer thereto as a part of their bill of complaint.

XX. That the said J., P. & M. Co. was a party to said suit so brought by the State and the trustees aforesaid, and that they appear therein, and answered the complaints filed in said suit, and admitted the issuance of said bonds by the governor of the State, and did not 469 deny its liability to pay said bonds, nor that there was a lien existing thereof, such as was determined to exist by said supreme court; said answer was sworn to by said Milton S. Littlefield, as the president of said company; that complainant produces herewith a true copy of said answer, and prays leave to refer thereto when necessary.

XXI. Complainants have procured the whole of said line of railroad, its workshops, depots, and rolling stock, to be examined by a competent and skillful railroad engineer, who reports that the said property is not fit for the safe transportation of passengers and freight, and cannot be profitably operated therefor; that the iron rails are badly worn

the cross ties decayed; that the rolling-stock is insufficient, and old, and inadequate; that it will cost a large sum to put such property in proper condition, more than the net earnings of said company will furnish, and that if said road is put in good working order, a large increase of such net earnings may be reasonably expected. Complainants are assured that money and material to put such road and property in good working order can be obtained, provided that such means, when advanced by any persons, can be secured to be paid out of the money arising from the sale of said road, and the same made a lien, as costs in this cause, by an order of this honorable court directing the doing of such work, and authorizing the procurement of the necessary material and money therefor. Complainants are advised that the governor of the State has not the power to make any contract for such purposes, and that in consequence he cannot procure the necessary material and money; and complainants submit to this honorable court whether or not the governor of the State should be invested, by an order made in this cause, with the powers of a receiver to this court, and with authority and power to obtain money and purchase material for the purposes before stated, and provision made in said order providing for the needful security for payment of the liabilities to be incurred in such behalf. Complainants are informed that there is now in the hands of the treasurer of the State of Florida a sum of money amounting to about thirty thousand dollars, paid to him by Robert Walker, re-
ceiver, by order and direction of the Supreme Court of the United
470 States, made in the cause decided in said court, in which E. C.
Anderson et al. were defendants and the State of Florida plaintiff; such money is the balance of the earnings of the line of road from Lake City west, which came to the hands of said receiver, and which money the said court directed should be held by the said treasurer subject to the order of a court of competent jurisdiction; and complainants are advised that said sum of money is a proper fund to be applied to the repair of said railroad and property, and they insist that they have the right to have the same so applied by order of this court.

XXII. Complainants are informed, and upon such information allege and state, that the defendant, the Western Division of the Western North Carolina Railroad Company, united with said Littlefield, said Swepson, and said S. W. Hopkins & Co. in procuring the governor, Harrison Reed, to issue and deliver to said J., P. & M. Co. the said State bonds (so called) and in all acts and representations done and made by said J., P. & M. Co., its officers and agents, and in the sale which said S. W. Hopkins & Co. made of said bonds, and that said North Carolina corporation received a portion of the proceeds of such sale, and contracted with said Swepson and said Littlefield, and with authorized agents of said J., P. & M. Co., for the payment to said North Carolina corporation, by the parties to said contract, of the sum of six hundred thousand dollars and upwards, such payment to be made out of the money to be received by said S. W. Hopkins & Co. from the sale of said bonds, to enforce which payment said North Carolina corporation brought suit, in a court of the State of New York, against said Hopkins & Co. and said J., P. & M. Co. Complainants are informed that said North Carolina corporation now alleges that the bonds held by complainants and others, which said corporation in part contributed to induce the present holders thereof, or those from whom they purchased, to take and pay for, as the bonds of the State of Florida, are not legal and valid obligations, and that the holders thereof are not entitled to the payment of the same in the manner and from the source which

complainants herein assert themselves to be entitled to, and are seeking to obtain in this their bill of complaint, all of which pretences,
471 set up by said North Carolina corporation, are made by them in bad faith, and in violation of equity and against good conscience; the said corporation is and should be, by the decree of this court, declared to be estopped from making the same by reason of the acts done by it in respect to the sale of said bonds, which are hereinbefore set forth, and that said corporation ought to be enjoined from making any interference with complainants' proceedings to subject said railroad and property to payment of their bonds, or from instituting any suit at law or equity against complainants or against the governor of the State for such purpose.

XXIII. That defendant, Edward M. L'Engle, has illegally possessed himself of the shares of stock which were sold by John P. Sanderson to Milton S. Littlefield; that payment therefor was made from funds received by S. W. Hopkins & Co., from the London banker, to whom they sold said Florida State bonds (so called), which fact was well known to said Sanderson and to said L'Engle, who were, at the time of such transaction, and afterwards, the attorneys of said Littlefield and of said railroad corporations, which he controlled. Said Sanderson was also an officer of said Florida Central Railroad Company, and assisted said Littlefield in the transactions before stated, which resulted in the consolidation of said railroads and the issuance and sale of said bonds. Said L'Engle has, since the said Florida State bonds (so called) were sold, purchased from certain persons who formerly held stock in said Florida Central Railroad Company their rights as such, whatever they may be; that he has, by use of such means, brought several suits in the State courts against sundry persons concerning the property which formerly belonged to said Florida Central Railroad Company, which suits he has dismissed after causing great damage and loss to said property thereby; and complainants are informed and believe that said L'Engle intends to institute further suits, founded on the title he has so acquired, or claims to have, with a view to compel complainants to pay him a large sum of money to buy their peace and to hinder them from obtaining the relief herein sought.

472 XXIV. The said L'Engle has instituted a suit in this court in the name of Robert J. Washington, in which it is sought to obtain a decree declaring said Washington to be the lawful owner of all the shares of stock which said Littlefield purchased from said Swepson, said Houstoun, and others. The title set up in said suit is derived from said L'Engle and one J. H. Miller, and is based solely on notes given to said L'Engle by said Littlefield without valid consideration, on the pretence of a payment by Littlefield to L'Engle for services pretended to have been rendered by said L'Engle to said Littlefield and the said Florida Central and Jacksonville, Pensacola and Mobile Railroad Companies. Complainants are informed and believe that said Robert J. Washington has no real interest in the subject matter of said suit, and that his name is being used by said L'Engle in fraud of the jurisdiction of this court, the said L'Engle making use of the name of said Washington because he, being a citizen of Florida, is disqualified to sue in the courts of the United States.

XXV. Complainants are informed and believe that said defendant, Milton S. Littlefield, made some agreement with said George W. Swepson to perform the obligations which the latter undertook with said trustees to do, viz, to purchase said unpaid Pensacola & Georgia and Tallahassee Railroad Companies' bonds; that said Littlefield did, in fact, purchase of said Edward Houstoun one hundred and three of said bonds in performance of such contract, which bonds are now deposited in the registry of this court to the credit of a cause therein pending in which Edward C. Anderson et al. are plaintiffs, and the J., P. & M. Co. et al. are defendants; that said bonds are claimed by divers persons under some contract with said Littlefield, which persons had full knowledge that said bonds were paid for out of the money for which the bonds issued by Governor Reed to the said J., P. & M. Co. were sold, as before set forth; said one hundred and three bonds have never been in the actual possession of said Littlefield. Complainants are advised that they should be delivered to said trustees of the internal improvement fund, and they should take such proceedings as may be necessary to procure the same to be done.

473 XXVI. That of the capital stock of the Florida Central Railroad Company, which consisted of five thousand five hundred shares, four thousand three hundred and seventy were held by Edward Houstoun at the time of his decease, which took place about two years since, as appears from the stock ledger of the Florida Central Railroad Company; that certificates of such stock were issued to said Houstoun by said company, which certificates are now in the hands of a receiver appointed by the superior court of Chatham County, in the State of Georgia, in a cause therein pending between the executors of said Houstoun and sundry other persons, in which suit the title to said stock is involved and the right thereto sought to have determined. That said Milton S. Littlefield has made a conveyance to the Western Division of the Western North Carolina Railroad Company, by which he pretends to convey to said corporation a legal title to said stock, which title he falsely pretends he held at the date of such conveyance, and which false pretense was well known to the officers of said corporation, who took from him such invalid conveyance; that the same was made and accepted to aid the said corporation to sustain the beforementioned claim of such corporation of interest in said railroad and property, and complainants insist that said corporation ought not to be allowed to make any claim under such conveyance, nor to derive any benefit or advantages therefrom.

In consideration of the premises, complainants pray that writs of subpœna may be issued out of this honorable court, directed to said defendants severally, viz: The Western Division of the Western North Carolina Railroad Company; the Jacksonville, Pensacola & Mobile Railroad Company; the Florida Central Railroad Company; Edward Lewis, Patrick Houstoun, Robert H. Gamble, Charles E. Dyke, sr., Edward M. L'Engle, Robert Walker, Clayton A. Cowgill, George W. Betton, James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, Joseph B. Stewart, Francis Vose, M. K. Jessup & Co., Chandler H. Smith, S. A. Smith, sr., Smith Simkins, B. C. Lewis,
474 D. Griffith Ambler; W. J. Hines, trustee; Mrs. F. A. Finlayson, James G. Gibbs, Edward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Falligant, Lewis F. Nicoll, George Robertson, J. A. Hunnicutt, The Peoples' Bank, William McBurney, Winthrop B. Williams; George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer of the State of Florida; Hugh A. Corley, commissioner of lands and immigration; George P. Raney, attorney-general; Walter Gwynn, treasurer, Columbus Drew, comptroller, George F. Drew, governor, as trustees of the internal improvement fund; and Robert J. Washington, commanding them to

be and appear before this honorable court on a day certain to be named therein, to answer the allegations of this bill:

1. And may it please your honors to decree that complainants are entitled to be taken and held as bona fide holders of the bonds of the Florida Central Railroad Company.

2. That the entire line of railroad from Jacksonville to the Apalachicola River, with the branches to Monticello and St. Mark's, and all property, real and personal, thereto pertaining, may be decreed to be subject to a lien for the payment of complainants' bonds superior to the claims of any and all persons whatever, and especially said defendants.

3. That it may be declared by the decree of this court that the sale of the said bonds by the said Jacksonville, Pensacola & Mobile Railroad Company, issued by Harrison Reed, governor, to said company, and the representations made by said company and its agents to the purchasers thereof, and the actings and doings of the officers and stockholders of said company, and of the said Florida Central Railroad Company, herein stated and alleged, created a trust in favor of complainants, and entitles them to have the whole of said line of railroad made subject to the payment of complainants' said bonds, and that such entire line of railroad be proceeded against for such purpose, and treated as belonging to the Jacksonville, Pensacola & Mobile Railroad Company; and that the stockholders of the Florida Central Railroad Company and such corporation be declared to be bound by the representations which were made by the said Jacksonville, Pensacola and Mobile Rail- 475 road Company to the purchasers of said bonds before alleged herein to have been made; that the line of railroad from Jacksonville west constituted one entire line of road, was the property of said last-named corporation; and that the same was subject to a lien for the payment of the principal and interest of said bonds by the provisions of the acts incorporating said last-named corporation.

4. May it please your honors to decree that complainants are entitled to the benefit of the provisions of the said acts of incorporation which created a lien on said railroad and property for payment of the bonds held by complainants; and that they are entitled to demand that the governor of Florida execute the power of sale vested in him by said acts, and that he be decreed to proceed therein in the manner and for the purposes which complainants have herein stated should be done.

5. That the defendants, the trustees of the internal improvement fund, and those who hold the Pensacola & Georgia and Tallahassee Railroad bonds, be decreed to have no longer any lien of any kind upon that portion of the said line of railroad which lies between Lake City and Quincy, with the branch to Monticello and the road from Tallahassee to St. Mark's; and that complainants have a superior equity as to such property for payment of their bonds over and above the vendor's lien claimed by said trustees and said last-mentioned bondholders to exist in their favor.

6. That the Western Division of the Western North Carolina Railroad Company be decreed not to have any other right, title, or claim in respect of the line of railroad from Jacksonville to Lake City than that which the said Florida Central Railroad Company and its stockholders shall be decreed to possess, and to be subject, in like manner, to the right of complainants to have said portion of said line of railroad sold for payment of complainants' bonds.

7. That the pretended organization of said board of directors, claimed to have been made under the authority of said judgment of Duval circuit court, in the suit instituted by said western division of the West-

ern North Carolina Railroad Company, be declared fraudulent and void; that the said judgments be declared to be void because of the fraud committed by the parties thereto; and that the said defend- 476 ants, claiming to be president, directors, and officers of said Florida Central Railroad Company, be declared to have no lawful title to such offices; that said defendants, Robert Walker, Robert H. Gamble, and the other defendants who were chosen directors of said Florida Central Railroad Company, as herein alleged by complainants, be declared to be the only proper representative of said Florida Central Railroad Company, or entitled as such to appear in this suit or otherwise act in respect of the interests of the stockholders of such company.

8. That defendants, Edward M. L'Engle and Robert J. Washington, be declared not to have any valid title to any stock in said Florida Central Railroad Company, and that as to any such stock which may have been acquired by said L'Engle, that he be decreed to hold the same subject to the claim herein alleged to exist in favor of complainants, and that he be held to have acquired the same with full notice of all the rights which are herein asserted by complainants.

9. That the bonds issued by the said defendants, E. M. L'Engle, as president, and said Foster, Fenwick, Stewart, Sawyer, and others, as directors of said Florida Central Railroad Company, be decreed to be null and void.

And may it please your honors to grant unto your orators writs of injunction, to be directed to said Western Division of the Western North Carolina Railroad Company, said Florida Central Railroad Company, and its stockholders, to said Edward M. L'Engle, said Robert J. Washington, enjoining them from instituting any proceedings at law or in equity in relation to said line of railroad from Jacksonville to Lake City, and its property, and from seeking to interfere with the possession thereof acquired by the said George F. Drew, governor, or from intermeddling therewith.

May it please your honors to make an order herein constituting and appointing George F. Drew, governor of the State of Florida, receiver of this court, with special power and authority to make purchases of railroad iron, material and equipments suitable for use of said railroad, and to put said line of railroad in suitable condition for the carriage of freight and passengers, and to preserve the same from dilapidation and destruction—for such purpose to apply the net earnings 477 of said railroad thereto, and, if necessary, to make purchases on credit, to be reimbursed and paid by order of this court, and to constitute a charge on said property in like manner as the costs of the cause are by law provided; and that the said governor, as such special receiver, be authorized to demand and receive from said defendant, Walter Gwynn, treasurer, the said sum of money herein stated to be in his hands, under said order of said Supreme Court of the United States; and that the said treasurer deliver such money to said governor, which money the said George F. Drew, governor, as such special receiver, be directed to use for the repair and preservation of said line of railroad; and that such fund be regarded in the hands of said receiver as a separate and distinct fund, to be disposed of by the decree of this court to be made herein, and subject to all proper claims, if any there be, against the same; and that the said George F. Drew, as such special receiver, be directed to render to this court an account of his actings under this order, at such specified times as may be prescribed therein.

And may it please your honors to grant unto your orators such other and further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

W. G. M. DAVIS,
Solicitor for Complainants.

UNITED STATES OF AMERICA,
Northern District of Florida:

Charles D. Willard, sworn, says that he is the authorized agent and attorney of each and every of the complainants in the foregoing bill mentioned; that he has received from them, and each of them, power in writing, properly authenticated, giving him authority to institute this suit, and to act for them generally in the prosecution of the rights which said complainants in said bill have set up; that he has for a long time been in correspondence with Jacobus Wertheim, a counsellor at law, residing at Amsterdam, in Holland, and who is employed, as deponent is informed and believes, by complainants to advise them in
478 respect to their rights as such bondholders; that the correspondence between deponent and said Wertheim was wholly upon such subject, and deponent was thereby informed as to the circumstances under which said bonds were purchased by complainants, and that they held the same.

Deponent further says that he has read the proceedings, or the greater part of them, which were instituted by divers plaintiffs in the courts of the United States, and those of the State of Florida, as well as in the suits instituted in New York by the Western Division of the Western North Carolina Railroad Company; that he has seen and read proceedings of the stockholders and directors of the Florida Central Railroad Company, the sworn statements of S. W. Hopkins & Co., of Edward Houstoun, and has generally received information as to the matters in said bill set forth from various persons, attorneys as well as others, who were familiar with such matters, and from such means of knowledge he is able to swear and does depose that the facts in the foregoing bill of complaint set forth he believes to be true; that as to the ownership by complainants of the bonds in the bill mentioned, deponent says he believes that they are owned and held by said complainants, and that they purchased the same in good faith, believing them to be what they purported on their face to be; and such belief deponent says he asserts by reason of the statements made by said complainants, sworn to by them in Amsterdam before the American consul, transmitted to deponent as such agent.

Deponent further says that the bonds of said complainants will shortly be received in the United States, and will be produced in this cause, of which fact deponent has been informed by a telegraphic dispatch sent by the Bank of Amsterdam to Mr. Adolphe Engler, of New York.

CHARLES D. WILLARD.

Sworn to and subscribed before me this 23d day of May, A. D. 1877.

FRED. T. MYERS,
Deputy Clerk United States Circuit Court,
Northern District of Florida.

479 SCHEDULE B.

No. 501.] UNITED STATES OF AMERICA. [$1,000.

STATE OF (Florida coat of arms) FLORIDA.

Bond of the Florida Central Railroad Company.

Cut of train of cars.] [Cut of steamship.

Know all men by these presents, that the Florida Central Railroad Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars, for value received, which sum the said Florida Central Railroad Company promises and agrees to pay to the State of Florida on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon at the rate of eight per centum per annum, payable semi-annually on the first days of July and January in each year on the presentation and delivery of the proper coupons hereto attached.

This bond is one of a series of like tenor limited to sixteen thousand dollars per mile, issued in accordance with an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine, and given in exchange for bonds issued by the State of Florida to aid the Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road for an equal amount, in accordance with said act.

In witness whereof the said company has caused this bond to be signed and attested in its behalf by its president and its common seal affixed at its office in this first day of January, in the year 1870.

{ FLORIDA CENTRAL }
{ RAILROAD CO. 1868. }
H. H. THOMPSON, *Treasurer*.

GEORGE W. SWEPSON,
President.

Issued in accordance with the provisions of an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine.

January 1st, 1870.

480 *Governor's certificate.*

EXECUTIVE OFFICE,
Tallahassee, January 31, 1877.

I, George F. Drew, governor of Florida, hereby certify that the within is a true and correct copy of original bond No. 501 now on file in office of State treasurer.

GEORGE F. DREW,
Governor.

SCHEDULE C.

No. 201.] UNITED STATES OF AMERICA. [$1,000

STATE OF (coat of arms) FLORIDA.

Bond of the Jacksonville, Pensacola and Mobile Railroad Company.

Train of cars.] [Cut of steamship.

Know all men by these presents, that the Jacksonville, Pensacola and Mobile Railroad Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars, for value received, which sum the said Jacksonville, Pensacola and Mobile Railroad Company promises and agrees to pay to the State of Florida on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon at the rate of eight per centum per annum, payable semi-annually on the first days of July and January in each year, on the presentation and delivery of the proper coupons hereunto attached.

This bond is one of a series of like tenor, limited to sixteen thousand dollars per mile, issued in accordance with an act of the legislature of the State of Florida, passed on the 24th of June, eighteen hundred and sixty-nine, entitled "An act to perfect the public works of the State"; also, an act amendatory thereof, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine, and given in exchange for bonds issued by the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company for an equal amount, in accordance with said act.

In witness whereof, the said company has caused this bond to be signed and attested in its behalf by its president, and its common seal affixed at its office in Tallahassee this first day of January, in the year 1870.

[SEAL J., P. & M. R. R. CO.] M. S. LITTLEFIELD,
President.

480½ Issued in accordance with the provisions of an act of the legislature of the State of Florida, approved the 24th of June, 1869, entitled an act to perfect the public works of the State; also, an act amendatory thereof, approved January 28th, eighteen hundred and seventy, entitled an act to alter and amend an act entitled an act to perfect the public works of the State, approved June 24th, eighteen hundred and sixty-nine.

January 1st, 1870.

STATE OF FLORIDA, EXECUTIVE OFFICE,
Tallahassee, February 14, 1877.

I, George F. Drew, governor of the State of Florida, do hereby certify that the within is a true and correct copy of bond No. 201 of the J., P. & M. R. R. Co., now on file in the office of the State treasurer.

GEORGE F. DREW,
Governor.

SCHEDULE D.

Memorandum plan.

(Bijlage A.)

For the reorganization of the Jacksonville, Pensacola and Mobile Railroad Company and the Florida Central Railroad Company of Florida, to be agreed upon by and between Frank R. Sherwin, agent of the owners and holders of the bonds of the State of Florida, issued in aid of said railroad companies, of the first part, and the owners and holders of the first-mortgage bonds of the Pensacola and Georgia and Tallahassee Railroad Companies of said State, issued under the provisions of the act of January 6th, 1855, generally known as the "internal improvement act," represented by Henry R. Jackson, of Savannah, in the State of Georgia, and Charles H. Simonton, of Charleston, in the State of South Carolina, of the second part.

The object to be sought in said reorganization shall be the formation, under the general incorporation laws of said State, of a new company, under the name and style of The Jacksonville and Mobile Railroad Company, for the purpose of purchasing the present lines of constructed railroads between Jacksonville and Chattahoochee, and Tallahassee and St. Marks, with branch at Monticello Junction, together with all their rolling-stock, depots, machine-shops, and all their other property, and of completing the said line of road to Mobile, in the State of Alabama.

481 To this end it is agreed between the said parties that the line of completed railway, to wit, the roads extending from Lake City to Chattahoochee, and from Tallahassee to St. Mark's, known as the Jacksonville, Pensacola and Mobile Railroad, and the road extending from Jacksonville to Lake City, known as the Florida Central Railroad, together with all their depots, rolling-stock, machine-shops, and all their other saleable property, shall be sold at public outcry, in accordance with law, so soon as the following antecedent arrangements, numbered "first" and "second," shall have been completed:

First. The said the parties to this agreement shall, within 30 days, select three persons who shall act as trustees in discharge of the trusts hereinafter set out; any vacancy in their number occurring by death or otherwise to be filled by the surviving trustees.

Second. The said bonds and coupons of the Pensacola and Georgia and Tallahassee Railroad Companies, held by the said parties of the second part, and the said bonds and coupons of the State of Florida, issued in aid of the said the Jacksonville, Pensacola and Mobile Railroad Company, and the said the Florida Central Railroad Company, shall be placed in the hands or under the control of the said trustees so selected, for the purpose of said trust, within thirty days from the date of the acceptance of their appointment.

The said, the governor, shall offer at public sale, according to law, said line of railroads, together with all their depots, rolling-stock, machine-shops, and all their other property, or such portions of it as may be legally saleable; and at the said sale the said trustees shall bid for the said property so to be exposed for sale, to the extent, if necessary, of the par value of the said bonds and past due coupons of the State of Florida so placed under their control, the aggregate amount in dollars and cents, of which said bonds and past due coupons shall be treated and received as cash at said sale by the said governor, and if such bid be the highest made at such sale or sales, the said line of railroad, together with all its property as hereinbefore detailed, shall be struck off to the said trustees so bidding, and upon the delivery to the said the governor of the said bonds and past due coupons last mentioned, he shall immediately cause the said trustees so bidding to be placed in the actual possession of all said railroad property, and full title shall be made to said trustees by the governor, the same to be held by them subject to the following conditions, namely: In trust to be conveyed by them to the said Jacksonville and Mobile Railroad Company, after the following arrangements and conditions shall have been perfected and complied with:

First. Such title to the line of railroad now known as the Florida Central, extending from Jacksonville to Lake City; and such 482 title to the Jacksonville, Pensacola and Mobile Railroad which extends from Lake City to the Chattahoochee River, and from Tallahassee to St. Mark's; and such right of franchise to continue the construction of said line of railway westward to the city of Mobile, as may not be perfected in the said selected trustees, by the said sale as hereinbefore provided, shall be perfected in the said the Jacksonville and Mobile Railroad Company, through the action and agency of the said party of the first part, and shall be so perfected as not to leave any lien or incumbrance upon said last-mentioned title or property, which shall be superior to the special mortgage lien to be created as hereinafter provided. The provisions of this clause, numbered first, to be practically carried out by the said party of the first part within six (6) months from the date of this agreement.

Second. Title having been so perfected in the said the Jacksonville and Mobile Railroad Company, that company shall execute an obligation in writing to the said, the selected trustees, stipulating that immediately after conveyance made to it, the said railroad property, so to be purchased as aforesaid by them (the said selected trustees), the said the Jacksonville and Mobile Railroad Company shall cause the entire line of constructed railroads heretofore named to be bonded at the rate of not more than twelve thousand dollars ($12,000) per mile, which bonds shall be due forty years from date, bearing interest at the rate of five (5) per cent. per annum, payable semi-annually either in New York City or Amsterdam, Holland, at the option of the holders, principal and interest payable in gold, which bonds shall be a first mortgage lien upon said line of railroads, its depots, machine-shops, rolling-stock, and all of its other property.

That distinct provision shall be made in said mortgage for the issue, in the first place, of a series of said bonds equal in amount only to the par value of said surrendered bonds and Georgia and Tallahassee Railroad Companies, in the event that the said lines of road formerly known as the Pensacola and Georgia and Tallahassee Railroads should be bid off by the said selected trustees at a sum below or not exceeding the aggregate amount of said last-mentioned bonds and past due coupons; but should the said last-mentioned roads be so bid off at a sum equal to or exceeding the aggregate amount of principal of said bonds and past due coupons and interest on said coupons, then the first series of bonds to cover the full amount of said last-mentioned aggregate, and this first and distinct series of bonds so issued shall constitute a prior lien upon the said line of railroad and its said property, to secure the payment of the interest and principal of the same when due; and the first 483 said series of bonds, when so issued, shall be delivered to the owners of the said surrendered bonds and coupons of the said Pensacola and Georgia and Tallahassee Railroad Companies, whereupon the said last-mentioned bonds and coupons shall be held by said trustees in trust, to be delivered to the trustees of the internal improvement fund of Florida for cancellation, so soon as all of the same class of bonds now outstanding shall have been surrendered to the said selected trustees, whether in exchange for the said new first-mortgage bonds or otherwise.

That provision shall also be made in said mortgage that in case of default for one year by said new company in payment of interest on any of the bonds, foreclosure of said mortgage may be made for the entire amount of indebtedness secured by it, both principal and interest, and the said road and all of its property may be sold, and the proceeds derived from such sale shall be first applied to the payment of the said first series of bonds, principal and interest, and the surplus, if any, shall be applied toward the payment of the remaining or second series of said bonds.

That provision shall also be made in said mortgage for the creation, at the expiration of three years from the organization of said company, of a sinking fund of one per cent. per annum in gold, payable semi-annually, upon its said bonded debt, which said sinking fund shall be semi-annually applied, as paid, to the redemption at par of the said bonds of said company, the numbers of which shall be selected by lot, and the said first series of said bonds of said company, issued as aforesaid, shall have priority of payment out of said sinking fund.

A draft of said contemplated bonds and mortgage, to be approved by the selected trustees, shall be appended as an exhibit to the said written obligation, and also a copy of the proposed charter of the said Jacksonville and Mobile Railroad Company, showing powers in the said new corporation to issue such bonds and to execute such mortgage.

It shall be further stipulated in said written obligation that a sufficient number of the second series of said bonds shall be set apart and used for the purpose of placing said line of constructed railroad in first-class order and repair as to road-bed, rolling stock, and otherwise, and that said new railroad company shall be managed by a board of directors, consisting of not more than seven nor less than five members, who shall be named by the owners or holders of said State bonds, but who shall be acceptable to said selected trustees; and that in case of vacancy in said board of directors or officers of said company, by death, resignation, or otherwise, notice of any intended new appointment shall be given to the said selected trustees; and a protest in writing, 484 signed by the owners representing a majority of the said first series of bonds of said company shall operate to prevent the appointment to fill said vacancy; this provision to continue in operation for the period of six years from the organization of the said new company.

It is also further stipulated and agreed, that all funds necessary to meet the costs and expenditures incurred in such sale or sales, and in perfecting said titles thereafter, shall be supplied by the said party of the first part.

In witness whereof we, the said parties to this agreement, have hereunto set our hands and affixed our seals interchangeably, this 12th day of January, A. D. 1877, at Savannah, Georgia.

FRANK R. SHERWIN,
HENRY R. JACKSON,
CHARLES H. SIMONTON.

Signed, sealed, and delivered in the presence of—
(Geteekend) VINCENT L. STARR, N. P.

44l2422 Ontvangen voor zegleregt Vijftig Cent.
Amsterdam, den vijftienden Februaij, 1800, Zeven en Zeventig.
De ontvanger B. A. No. I.
KNIPSCHEER.

Geregistreerd te Amsterdam den Vijftienden Februari, 1800 Zeven en Zeventig, Deel 108, blad 145 No. vak 1, twee bladen geen renvooi, ontvangen voor regt *f* 0.80 voor 38 opcenten *f* 0.305, te zamen een Gulden tien en een halve Cent. De ontvanger B. A. No. 1.
(Geteekend) KNIPSCHEER.

Uitegeven voor Afschrift van vorenstaand stuk gededeponeered onder de minuten van den ondergeteekende Jean Charles Gerald Pollones, Notaries, residerende te Amsterdam, blijkens acte den veertienden Februari 1800 zeven ze zeventig, ten zijnen overstann verleden.
(Geteekend) J. C. G. POLLONES, *Notaris.*

Filed May 23, 1879.

P. MARTIN, *Clerk.*

W. G. M. DAVIS, *Sol.*

485 In circuit court United States, northern district of Fla. In equity.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY, the Jacksonville, Pensacola & Mobile Railroad Company, J. Fred. Schutte et al.

The defendants, J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fald, J. Borzo, H. Van Broom, Dr. Nicholas Jacob den Tex, H. J. Brennekraff, J. H. Green, Willinmier Van Tyer Van Taer, C. Both, L. L. Werthem, Wysman de Vorgt, T. P. Roelopz, Jan Tichelaar, jr., Jacobus Werthiem, P. Van Reysen, Mey de Benditby Beer, Gerard A. Hemeken, T. Colom, Charles Gosewencekel, Boon Hartsink Van Tyen, N. R. Franket, Johannes Willans Donk, Vander Stoop and Berg, by their solicitor, come here into court and suggest and give
486 the court to be informed that by an act of the general assembly of the State of North Carolina, ratified the 13th day of March, A. D. 1879, entitled "An act to repeal any and all acts creating, recognizing, or continuing in existence the Western Division of the Western North Carolina Railroad Company," the charter of the said complainant in this suit, the Western Division of the Western North Carolina Railroad Company, was repealed and the said corporation was extinguished.

These defendants therefore suggest that this suit has abated.

W. G. M. DAVIS,
Solicitor for Defendants.

Filed May 23d, 1879.

PHILIP WALTER, *Clerk.*

487 In circuit court United States, northern district of Florida. In equity.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, J. Fred. Schutte et al.

The defendants, J. Fred. Schutte, Jan Prins, Adrianus, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J. Brunnekruff, J. H. Grem, Willemnier Van Tyer Van Taer, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaar, jr., Jacobus Wertheim, P. Van Reysen, Mey de Benedithy Beer, Girard A. Heinken, T. Colom, Charles Goswinkel, Boon Hartsink Van Tyen, N. J. Franket, Johannes Willins Donk, Vander Stoop & Berg, by their solicitor, come here into court and suggest and give the court to be informed that by an act of the general assembly of the State 488 of North Carolina, ratified the 13th day of March, A. D. 1879, entitled "An act to repeal any and all acts creating, recognizing, or continuing in existence, the Western Division of the Western North Carolina Railroad Company," the charter of the said complainant in this suit, the Western Division of the Western North Carolina Railroad Company, was repealed and the said corporation was extinguished.

These defendants therefore suggest that this suit has abated.

Filed May 23d, 1879.

PHILLIP WALTER, *Clerk.*

489 In the United States circuit court for the northern district of Florida. In equity.

THE WESTERN NORTH CAROLINA RAILROAD Company, complainant,
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C, The Jacksonville, Pensacola and Mobile Railroad Company; Gideon Maria Boissevain, Adrian Milders, Joseph Zadock, Adrian Stoop, Frank R. Sherwin, agent for the four parties last named; John Collinson, Milton S. Littlefield, Walter Gwynn, Thomas B. Coddington, J. Fred Schutte, Jans Prins, Heinrich Ulrici, Elias Fuld, Dr. Nicholas Jacob Den Tex, J. Borzo, Edward Isaac Asser, and Adolph Engler, trustee, defendants.

To the honorable the judges of the circuit court of the United States for the northern district of Florida.

490 Your orator, the Western North Carolina Railroad Company, being a body corporate and politic, created and existing by and under the laws of the State of North Carolina, and a citizen of said State, brings this its bill of revivor, and respectfully shows to your honors that heretofore the Western Division of the Western North Carolina Railroad Company, a corporation created by and under the laws of North Carolina, filed its bill of complaints against some of the above

named defendants, and afterwards, upon leave of the court in that behalf first had and obtained, added the remainder of the parties so named as defendants; that such proceedings were had and taken therein as that said bills were brought to a hearing before this honorable court at a stated term thereof held at Jacksonville, on Monday, May 19th,
1879; and that thereafter and pending the hearing of said suits,
491 the defendants suggested to the court as matter of abatement
that by a statute of the State of North Carolina, approved March 13th, 1879, the charter of the Western Division of the North Carolina Railroad Company had been repealed, and all and singular its assets, property, and estates and causes of action vested in your orator.

Wherefore your orator exhibits and files this its bill of revivor, and hereby avers all and singular the matters and things in said bills alleged by and on behalf of said Western Division of the Western North Carolina Railroad Company, and prays as in said bills was prayed; and that the United States writ of subpœna may issue to require the said defendants and each of them, to wit: George F. Drew, governor of the State of Florida; the Jacksonville, Pensacola and Mobile Railroad Company; Gideon M. Boissevain, Adrian Meldens, Joseph Zadock, Adrian Stoop, Frank R. Sherwin, John Collinson, Milton S. Littlefield, Walter
Gwynn, Thomas B. Coddington, J. Fred Schutte, Jans Prins, Adri-
492 anus Prins, Heinrich Ulrici, Elias Fuld, Dr. Nicholas Jacob Den
Tex, J. Borzo, Edward Isaac Asser, and Adolph Engler, to appear on a day named, and show cause, if any they have, why the cause should not be revived.

And your orator prays as in the said bill to be revived is prayed and for all general and special relief.

JOS. B. STEWART,
Sol. for Comp't.

JAMES M. BAKER,
Of Counsel.

Filed this 26th day of May, A. D. 1879.

PHILLIP WALTER, *Clerk.*

493 In the United State' circuit court for the northern district of Florida, in equity.

THE WESTERN NORTH CAROLINA RAILROAD Company, complainants,
vs.
GEO. F. DREW, GOVERNOR, TRUSTEE, &C., The Florida Central Railroad Company, The Jacksonville, Pensacola and Mobile Railroad Company, Gideon Maria Boisevain, Adrian Milders, Joseph Zadock, Adrian Stoop, Frank R. Sherwin, agent for the four parties last named; John Collinson, Milton S. Littlefield, Walter Gwynn, Thos. B. Coddington, J. Fred. Schutte, Jans Prins, Adrianus Prins, Heinriech Ulrici, Elias Fuld, Dr. Nicholas Jacob dens Tex, J. Borzo, Edward Isaac Ascu, and Adolph Engler, trustee, efendants.

494 To the honorable the judges of the circuit court of the United States for the northern district of Florida:

Your orator, the Western North Carolina Railroad Company, being a body corporate and politic created and existing by and under the laws of the State of North Carolina, and a citizen of said State, bring this its bill of revivor, and respectfully shows to your honors that heretofore the Western Division of the Western North Carolina Railroad Company, a corporation created by and under the laws of the State of North Carolina, filed its bill of complaint against some of the above named defendants, and afterwards, upon leave of the court in that behalf first had and obtained, added the remain der of the parties so named as defendants; that such proceedings were had and taken therein as that said bills were brought to a hearing before this honorable court, at a stated term thereof held at Jacksonville, on Monday, 495 May 19th, 1879; and that thereafter, and pending the hearing of said suits, the defendants suggested to the court as matter of abatement that by a statute of the State of North Carolina, approved March 13th, 1879, the charter of the Western Division of the Western North Carolina Railroad Company had been repealed, and all and singular its assets, property, and estate and causes of action vested in your orator.

Wherefore your orator exhibits and files this its bill of revivor, and hereby avers all and singular the matters and things in said bills alleged by and on behalf of said Western Division of the Western North Carolina Railroad Company, and prays as in said bills was prayed, and that the United States writ of subpoena may issue to require the said defendants and each of them, to wit: George F. Drew, governor of the State of Florida, The Florida Central Railroad Company, The Jacksonville, Pensacola and Mobile Railroad Company, Gideon M. Boissevain, Adrian Mildens, Joseph Zadock, Adrian Stoop, Frank R. Sher- 496 win, John Collinson, Milton S. Littlefield, Walter Gwynn, Thomas B. Coddington, J. Fred Schutte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, Dr. Nicholas Jacob Den Tex, J. Borzo, Edward Isaac Asser, and Adolph Engler, to appear on a day named and show cause, if any they have, why the cause should not be revived.

And your orator prays as in the said bill to be revived is prayed, and for all general and special relief.

JOS. B. STEWART,
Sol. f'r Comp't.

JOS. B. STEWART,
Of Counsel.

Filed this 26th day of May, 1879.

PHILLIP WALTER, *Clerk.*

497 In the United States circuit court, northern district of Florida.

The joint and several answers of J. Fred. Schutte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J. Brunnenkruff, J. H. Grem, Willimier Van Tyer, Van Taer, C. Booth, L. L. Wertheim, Wyseman de Voogt, T. P. Roelopz, Jan Tichlan, jr., Jacobus Wertheim, P. Van Reysen, Mey de Benedithy Beer, Gerard A. Heinekin, T. Colom, Charles Gosewinckel, Boon Hartsink, Van Tyen, N. J. Franket, Johannes Willem Dork, Vander Stoop & Berg, impleaded with Geo. F. Drew & others, defendants, to the bill of revivor exhibited by the Western North Carolina Railroad Company, complainants.

These defendants admit the statements in said bill of revivor contained, material to entitle the said complainants to the relief thereby prayed.

C. D. WILLARD,
Solicitor for the said defendants.

Filed this 26th day of May, A. D. 1879.

PHILIP WALTER, *Clerk.*

498 In the United States circuit court, northern district of Florida.

The joint and several answers of J. Fred. Schutte, Jans Prins, Adrianus Prins, Heinreich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J. Brunnekruff, J. H. Grem, Willeminer Van Tyer Van Taer, C. Booth, L. L. Wertheim, Wyseman de Voogt, T. P. Roelopz, Jan Tichlaer, jr., Jacobus Wertheim, P. Van Reysen, Mey de Benedithy Beer, Gerard A. Heineken, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyen, N. J. Franket, Johannes Willem Dork, Vander Stoop & Berg, impleaded with Geo. F. Drew & others, defendants, to the bill of revivor exhibited by the Western North Carolina Railroad Company, complainant.

These defendants admit the statements in said bill of revivor contained, material to entitle the said complainant to the relief thereby prayed.

C. D. WILLARD,
Solicitor for said defendants.

499 Filed this 26th day of May, A. D. 1879.

PHILIP WALTER, *Clerk.*

(Pages 500 to 503 inclusive omitted per stipulation.)

504 In the circuit court of United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., the Florida Central Railroad Company et al.

And now comes the complainant, and by protestation, not admitting all or any of the matters & things in the answer of the defendant, George F. Drew, governor, trustee, &c., to be good and sufficient in law or true in fact to be replied unto, for replication thereunto saith, that the matters and things in the said answer are not true in point of fact or good & sufficient in law to meet or avoid the matters and things in complainants' bill alleged, and the relief therein prayed.

505 And, further replying, the complainant saith, that the matters and things in said bill alleged are true in fact, and are good and sufficient in law to entitle the complainant to all and singular the relief in its said bill prayed, as it will ever maintain and make good before this honorable court.

Wherefore it prays for the judgment and relief, as in its said bill it hath prayed.

JOS. B. STEWART,
Solicitor for Compl'nt.

Filed M'ch, 1879.

P. WALTER, *Clerk.*

506 In the circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Co.
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Jacksonville, Pensacola & Mobile Railroad Company et al.

And now comes the complainant and by protestation, not admitting all or any of the matters & things in the answer of the defendant, George F. Drew, governor, trustee, &c., to be good and sufficient in law or true in fact to be replied unto, for replication thereunto saith that the matters & things in the said answer are not true in point of fact or good and sufficient in law to meet or avoid the matters & things in complainant's bill alleged and the relief thereunto prayed.

507 And, further replying, the complainant saith that the matters and things in said bill alleged are true in fact, and are good and sufficient in law to entitle the complainant to all and singular the relief in its said bill prayed, as it will ever maintain and make good before this honorable court.

Wherefore it prays for the judgment and relief as in its said bill it hath prayed.

JOS. B. STEWART,
Solicitor for Complain't.

Filed March, 1879.

P. WALTER, *Clerk.*

508 In the United States circuit court for the northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEO. F. DREW, GOVERNOR, &C., THE JACKSONVILLE, Pensacola & Mobile Railroad Co. et al.

And now comes the complainant, by its solicitors, Joseph B. Stewart and E. M. Thompson, and by protestation, not admitting the answer of the defendants, Geo. F. Drew, governor of the State of Florida, Walter Gwynn, treasurer of said State, Columbus Drew, comptroller of said State, Hugh A. Corley, commissioner of lands & immigration of said State, and George P. Raney, attorney-general of said State, who are trustees of the internal improvement fund of Florida, to the bill of complaint filed in this cause or any of the matters and things in
509 the said answer contained, to be true, good, and sufficient in law or in fact as an answer to complainant's bill or the relief therein prayed to be replied unto, for replication thereunto doth aver that the matters and things in the said bill of complaint alleged are true in fact and good and sufficient in law to entitle the complainant to the relief therein prayed, as the complainant will ever maintain in such manner and form as this honorable court may order, adjudge, and require.

JOSEPH B. STEWART,
E. M. THOMPSON,
Solicitors for Compl'nt.

Filed Jan. 3d, 1878.

PHILIP WALTER, *Clerk.*

510 United States circuit court, northern district of Florida.

THE WESTERN NORTH CAROLINA RAILROAD Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &c., The Florida Central Railroad Company, et al.

The replication of the complainant to the answer of J. Fred. Schütte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booren, and others, defendants:

This repliant, saving and reserving unto itself, now and at all times
hereafter, all and all manner of benefit and advantage of exception
which may be had or taken to the manifold insufficiencies of said
answer, for replication says that it will aver, maintain, and prove its
said bill of complaint to be true, certain, & sufficient in law to
511 be answered unto, and that the said answer of the said defend-
ants is uncertain, untrue, and insufficient in law to be replied
unto by this repliant. Without this that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well & sufficiently replied unto, confessed or avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has prayed.

JOS. B. STEWART,
Sol. for Compl't.

Filed this 26th day of May, A. D. 1879.

PHILIP WALTER, *Clerk.*

512 United States circuit court, northern district of Florida.

THE WESTERN NORTH CAROLINA RAILROAD Company
vs.
GEO. F. DREW, GOVERNOR, TRUSTEE, &C., The Jacksonville, Pensacola and Mobile Railroad Company, et al.

The replication the Western North Carolina Railroad Company to the answer of J. Fred. Schutte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borozo, H. Van Booren, and others, defendants:

This repliant, saving & reserving unto itself, now and at times here-
after, all and all manner of benefit and advantage of exception which
may be had or taken to the manifold insufficiencies of said answer, for
replication to so much of said answer as is not demurred to, says
513 that it will aver, maintain, and prove its said bill of complaint to
be true, certain, and sufficient in law to be answered unto, and
that the said answer of the said defendants is uncertain, untrue, and insufficient in law to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained

material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed, or denied is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has prayed.

JOS. B. STEWART,
Sol. for Compl't.

JAMES M. BAKER,
Of Counsil.

Filed this 26th day of May, A. D. 1879.

PHILIP WALTER, *Clerk.*

514 U. S. circuit court, northern district of Flordia.

THE WESTERN DIVISION OF THE WESTERN North Carolina
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Florida Railroad Company, The Jacksonville, Pensacola and Mobile Railroad Company, et al.

UNITED STATES OF AMERICA,
Northern District of Florida:

Philip Walter being duly sworn, deposes and says that he is clerk of the United States circuit court for the northern district of Florida; that soon after the granting of the order of the 22d day of May, 1877, making J. Fred Schutte and others therein named parties to this suit, he, at the request of Joseph B. Stewart, solicitor for complainant, made out and certified a copy thereof for each of the said defendants, and also at the request of said Stewart attached a subpœna, under the seal of the court, to each of said parties, and at the further request of said Stewart, who provided the means, he sent a sterling bill of exchange equal to two dollars in gold to each defendant to pay for the service of said orders and subpœnas, and enclosed the same to Charles 515 Mueller, then U. S. consul at Amsterdam, and requested him to cause said orders and subpœnas to be served; that he mailed the same to said Mueller, together with a duplicate to be returned to the clerk of this court.

Deponent further says that at a period after the time fixed in said order for their service had expired they were returned to him by said Mueller unserved.

P. WALTER, *Clerk.*

Subscribed and sworn to before me this 22d day of May, 1879.

JOSEPH P. BRADLEY,
Cir. Justice.

Filed May 22d, 1879.

P. WALTER, *Clerk.*

516 United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Jacksonville, Pensacola & Mobile Railroad Company, et al.

Joseph B. Stewart, being duly sworn upon oath, states that immediately after the granting of the order of service by this court, on the 22 day of May, 1877, he caused certified copies thereof to be made, with subpœnas attached thereto, under the seal of this court, and caused the clerk, Philip Walter, esq., to endorse the same to Charles Mueler, esq., then U. S. consul at Amsterdam, Holland, requesting him to be so good as to cause the same to be served on J. Fred Schutte, Jan Prins, and other parties named as defendants in same order, to each of whom a copy of said order was addressed; that deponent likewise supplied said Walter with the means to purchase a sterling bill equal to ten dollars in gold, to pay for the serving of said orders; 517 that subsequently and long after the time for serving of said orders had expired, deponent was advised by said Walter that said orders of service were returned by said Mueller, who refused to serve the same; that deponent subsequently ascertained that said Mueler was interested with the said defendants in speculating in what is known as the "Florida State bonds" involved in this suit, and was informed and believe that because of such interest he refused to serve said order; and deponent was further advised that said Mueller was so interested when he acted judicially as U. S. consul in administering oaths and taking testimony on the part of the defendants to me before this court, in procuring an appointment for receiver for the railroads involved in this suit; that deponent, being so advised, deemed it his duty to bring the matter to the attention of the Department of State, asking the removal of said Mueler, and in that behalf was requested to exhibit and file the original orders of service, which he procured from the clerk of the court and filed as requested, and which resulted in the ultimate removal of said Mueller.

518 JOS. B. STEWART.

Sworn & subscribed to before me this 22nd day of May, 1879.

P. WALTER, *Clerk.*

Filed May 22, 1879.

P. WALTER, *Clerk.*

519 United States circuit court, northern dist. of Florida. In equit.

WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR OF FLORIDA, et als.

The defendants, George F. Drew, governor of Florida, and Walter Gwynn, treasurer of said State, hereby appear in the above-stated action, & the clerk will please enter my appearance for them.

March 1st, 1877.

GEORGE P. RANEY,
Solicitor.

It is agreed that the default from appearance in the above entitled cause be vacated and the appearance be entered as of the rules of this 8th March, 1877.

Dated March 21st, 1877.

JOS. B. STUART,
Solicitor for Complainant.

Filed March 5th 1877.

P. WALTER, *Clerk.*

520 Circuit court U. S., 5th circuit, northern district of Florida. In equity.

THE WESTERN DIVISION OF THE WESTERN N. C. R. R. Company
vs.
GEO. F. DREW, GOVERNOR OF FLORIDA, TRUSTEE, The Jacksonville, Pensacola and Mobile R. R. Company, et als.

Whereas the complainant company in the above cause recognizes the superior claim and lien of the trustees of the internal improvement fund of Florida, defendants in the above cause, upon the railroads and properties mentioned in the pleadings, which were sold March 20th, A. D. 1869, by the trustees of the internal improvement fund aforesaid, for the balance of the purchase money bid at said sale, set forth in the answer of said trustees in this cause, and interest on said claim;

And whereas said complainant company makes no claim for the re-establishment of the bonds paid to said trustees on said sale and
521 cancelled, as set forth in the pleadings, but *but* hereby withdraws all such claim as may be set up in the bill of complaint for such re-establishment or surrender to it of said bonds so paid in or cancelled;

And whereas the trustees of said internal improvement fund are willing, in case it shall be decided and adjudged in this cause, that the complainant company should be permitted to pay up said balance of purchase money, and interest aforesaid, to have the right to redeem said railroads or properties by paying the said balance of purchase money and interest to said trustees, to allow or consent to said complainants having a reasonable time to make such payment:

Now, therefore, this instrument witnesseth that it is hereby agreed and stipulated between said complainant company and trustees of the internal improvement fund as follows:

1st. That the final decree in said cause shall provide for the
522 sale of the said railroads and properties to satisfy and pay up said balance of purchase money and interest, as the first and preferred claim against the same, but it shall further provide that said sale shall not take place within less than one hundred and twenty days from the date of said decree, it being, however, expressly understood and agreed that nothing herein, nor in said decree, shall prevent the advertisement of the notice of sale during said period of one hundred and twenty days or any part thereof.

2nd. The complainant company shall immediately dismiss the bill in this cause as to the treasurer of the State of Florida, and the said trustees, in so far as it involves or relates to the monies held by him, which were received from the register of the Supreme Court of the United States, said funds being the earnings of the railroad under the
523 receivership of Rob't Walker in the case of the State of Florida vs. E. C. Anderson et als. in said U. S. Supreme Court.

JOS. B. STUART,
Solicitor for Complainant.
GEO. P. RANEY,
D. S. WALKER,
Sols. for Trustees I. I. Fund.

Filed this 14 day of May, A. D. 1877.

PHILIP WALTER, *Clerk.*

524 In the United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Florida Central Railroad Company

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Jacksonville, Pensacola and Mobile Railroad Company, et al.

It is hereby stipulated and agreed that the defendant The Jacksonville, Pensacola and Mobile Railroad Company has and leave is hereby given to file its answer in the above entitled cause without prejudice to the time of filing, upon the condition, however, that the filing of its answer at the present time shall not retard or delay the trial of the cause.

Dated Sept. 27th, 1878.

JOS. B. STEWART,
Solicitor for Complainant.
S. B. STEPHENS,
Solicitor for Defendant The J., P. & M. R. R. Co.

Filed Sept. 27, 1878.

PHILIP WALTER, *Clerk.*

525 In the circuit court of the United States for the northern district of Florida. In equity.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., &c., et al.
Two suits.

It is hereby stipulated and agreed that any paper or papers of record in the office of the comptroller, or in the office of the secretary of the board of trustees of the internal improvement fund of the State of Florida, respecting the surrender and cancellation of the $960,700 in the bonds of the Pensacola and Georgia and Tallahassee Railroad, paid to the said trustees in the purchase of the said railroads by F. Dibble and associates on the 20th day of March, 1869, and as part consideration for the deeds executed by said trustees conveying said roads to said Dibble and associates, and showing the receipt and cancellation of said bonds, and the numbers thereof, may be read in evidence by either party on the trial of the above-named suits, with the same effect as if produced and testified to before an examiner of this court.

Dated at Tallahassee, Fla., March 13th, 1879.

JOS. B. STEWART,
Sol. for Complainant.
GEO. P. RANEY,
Sol. for Trustees I. I. Fund.

526 TALLAHASSEE, *Feb.* 26, 1872.

The trustees assembled in the office of Comptroller Gamble on the 26th February, at three o'clock p. m., when were present Acting Governor Day and Messrs. Gamble and Adams.

On motion, the trustees proceeded to compare the bonds of the Tallahassee and Pensacola and Georgia Railroads, which were received as part of the purchase price of the above railroads from F. Dibble and associates, who bid off the same on the 20th March, 1869, with the lists of the same which had been prepared, and found the lists of the bonds and coupons to be correct; and therefore said bonds and coupons were destroyed by burning, in presence of the trustees and Messrs. McIntosh and Major Gamble.

The bonds thus destroyed were of the aggregate amount of $153,100 of the Tallahassee Railroad bonds, and $807,600 of the Pensacola and Georgia Railroad bonds.

The secretary was instructed to prepare and record from the lists taken a full record of the bonds and coupons. The secretary reported that he had caused a suit to be instituted against George W. Swepson for the balance of money in his hands belonging to the fund, and had garnisheed M. D. Papy as trustee of said Swepson.

M. D. Papy then appeared before the trustees and stated that he had no funds whatever in his hands belonging to Mr. Swepson. Then, on motion, the secretary was directed to discharge the garnishee process as against Mr. Papy.

On motion, the trustees adjourned.

A true copy.

Attest:

(Signed) J. S. ADAMS, *Secretary.*

I hereby certify that the foregoing is a true copy of the record of the proceedings of the board of trustees of the internal improvement
527 fund, at a meeting held on the 26th February, 1872, as appears from said record on file in my office.

In testimony whereof, I have hereunto placed my signature and affixed the seal of the Florida State land office, at Tallahassee, Fla., this 11th March, 1879.

[L. S.] HUGH A. CROLEY,
Secretary of the Board Trustees I. I. Fund.

528 S. No. 6.

List of bonds of the Pensacola and Georgia and Tallahassee Railroads placed in my hands by G. W. Swepson, to be paid into the internal improvement fund on account of the sale of said roads sold on the 20th March, 1869.

(Proper signature) R. H. GAMBLE.

Bonds of the Pensacola and Georgia Railroad.

No. 22 for $500	$500 00	
" 16, 17, 18—3 bonds of $250 each	750 00	
" 13 for $200	200 00	
		$1,450 00
" 98, 99, 109—3 bonds of $1,000 each	$3,000 00	
" 213, 215, 217, 218, 219, 220, 221, 222, 214, 212, 293, 292, 291, 368, 371—15 bonds of $1,000 each	15,000 00	

No.	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 30—17 bonds of $500 each	8,500 00	
“	8, 22, 23, 24—4 bonds of $250 each	1,000 00	
“	1, 20—2 bonds of $200 each	400 00	
“	15, 16, 17—3 bonds of $100 each	300 00	
			28,200 00
“	120, 122, 123, 124, 125, 126, 127, 128—8 bonds of $1,000 each	$8,000 00	8,000 00
“	285, 286, 287, 102, 103, 140, 141, 274, 276, 273—10 bonds of $1,000 each	10,000 00	
“	30—1 bond of $250	250 00	
“	3—1 bond of $100	100 00	
			10,350 00
“	113, 114, 115, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 142, 143, 144, 146, 147—20 bonds of $1,000 each	$20,000 00	20,000 00
“	42, 43, 44, 45, 46, 47, 48, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 27—20 bonds of $1,000 each	20,000 00	20,000 00
“	88, 168, 169, 270, 342, 347—6 bonds of $1,000 each	6,000 00	6,000 00
“	170—1 bond of $1,000	1,000 00	1,000 00
“	338, 339, 360, 361, 362—5 bonds of $1,000 each	5,000 00	5,000 00
“	153, 154, 158, 159, 161, 162, 163, 164, 165, 166, 167, 338, 340, 341, 345—15 bonds of $1,000 each	15,000 00	15,000 00
“	240, 241, 246, 247, 255, 251, 261, 268, 272, 274, 276, 279, 280, 284, 289, 8, 13, 124, 125, 202, 198—21 bonds of $1,000 each	21,000 00	21,000 00
529	No. 89, 127, 128, 129, 147, 277, 278, 280, 283—9 bonds of $1,000 each	9,000 00	
“	8—1 bond of $100	100 00	
“	17, 28—2 bonds of $500 each	1,000 00	
			10,100 00
“	15, 16, 17, 18, 63, 64, 182, 183, 184, 185, 186, 253, 254, 255, 256, 257, 267, 268, 365—19 bonds of $1,000 each	$19,000 00	19,000 00
“	252, 253, 254, 267, 307, 308, 309—7 bonds of $1,000 each	7,000 00	7,000 00
“	78, 79—2 bonds of $1,000 each	2,000 00	2,000 00
“	269—1 bond of $1,000	1,000 00	1,000 00
“	1, 2, 3, 4, 5, 6, 7, 8, 9, 74, 1, 2, 3, 4, 5, 6, 7, 9, 11, 14, 17, 12, 21, 19, 23, 24, 26, 28, 29, 30, 31, 32, 33, 34, 22, 10, 8, 13, 15, 16, 18, 25, 27, 131, 136, 137, 139, 133, 140, 77, 160, 158, 157, 73, 156, 68, 67, 66, 65, 132, 138, 186, 176, 179, 178, 177, 175, 180, 181, 126, 20, 155, 217, 219, 218, 221, 220, 182, 183, 184, 185, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 150, 151, 152, 159, 197, 211, 141—101 bonds of $1,000 each	101,000 00	101,000 00
“	76, 77, 78, 79, 80, 81, 86, 87, 150, 147, 148, 149, 151, 152, 153, 154, 155, 156, 159,		

160, 161, 162, 204, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 265, 203—35 bonds of $1,000 each..................	35,000 00	
No. 32—1 bond of $500.................. ...	500 00	
		35,500 00
" 152, 153, 154, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174—21 bonds of $1,000 each..................................	$21,000 00	21,000 00
" 72, 73, 145, 155, 156, 157, 160, 210, 222, 223, 234, 240. 241, 242, 243, 248, 252, 254, 256, 258, 310—21 bonds of $1,000 each..................................	21,000 00	21,000 00
" 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 67, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74. 75, 76, 77, 129, 130—78 bonds of $1,000 each...............	78,000 00	78,000 00
" 26, 39, 40, 41. 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 68, 69, 530 70, 71, 72, 73, 74, 75, 86, 81, 82. 83, 84, 85, 83, 89, 90, 91, 92, 93, 123, 124, 125, 126, 157, 158, 146, 147. 148, 163, 164, 165, 166—55 bonds of $1,000 each....		55,000 00
No. 429, 430, 431, 532, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474. 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485—57 bonds of $1,000 each............		57,000 00
" 95, 113, 114, 117, 177, 178, 179, 180, 181, 234, 235, 304, 305, 306, 348, 349, 950, 351, 352, 366, 367, 369, 70, 372, 373, 374—26 bonds of 1,000 each..........		26,000 00
" 11, 19, 20, 21, 22, 23, 24, 25, 10, 121, 131, 134, 137, 138, 139, 140, 141, 153, 154, 130, 133, 134, 135, 177, 178, 179, 180, 181, 192, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 142—43 bonds of $1,000 each..............		43,000 00
" 216, 217, 219, 220, 229, 231, 331, 232, 232, 233, 233, 234, 230, 235, 236, 237, 238, 239, 240, 239, 238, 237, 236, 235, 250, 251, 255, 256, 257, 249, 248, 247, 246—34 bonds of $1,000 each..............		34,000 00
" 77, 78, 79, 80, 81, 82, 84, 85, 86. 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 105, 106, 107, 108, 109, 104, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 122, 127, 128, 129, 130, 131, 76—41 bonds of $1,000 each..........		49,000 00

	No. 26, 28, 29, 50, 51, 52, 54, 55, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 149, 150, 151, 236, 237, 375, 376, 377, 378, 379, 380, 381, 385, 384, 386, 382, 383—36 bonds of $1.000 each	36,000 00
	" 27, 28, 29, 30, 31, 32, 33, 36, 35, 37, 38, 59, 60, 61, 62, 63, 64, 65, 66, 101, 102, 120, 121, 103, 144, 145, 387, 388, 389, 390, 391, 392, 393, 394, 305, 396, 397—38 bonds of $1,000 each	38,000 0
	" 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428—31 bonds of $1,000 each	31,000 00
		$800,600 00
531	13 bonds deposited in safe in Comptroller's office, September 2d, 1869, Nos. 12, 200, 244, 245, 275, 278, 283—7 bonds of $1,000 each	7,000 00
		$807,600 00

Bonds of the Tallahassee Railroad.

No. 1, 28, 29, 30, 31. 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 112, 123, 124, 125, 126, 127, 128, 129, 130, 131, 109, 110, 111—35 bonds of $200 each	$7,000 00	
" 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 39, 40, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 908, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 43—104 bonds of $100 each	10,400 00	
		$17,400 00
" 172, 173, 174. 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 191, 192, 193, 194, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273—38 bonds of $500 each	19,000 00	19,000 00
" 18, 19, 20, 21, 22, 77, 78, 79, 80. 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 96, 97, 98, 100, 76, 95, 99—30 bonds of $200 each		6,000 00

	No. 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139 140, 141, 142, 143, 144, 145, 146, 1 , 148, 149, 150, 21—99 bonds of $100 each		9,900 00
532	No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 20, 24, 28, 29, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 78, 76, 73, 79, 80, 86, 87, 82, 83, 241, 242, 243, 244, 246, 247, 248, 249, 250, 251, 252, 88—63 bonds of $500 each		31,500 00
	“ 279, 280, 281, 290, 291, 292, 293, 294, 295, 296, 297, 298, 290—13 bonds of $500 each		6,500 00
	Coupons due July 1, 1869:		
	“ 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 404, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130—40 bonds of $500 each		20,000 00
	Coupons taken off to July 1, 1869:		
	“ 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 206, 207, 208, 209, 210, 211, 203, 204, 205, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 277, 278, 282, 283, 284, 285, 286, 287, 288, 289, 300—66 bonds of $500 each		33,000 00
	“ 30, 14, 15, 22, 26, 27—6 bonds of $500 each	3,000 00	
	“ 23, 24, 25, 26, 52, 54, 55, 56, 57, 58, 60, 61, 62, 64, 65, 68, 69, 70, 71, 73, 101, 102, 103—23 bonds of $200 each	4,600 00	
			7,600 00
	“ 114, 115, 133, 134—4 bonds of $200 each.		800 00
	“ 105, 106—2 bonds of $200 each		400 00
	“ 168, 169—2 bonds of $500 each		1,000 00
			$153,100 00

533 Memorandum of amount of coupons attached to bonds of the Pensacola and Georgia Railroad deposited in the comptroller's office by Geo. W. Swepson, as part payment on purchase of said road, sold March 20, 1869:

24,810 coupons of	$35.00 each	$868,350 00	
418 "	17.50 "	7,315 00	
176 "	8.75 "	1,540 00	
66 "	7.00 "	462 00	
88 "	3.50 "	308 00	
			$877,975 00

534 Memorandum of amount of coupons attached to bonds of the Tallahassee Railroad, deposited in the comptroller's office by George W. Swepson, as part payment on purchase of said road, sold March 20, 1869:

2,128 coupons of	$17.50 each	$37,190 00	
882 "	7.50 "	6,615 00	
1,316 "	7.00 "	9,212 00	
2,942 "	3.50 "	10,297 00	
			$63,314 00

RECAPITULATION.

Pensacola and Georgia Railroad bonds	$807,600 00	
" " coupons	877,975 00	
		1,685,575 00
Tallahassee Railroad bonds	153,100 00	
" " coupons	63,314 00	
		216,414 00
		$1,901,989 00

535 COMPTROLLER'S OFFICE,
Tallahassee, Fla., March 13th, 1879.

I, Columbus Drew, comptroller, do hereby certify that the foregoing is a true and correct list of the bonds and coupons of the Pensacola and Georgia and Tallahassee Railroads, paid into the internal improvement fund, as part of the purchase money for which said roads were sold for, March 20, 1869, as shown by the records of this office, the same paid to R. H. Gamble, late comptroller, as evidenced by the records of this office.

Given under my hand and official seal, the day and date above written.

[SEAL.]

C. DREW,
Comptroller.

Filed May 16th, 1879.

P. WALTER, *Clerk*

536 Circuit court of the United States, northern district of Florida.
In equity.

To the honorable the judges of the circuit court of the United States for the northern district of Florida:

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, J. H. Brunnekruff, J. H. Grem, Willenmier Van Tyer Van Taer, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaar, jr., Jacobus Wertheim, P. Van Reysen, May de Benedithy Beer, Gerard A. Heineken, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyen, N. J. Franket, Johannes Willem Donk, Vander Stoop & Berg, who are

aliens and subjects of the King of the Netherlands, bring this, their bill of complaint, in their own behalf, and in behalf of such other persons having like claims, who may come in and be made parties plaintiffs herein and contribute to the expenses thereof,

against

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, a corporation created by and existing under the laws of said State, and a citizen thereof; the Jacksonville, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company, corporations created by and existing under the laws of the State of Florida, and citizens thereof; Edward Lewis, Patrick Houstoun, Robert H. Gamble, Charles E. Dyke, sr., Edward M. L'Engle, Robert Walker, Clayton A. Cowgill, George W. Betton, directors in said last-mentioned corporation, and who are citizens of the State of Florida; James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, who are citizens of the State of Florida, and Joseph B. Stewart, who is a citizen of the

537 State of New York, claiming to be directors in said Florida Central Railroad Company; Francis Vose, who is a citizen of the State of New York; M. K. Jessup & Co., who are citizens of the same State; Chandler H. Smith, S. A. Smith, sr., Smith Simkins, B. C. Lewis, D. Griffith Ambler; W. J. Hines, trustee; Mrs. A. F. Finlayson, James G. Gibbes, who are citizens of the State of Florida; Edward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Falligant, Lewis F. Nicoll, George Robertson, J. A. Hunnicutt, who are citizens of the State of Georgia; The People's Bank, a corporation created by and existing under the laws of the State of South Carolina, and a citizen of said State; William McBurney, Winthrop B. Williams, who are citizens of the State of South Carolina; George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer of the State of Florida; Hugh A. Corley, commissioner of lands and immigration of the State of Florida; George P. Raney, attorney-general; Walter Gwynn, treasurer; Columbus Drew, comptroller, George F. Drew, governor, which officers are trustees of the internal improvement fund, and herein sued as such; Milton S. Littlefield, in his own right; Robert J. Washington, who is a citizen of the State of Virginia.

And thereupon your orators complain and say:

I. That on the 20th of March, 1869, the trustees of the internal improvement fund, acting under the powers conferred upon them by an act of the general assembly of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, 1855, took possession of and sold at public auction the railroads and property which belonged to and were used by the Pensacola and Georgia and Tallahassee Railroad Companies, which railroads extended from Lake City to Quincy, with a branch to Monticello, and from Tallahassee to St. Mark's. Said sale was made because of non-compliance with the third section of said law.

II. That said sale was fairly conducted, and made in strict compliance with the provisions of said law; that the aggregate
538 amounts for which said roads were sold was the sum of one million four hundred and fifteen thousand dollars, which sum exceeded the total amount of the principal of all the bonds then outstanding, which were issued by said corporations under the said law.

III. That F. Dibble and associates purchased said roads at said sale, and paid the purchase money, and the said trustees made deeds under their seals, by which they conveyed said property to said purchasers, reciting therein the payment of the purchase moneys, which deeds they delivered to said Dibble, and immediately placed him in possession of said railroads and property.

IV. That complainants have been informed within a short period that part of said purchase money was accepted by said trustees in said bonds issued by the said corporations, which they immediately cancelled, and the balance was placed by said trustees in the hands of Geo. W. Swepson, as agent of said trustees, with directions to purchase and deliver to them for cancellation the outstanding of said bonds of said companies, which were entitled to payment out of said fund; that said Swepson was a man in good credit, reputed to be worth at least a half million of dollars, and had that amount in Florida; that the said trustees acted in the premises within the scope of their authority and in good faith, and to carry into execution the powers with which they were vested by law.

V. That said Dibble and associates afterward became incorporated by an act of the legislature of Florida, under the name and style of Tallahassee Railroad Company, for the purpose of operating the said railroads to which they had so acquired title. Afterwards the said Tallahassee Railroad Company, and said Dibble and associates, conveyed the said railroads to the Jacksonville, Pensacola and Mobile Railroad Company, of which Geo. W. Swepson and Milton S. Littlefield owned nearly the entire stock.

539 VI. That in the year 1870, the last named company, which will hereafter be spoken of as the J., P. & M. Co., obtained from the governor of Florida, Harrison Reed, four thousand bonds of one thousand dollars each, which were issued by said governor in accordance with the laws incorporating said J., P. & M. Co., and which bonds purported to obligate the State of Florida to pay to the bearer thereof one thousand dollars on each bond, with interest at the rate of eight per cent. per annum, a copy of one of which bonds is hereto annexed, marked A, and prayed to be referred to.

VII. The said J., P. & M. Co. delivered to the governor of said State, in exchange for said four thousand bonds, which he received from him a like amount of bonds, three thousand of which were executed by the said J., P. & M. Co. and one thousand by the Florida Central Railroad Company. Said bonds were for the sum of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable to the State of Florida. Copies of each description of said bonds are filed herewith, marked B and C, and prayed to be referred to. The execution and delivery of said bonds was done by said companies in order to comply with the terms of the laws incorporating the said J., P. & M. Co.

VIII. That when the said bonds were executed by the Florida Central Company, Milton S. Littlefield owned a large majority of its stock, and he had contracted to buy from Edward Houstoun, J. P. Sanderson and others, stock owned by them, which, added to his own, constituted all the shares of said company except about four hundred. The whole number was 5,500. That such purchases were made by said Littlefield for the purpose of making a consolidation of the Florida Central with the J., P. & M. Co., which object was known to the parties from whom Littlefield purchased said stock, and they sold to aid therein: that the one thousand bonds issued as bonds of the Florida Central Railroad Company, and delivered to the governor, were caused to be executed and delivered by the joint action of said Houstoun and said other stockholders in order to enable the said J., P. & M. Co. to obtain from the governor of Florida State bonds (so called), and with the understanding and agreement
540 that said bonds should be sold, and said Littlefield should make
payment for the stock purchased from said Houstoun and said other stockholders out of the proceeds, which he in fact did, with the exception of the stock which he purchased from said Gamble, for which he paid in part only; that the holders of some shares of stock in said Florida Central Company, other than those beforementioned, although they had notice of the acts and intentions of said Littlefield, Houstoun and said other stockholders in the foregoing paragraph set forth, took no steps to prevent the execution thereof, and remained inactive and acquiescent until long after the sale which was made of the Florida State bonds (so called), as is hereinafter set forth; that the said Littlefield, and the others who were connected with him in the management of the J., P. & M. Co., immediately after the issuance of the Florida State bonds (so called), took possession of and operated the line of railroads which formerly belonged to the Florida Central, which lies between Jacksonville and Lake City, and treated it as constituting, with the roads formerly belonging to the Pensacola & Georgia and Tallahassee Railroad Company, and which had become the property of the J., P. & M. Co., in the manner before stated, as the line of railroads of the said J., P. & M. Co., and took and disposed of the earnings of the whole. In the year 1871 said J., P. & M. Co. conveyed the whole of said roads, by deed, to trustees to pay debts due by the J., P. & M. Co., in which deed the line of railroad from Jacksonville to Lake City was treated and conveyed as the property of the J., P. & M. Co. The said trustees took possession of and operated the said road conveyed to them for a considerable space of time, and without any interference on the part of any bona fide stockholders of the said Florida Central Company.

IX. That the said J., P. & M. Co. sent the bonds which they obtained from the governor of Florida to England, and sold nearly all through an agent in the city of London. Such sale was made to a banker in said city, at the price of about one hundred and thirty-eight pounds sterling per bond. The said buyer afterwards resold the said bonds through bankers in the city of Amsterdam, Holland, by whom
541 they were offered for sale to the public in said city and in other
parts of the Netherlands, and which said bonds were dealt in on the stock exchange of Amsterdam as other public securities, were in full

reliance by all purchasers upon the representations which were made in respect to such bonds, which are hereinafter set forth and stated; that said bonds bore a good price so long as the interest was paid thereon, bringing at one time as high as eighty-one per cent. gold in United States coin.

X. The said J., P. & M. Co., through its agents in London, represented to the public in England, Holland, Germany, and France that the said bonds were veritable and lawful obligations of the State of Florida, that the interest thereon would be punctually paid by said State, that there was provided by law of said State as a security for the payment of said bonds a lien on the whole line of railroad from Jacksonville west; which line was represented to be owned by the J., P. & M. Co. alone. That the banker by whom they were purchased in London repeated the same representation to the bankers in Amsterdam, and they to the public in the Netherlands, and to complainants, as well as to others who purchased, sold, and dealt in said bonds.

XI. That complainants are the owners of a large number of the said bonds issued by Governor Harrison Reed to the said J., P. & M. Co., and sold by its agents as before set forth, which bonds are numbered between number one and number three thousand two hundred; the numbers belonging to each of complainants are stated in affidavits made by them before the American consul in Amsterdam, which affidavits are filed herewith and are prayed to be referred to as a part of this bill. Complainants are ready to produce said bonds when required, and will be able to produce them upon their arrival in the United States, they being on the way from Amsterdam to New York, to which latter place they have been sent by complainants to Adolphe Engler, as agent of complainants, entrusted by them to deal with said bonds as may be determined to be for the interest of complainants by their agent, Charles D. Willard, and their counsel. That interest from the 1st day of
542 January, 1873, is due and unpaid on said bonds, and they have
applied to the governor of the State of Florida to enter upon and seize, and take possession of the line of railroads and property thereto pertaining, before described as belonging to the said J., P. & M. Co., including an extension of said railroad, which has been constructed by the said company, from Quincy to the Apalachicola River since the year 1870; and complainants say they have a right to have said railroads seized and sold for the payment of the principal and interest of the bonds held by them; and in case they should desire to become purchasers at said sale they should be permitted to make payment with their said bonds as far as they may be sufficient therefor.

That interest was paid on said bonds after they were sold up to January 1st, 1873, semi-annually, by a trust company in the city of New York, which was appointed by the governor of Florida as the fiscal agent of the State to pay such interest; that the said governor gave notice to the holders of such bonds of such appointment; that it was represented to the persons who dealt in said bonds, including complainants, that the money for the payment of such interest was provided by the State; that owing to such an occurrence and such information, the belief that such bonds were lawfully issued by the governor of Florida was greatly strengthened, and full faith was also given to all that had been represented by said J., P. & M. Co. as to the extent of its own line of railroads.

XII. Complainants are informed that defendants, Francis Vose, M. K. Jessup & Co., Chandler H. Smith, S. A. Smith, sr., Smith Simpkins, B. C. Lewis, D. Griffith Ambler, W. J. Hines, trustee, Mrs. A. F. Fin-

layson, James G. Gibbs, Edward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Falligant, Louis F. Nicoll, George Robertson, The Peoples' Bank, William McBurney, and Winthrop B. Williams, together with other persons whose names and citizenship are to complainants unknown, allege that they are the holders of the outstanding and unpaid bonds which were issued by the Pensacola and Georgia and Tallahassee Railroad Companies under the provision of the 3d section of the internal improvement act of 1855, and that there is a subsisting lien on the railroads which were sold
543 by said trustees to F. Dibble and associates, for the payment of said bonds, and said defendants at times assert that the original lien and power of sale given by the act aforesaid is still in force; and other times they assert that the said F. Dibble and associates did not pay to said trustees the full amount of said purchase money, and that there remains due on such account the sum of $472,065 and interest. And that said trustees, as vendors, have in equity a lien on said railroad and property for such sum of money, and they have demanded of said trustees that they proceed to enforce such lien irrespective of the paramount lien which complainants herein assert to exist for payment of their bonds. All of which pretenses and claims, made by the holders of said Pensacola and Georgia and Tallahassee bonds, complainants allege to be without support in fact, and they are advised that they are not well founded in law. Complainants insist that the holders of said bonds are bound by the acts of said trustees; that such acts were done in the exercise of powers conferred upon them by the law of 1855, and that even if they acted in bad faith and corruptly when they executed and delivered the said deed of said property to said F. Dibble, and entrusted said Swepson with said money and accepted his obligation to purchase for them said outstanding bonds, complainants, as bona fide purchasers, as they allege themselves to be, without actual notice of any wrong or fraud on the part of said trustees or of said Dibble and associates, or of said Swepson, and claiming as they do under the title created by the contract made between the said Dibble and associates and the J., P. & M. Co., and the subsequent contract and trust created by the acts of the legislature which incorporated the said J., P. & M. Co., are not affected thereby, nor liable to be postponed to any vendor's lien in favor of said trustees, such as is asserted to exist by said P. & G. and Talla. bondholders; that the complainants' right to subject said railroad to payment of their bonds arises out of conveyances of the legal title made by the purchasers from the said trustees and those to whom they conveyed, and that there is no privity of contract between complainants and the said trustees. Complainants claim under the legal title, and therefore have a higher and better equity to payment out of said railroad and property than any which can be set up by the
544 holders of said unpaid P. and G. and Talla. bonds, and complainants insist that the P. & G. and Talla. bondholders have failed to cause the said trustees to sue the said Swepson to recover the amount due by him, and for which said trustees hold his written obligation; and complainants insist that until such proceeding has been taken and has proved to be ineffectual, and until it appears that said trustees have not lost their remedy against said Swepson by reason of any laches on their part, the said bondholders, who assert that they are entitled to a lien on said railroad superior to the equities which are by complainants stated herein to exist in their favor, should be enjoined from maintaining or asserting any such lien.

Complainants insist that no such claim as is attempted to be set up by said bondholders should be entertained in a court of equity, because of the time which has elapsed since the happening of the events and the doing of the acts by said trustees and said Dibble and associates and said Swepson, upon which the said bondholders rely to sustain their claim, all of which transactions took place in the year 1869, and as to which the persons by whom the outstanding bonds of the P. & G. and Talla. Co.'s were owned at the time had full notice, and that said Vose and many of said defendants, having like securities, have purchased within a short time for purposes of speculation and litigation with full notice; that the persons who held said bonds in March, 1869, had notice of the transactions herein stated in relation to said railroads, which were done by said Dibble and associates, and also of the passage of the laws disposing of and transferring the said railroads, the creation of said Tallahassee and of said J., P. & M. Co.'s, and the authority given by law to the latter company to create a lien on said railroads, and under which lien it is that complainants seek payment of their bonds; that as such persons had such knowledge and information and did not take any proceedings, such as they might have taken, to prevent the J., P. & M. Co. from doing what they were authorized to do by their charter, they, the said holders of P. & G. and Talla. bonds, have no right now to object to any of the acts that were done by said corporation under such authority of law, but that they are estopped to deny the legal consequences which arise out of such acts. Complainants state they are 545 advised that the said P. & G. and Talla. bonds never constituted a lien on the roads owned by said companies for any sum of money other than the principal of such bonds; that the interest thereof was secured by the land-trust fund created by the act of 1855, and complainants are informed, and therefore allege, that said fund is ample security for such interest, and they insist that the holders of said bonds, whatever claim they may have, should be required to exhaust such fund before resorting to a security such as the railroad, which is not common to them and complainants. Complainants are advised that the said bondholders had the right to have the sinking fund, which was provided by the act of 1855, collected and invested in the manner specified in said act, and in case of any loss of any part thereof by the acts of the trustees, that they had a remedy against them and also a right to have the loss made good to them out of the proceeds of the sale of the land conveyed to the trustees by the State, and complainants insist that said bondholders should be restricted to such sinking fund and to such remedies for the collection and restoration thereof as are herein stated to exist and open to be pursued by them.

XIII. That the defendants, the Western Division of the Western North Carolina Railroad Company, Milton S. Littlefield, James M. Baker, Charles B. Fenwick, Edward M. L'Engle, falsely pretending that they were bona-fide holders of stock in the Florida Central Railroad Company, and claiming that they were legally authorized to elect a president and directors of said company, held an illegal meeting and chose Edward M. L'Engle president, and James M. Baker, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Joseph B. Stewart, Charles B. Fenwick, and George R. Foster directors, none of whom were stockholders in said corporation; and they appointed Charles B. Fenwick secretary and George R. Foster treasurer thereof; that immediately after they issued a large number of certificates of stock represented to be stock of Florida Central Railroad Company in favor of themselves and sundry other persons who have combined with them to defraud the State and the public at large, and especially to vex, 546 harrass, and injure complainants; that they have formed a plan, and are about to make and issue bonds in the name of the Florida Central Railroad Company, and to execute a mortgage of the railroad and property which was formerly owned by said corporation, and intend sharing such bonds among themselves with the intention to dispose of them for money; that said George W. Swepson has some interest in said scheme, and is to receive a large number of said bonds.

That said defendants, Littlefield, L'Engles, Sawyer, Stewart, Baker, Lawton, and others, pretend that they formed such organization and held such election under a judgment rendered by the judge of the fourth judicial circuit court of the State of Florida. Complainants are informed, and so allege, that the judgment of said court was procured by fraud. That the Western Division of the Western North Carolina Railroad Company, an insolvent corporation, acting by one Jos. B. Stewart, filed a petition for mandamus in said court, and by collusion with Milton S. Littlefield and said last-named defendants, and others to complainants unknown, alleged said North Carolina corporation to be a stockholder in said Florida Central Railroad Company; and that said Littlefield and others were made defendants in such mandamus proceeding, and who owned no stock in said Florida Central Railroad Company, and they made no resistance to the prayer of the petition, but falsely answered that they were such stockholders; that no persons who were bona fide stockholders in said Florida Central Railroad Company were parties to such proceedings; that the persons who participated were not holders of bona fide certificates of shares of stock in said corporation, as will fully appear by the entries on the transfer book and stock ledger of said company, up to the tenth day of April, 1872. And complainants insist that said judgment of said State court should be adjudged and held to be void because of the fraud in procuring the same. And the said defendants, Milton S. Littlefield, Joseph B. Stewart, N. K. Sawyer, James M. Baker, W. J. Lawton, J. C. L'Engle, Edward M. L'Engle, and the Western Division of the Western North Carolina Railroad Company should be enjoined from asserting themselves to be stockholders in or officers of said company, and that they be ordered to refrain from issuing any of the bonds and from the execution of the mortgage before
547 alleged to be in course of preparation, and if any such papers have been executed, that they should be directed to deliver them to an officer of this court to be designated herein; that the said defendants should be also required to deliver to said officer any seal in their possession which has been used by them or by any one under their authority as the seal of the Florida Central Railroad Company.

XIV. That the governor of the State of Florida has seized the whole line of railroad, and the property thereto pertaining, which was formerly owned by the Florida Central Railroad Company, as well as that from Lake City to the Apalachicola River, with the branches to Monticello and St. Mark's and has advertised the same for sale; but he has described in the advertisement the railroad from Jacksonville to Lake City as the property of the Florida Central Railroad Company, and has stated that said road is seized and that he will sell the same for default made by said company on bonds delivered by it to the governor of the State. Complainants are satisfied that the now governor of the State deems such proceedings proper; but complainants are advised that so far as they are concerned they have the right to demand that the said railroad between Jacksonville and Lake City should be seized by the governor and sold as forming with the railroad west of Lake City an entire line and as the property of the said J., P. & M. Co.

XV. That the governor of Florida declares in the advertisement made by him, in which he gives notice of the intended sale of the railroad from Lake City to Quincy and the branch to Monticello and that from Tallahassee to St. Mark's, that such sale will be made subject to a prior lien thereon for unpaid purchase money claimed to be due by the holders of the said bonds issued by the Pensacola and Georgia and Tallahassee Railroad Companies, and which they claim are secured as is hereinbefore set forth. Complainants insist that the governor has erred in declaring that such lien exists, and that it was his duty to make sale of said railroads and property clear of all lien or claim of any kind, and as being bound solely to pay the said bonds which complainants own
548 and which they seek in this proceeding to obtain payment of;
and that the governor should be instructed by this honorable court so to proceed in the exercise of the power of sale vested in him by the acts which incorporated the J., P. & M. Co. Complainants are satisfied that the governor is ready and willing so to do when directed by the decree of this honorable court.

XVI. That the complainants being averse to litigation, and fearing that if driven to assert what they are advised are their full rights in a court of equity, they would be subjected to great cost and delay, and being informed that said railroads and property thereto pertaining were greatly dilapidated and in bad condition to carry freight and passengers, and that no means of placing said property in proper condition by suitable construction and repair existed, sought, by making concessions to the persons by whom the said bonds issued by the Pensacola and Georgia and Tallahassee Railroad Companies are owned, to have a speedy sale of said last-mentioned railroads, and to that end they authorized an agent to act for them in the United States and to join in a plan, a copy of which is hereto annexed, marked D. And that a majority of the holders of said bonds have assented to said plan of settlement. but the said defendant, Francis Vose, combined with a minority of said bondholders, and took such legal proceedings as prevents such compromise settlement from being carried into execution. Complainants are willing to consent that a decree be made and entered in this cause, making provision for the sale of the said railroads and property upon the basis in said plan contained, provided that the said trustees of the internal improvement fund and the holders of the said bonds issued by the said Pensacola and Georgia and Tallahassee Railroad Companies agree that such decree be made.

XVII. Complainants are informed that some time in the year eighteen hundred and seventy-five the persons who held a majority of the shares of the stock in the Florida Central Railroad Company at the time when said transactions took place, whereby the railroad from Jacksonville to Lake City became consolidated with that owned by said J., P. &
549 M. Co., and by which means such railroad became pledged for
the payment of complainants' bonds, met in Tallahassee and elected certain persons, viz, said Edward Lewis, B. Williams (now deceased), Patrick Houstoun, R. H. Gamble, C. E. Dyke, sr., E. M. L'Engle, R. Walker, C. A. Cowgill, and G. W. Betton as directors of the said Florida Central Railroad Company; that such persons took upon themselves such offices and acted therein; that no president of said corporation was attempted to be elected, but that Robert Walker was authorized to act in lieu of such president. Complainants are advised that it is not material to them whether said corporation was dissolved by the proceedings which are hereinbefore set forth as to the consolidation of said railroads, and they do not, therefore, ask in this their bill that such

dissolution be declared to have taken place, unless the same be necessary to enable the said complainants to obtain payment of their bonds; and complainants allege that if such Florida Central Railroad Company is still in existence as a corporation, that the persons before mentioned are the only persons who can by law represent said company, because, as complainants are informed, there has been no meeting of the persons who held said stock in said company since that last before stated.

XVIII. That said persons acting in said capacities were parties in a certain suit commenced in the State circuit court and finally determined in the supreme court of the State, wherein the State of Florida and trustees of the internal improvement fund were complainants in the first court, in which suit questions of law and fact were presented for adjudication, and which were determined by said supreme court, touching the liability of the line of railroad and property between Jacksonville and Lake City for the payment of the bonds delivered by the governor of the State to the J., P. & M. Co. before mentioned, and as to whether the said Florida Central Railroad Company was or not, by the acts done by its stockholders and directors, estopped from denying such liability as against the claim which complainants have hereinbefore alleged in respect to such line of railroad for payment of said bonds. The said supreme court, by its judgment rendered in said cause, deter- 550 mined such questions of law and fact in favor of the claim so made by complainants, and they are advised and insist that they are entitled to rely upon and they do herein claim and rely upon said judgment of said supreme court as a conclusive judgment in their favor as to such matters, and as binding on the Florida Central Railroad Company, if there be such corporation, and upon all persons who claim to be owners of stock therein.

XIX. That Daniel P. Holland, who was likewise a defendant in the said case in the State circuit court, prosecuted an appeal to the supreme court from a judgment rendered by said circuit court in said cause, adverse to said Holland, which appeal was finally heard and determined by the said supreme court; that among other questions of law and fact therein made and decided, the said supreme court by its judgment determined that the acts incorporating the said J., P. & M. Co., the issuance of said bonds by Governor Reed to it, the sale thereof by said company to the complainants and others, created a trust in fovor of the bona fide holders of said bonds, that a lien on the railroad and property for the payment of said bonds existed, and that a power of sale by said acts of incorporation conferred on the governor of the State must be executed by him for the purpose and in the manner in said acts specified; and complainants are advised and insist that they are entitled to and do plead and rely on such judgment in support of the claim which they herein allege to exist as to such lien, to the existence of such trusts, and as to their right to have the line of railroad which formerly belonged to the Pensacola and Georgia and Tallahassee Railroad Company, sold by the governor in the manner and for the purposes which they have hereinbefore alleged in respect thereof; and complainants produce herewith the judgments of the said supreme court in said several cases, and pray leave to refer thereto as a part of their bill of complaint.

XX. That the said J., P. & M. Co. was a party to said suit so brought by the State and the trustees aforesaid, and that they appear therein and answered the complaints filed in said suit, and admitted the issuance of said bonds by the governor of the State, and did not 551 deny its liability to pay said bonds, nor that there was a lien existing thereof, such as was determined to exist by said supreme court; said answer was sworn to by said Milton S. Littlefield, as the president of said company; that complainant produces herewith a true copy of said answer, and prays leave to refer thereto when necessary.

XXI. Complainants have procured the whole of said line of railroad, its workshops, depots, and rolling stock, to be examined by a competent and skillful railroad engineer, who reports that the said property is not fit for the safe transportation of passengers and freight, and cannot be profitably operated therefor; that the iron rails are badly worn; the cross-ties decayed; that the rolling stock is insufficient and old and inadequate; that it will cost a large sum to put such property in porper condition, more than the net earnings of said railroad will furnish, and that if said road is put in good working order, a large increase of such net earnings may be reasonably expected. Complainants are assured that money and material to put such road and property in good working order can be obtained, provided that such means when advanced by any persons can be secured to be paid out of the money arising from the sale of said road, and the same made a lien, as costs in this cause, by an order of this honorable court, directing the doing of such work, and authorizing the procurement of the necessary material and money therefor. Complainants are advised that the governor of the State has not the power to make any contract for such purposes, and that in consequence he cannot procure the necessary material and money; and complainants submit to this honorable court whether or not the governor of the State should be invested by an order made in this cause with the powers of a receiver to this court, and with authority and power to obtain money and purchase material for the purposes before stated, and provision made in said order providing for the needful security for payment of the liabilities to be incurred in such behalf. Complainants are informed that there is now in the hands of the treasurer of the State of Florida a sum of money amounting to about thirty thousand dollars, paid to him by Robert Walker, receiver, by order and direction of the
552 Supreme Court of the United States, made in the cause decided in
said court, in which E. C. Anderson et al. were defendants, and the State of Florida plaintiff; such money is the balance of the earnings of the line of road from Lake City, west, which came to the hands of said receiver, and which money the said court directed should be held by the said treasurer, subject to the order of a court of competent jurisdiction; and complainants are advised that said sum of money is a proper fund to be applied to the repair of said railroad and property, and they insist that they have the right to have the same so applied by order of this court.

XXII. Complainants are informed, and upon such information allege and state, that the defendant, the Western Division of the Western North Carolina Railroad Company, united with said Littlefield, said Swepson, and said S. W. Hopkins & Co. in procuring the governor, Harrison Reed, to issue and deliver to said J., P. & M. Co. the said State bonds (so called) and in all the acts and representations done and made by said J., P. & M. Co., its officers and agents, and in the sale which said S. W. Hopkins & Co. made of said bonds, and that said North Carolina corporation received a portion of the proceeds of such sale, and contracted with said Swepson and said Lit'field, and with authorized agents of said J., P. & M. Co., for the payment to said North Carolina corporation, by the parties to said contract, of the sum of six hundred thousand dollars and upwards, such payment to be made out of the money to be received by said S. W. Hopkins & Co. from the sale of said bonds, to enforce which payment said North Carolina corporation brought suit in a court of the State of New York against said Hopkins & Co. and said J., P. & M. Co. Complainants are informed that said North Carolina corporation now alleges that the bonds held by complainants and others, which said corporation in part contributed to induce the present holders thereof, or those from whom they purchased, to take and pay for, as the bonds of the State of Florida, are not legal and valid obligations, and that the holders thereof are not entitled to the payment of the same in the manner and from the source which complainants herein assert themselves to be entitled to, and are seeking to obtain in this, their bill of complaint, all of which pretences, set 553 up by said North Carolina corporation, are made by them in bad faith, and in violation of equity and against good conscience; the said corporation is, and should be, by the decree of this court, declared to be estopped from making the same by reason of the acts done by it in respect to the sale of said bonds, which are hereinbefore set forth, and that said corporation ought to be enjoined from making any interference with complainants' proceedings to subject said railroad and property to payment of their bonds, or from instituting any suit at law or equity against complainants or against the governor of the State for such purpose.

XXIII. That defendant, Edward M. L'Engle, has illegally possessed himself of the shares of stock which were sold by John P. Sanderson to Milton S. Littlefield; that payment therefor was made from funds received by S. W. Hopkins & Co. from the London banker to whom they sold said Florida State bonds (so called), which fact was well known to said Sanderson and to said L'Engle, who were, at the time of such transaction and afterwards, the attorneys of said Littlefield and of said railroad corporations, which he controlled. Said Sanderson was also an officer of said Florida Central Railroad Company, and assisted said Littlefield in the transactions before stated, which resulted in the consolidation of said railroads, and the issuance and sale of said bonds. Said L'Engle has, since the said Florida State bonds (so called) were sold, purchased from certain persons who formerly held stock in said Florida Central Railroad Company their rights as such, whatever they may be; that he has, by use of such means, brought several suits in the State courts against sundry persons concerning the property which formerly belonged to said Florida Central Railroad Company, which suits he has dismissed after causing great damage and loss to said property thereby; and complainants are informed and believe that said L'Engle intends to institute further suits, founded on the title he has so acquired, or claims to have, with a view to compel complainants to pay him a large sum of money to buy their peace, and to hinder them from obtaining the relief herein sought.

554 XXIV. The said L'Engle has instituted a suit in this court in the name of Robert J. Washington, in which it is sought to obtain a decree declaring said Washington to be the lawful owner of all the shares of stock which said Littlefield purchased from said Swepson, said Houstoun and others. The title set up in said suit is derived from said L'Engle and one J. H. Miller, and is based solely on notes given to said L'Engle by said Littlefield without valid consideration, on the pretence of a payment by Littlefield to L'Engle for services pretended to have been rendered by said L'Engle to said Littlefield and the said Florida Central and Jacksonville, Pensacola and Mobile Railroad Companies. Complainants are informed and believe that said Robert J. Washington has no real interest in the subject-matter of said suit, and

that his name is being used by said L'Engle in fraud of the jurisdiction of this court, the said L'Engle making use of the name of said Washington because he, being a citizen of Florida, is disqualified to sue in the courts of the United States.

XXV. Complainants are informed and believe that said defendant, Milton S. Littlefield, made some agreement with said George W. Swepson to perform the obligations which the latter undertook with said trustees to do, viz, to purchase said unpaid Pensacola & Georgia and Tallahassee Railroad Companies' bonds; that said Littlefield did, in fact, purchase of said Edward Houstoun one hundred and three of said bonds in performance of such contract, which bonds are now deposited in the registry of this court to the credit of a cause therein pending, in which Edward C. Anderson et al. are plaintiffs and the J., P. & M. Co. et al. are defendants; that said bonds are claimed by divers persons under some contract with said Littlefield, which persons had full knowledge that said bonds were paid for out of the money for which the bonds issued by Governor Reed to the said J., P. & M. Co. were sold as before set forth; said one hundred and three bonds have never been in the actual possession of said Littlefield. Complainants are advised that they should be delivered to said trustees of the internal improvement fund, and they should take such proceedings as may be necessary to procure the same to be done.

555 XXVI. That of the capital stock of the Florida Central Railroad Company, which consisted of five thousand five hundred shares, four thousand three hundred and seventy were held by Edward Houstoun at the time of his decease, which took place about two years since, as appears from the stock ledger of the Florida Central Railroad Company; that certificates of such stock were issued to said Houstoun by said company, which certificates are now in the hands of a receiver appointed by the superior court of Chatham County, in the State of Georgia, in a cause therein pending between the executors of said Houstoun and sundry other persons, in which suit the title to said stock is involved, and the right thereto sought to have determined. That said Milton S. Littlefield has made a conveyance to the Western Division of the Western North Carolina Railroad Company, by which he pretends to convey to said corporation a legal title to said stock, which title he falsely pretends he held at the date of such conveyance, and which false pretense was well known to the officers of said corporation, who took from him such invalid conveyance; that the same was made and accepted to aid the said corporation to sustain the before-mentioned claim of such corporation of interest in said railroad and property, and complainants insist that said corporation ought not to be allowed to make any claim under such conveyance, nor to derive any benefit or advantages therefrom.

In consideration of the premises, complainants pray that writs of subpœna may be issued out of this honorable court, directed to said defendants severally, viz: The Western Division of the Western North Carolina Railroad Company, the Jacksonville, Pensacola & Mobile Railroad Company, the Florida Central Railroad Company, Edward Lewis, Patrick Houstoun, Robert H. Gamble, Charles E. Dyke, sr., Edward M. L'Engle, Robert Walker, Clayton A. Cowgill, George W. Betton, James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, Joseph B. Stewart, Francis Vose, M. K. Jessup & Co., Chandler H.
556 Smith, S. A. Smith, sr., Smith Simkins, B. C. Lewis, D. Griffith Ambler, W. J. Hines, trustee, Mrs. A. F. Finlayson, James G.

Gibbs, Edward C. Anderson, James Hunter, E. Waitzfeller, John M Guerard, John C. Falligant, Lewis F. Nicoll, George Robertson, J. A. Hunnicutt, The People's Bank, William McBurney, Winthrop B. Williams, George F. Drew, governor of the State of Florida, Walter Gwynn, treasurer of the State of Florida, Hugh A. Corley, commissioner of lands and immigration, George P. Raney, attorney-general, Walter Gwynn, treasurer, Columbus Drew, comptroller, George F. Drew, governor, as trustees of the internal improvement fund, and Robert J. Washington, commanding them to be and appear before this honorable court on a day certain to be named therein, to answer the allegations of this bill.

1. And may it please your honors to decree that complainants are entitled to be taken and held as bona fide holders of the bonds of the Florida Central Railroad Company.

2. That the entire line of railroad from Jacksonville to the Apalachicola River, with the branches to Monticello and St. Marks, and all property, real and personal, thereto pertaining, may be decreed to be subject to a lien for the payment of complainants' bonds superior to the claims of any and all persons whatever, and especially said defendants.

3. That it may be declared by the decree of this court that the sale of the said bonds by the said Jacksonville, Pensacola & Mobile Railroad Company, issued by Harrison Reed, governor, to said company, and the representations made by said company and its agents to the purchasers thereof, and the actings and doings of the officers and stockholders of said company and of the said Florida Central Railroad Company, herein stated and alleged, created a trust in favor of complainants, and entitles them to have the whole of said line of railroad made subject to the payment of complainants' said bonds, and that such entire line of railroad be proceeded against for such purpose, and treated as belonging to the Jacksonville, Pensacola & Mobile Railroad Company; and that the stockholders of the Florida Central Railroad Company and such corporation be declared to be bound by the representations which were made by the said Jacksonville, Pensacola and
557 Mobile Railroad Company to the purchasers of said bonds before alleged herein to have been made; that the line of railroad from Jacksonville west constituted one entire line of road, was the property of said last-named corporation, and that the same was subject to a lien for the payment of the principal and interest of said bonds by the provisions of the acts incorporating said last-named corporation.

4. May it please your honors to decree that complainants are entitled to the benefit of the provisions of the said acts of incorporation which created a lien on said railroad and property for payment of the bonds held by complainants, and that they are entitled to demand that the governor of Florida execute the power of sale vested in him by said acts, and that he be decreed to proceed therein in the manner and for the purposes which complainants have herein stated should be done.

5. That the defendants, the trustees of the internal improvement fund, and those who hold the Pensacola & Georgia and Tallahassee Railroad bonds be decreed to have no longer any lien of any kind upon that portion of the said line of railroad which lies between Lake City and Quincy, with the branch to Monticello and the road from Tallahassee to St. Marks, and that complainants have a superior equity as to such property for payment of their bonds over and above the vendor's lien claimed by said trustees and said last-mentioned bondholders to exist in their favor.

6. That the Western Division of the Western North Carolina Railroad

Company be decreed not to have any other right, title, or claim in respect of the line of railroad from Jacksonville to Lake City than that which the said Florida Central Railroad Company and its stockholders shall be decreed to possess, and to be subject, in like manner, to the right of complainants to have said portion of said line of railroad sold for payment of complainants' bonds.

7. That the pretended organization of said board of directors claimed to have been made under the authority of said judgment of Duval circuit court in the suit instituted by said Western Division of the Western North Carolina Railroad Company be declared fraudulent and void; that the said judgments be declared to be void because of the fraud committed by the parties thereto, and that the said defendants
558 claiming to be president, directors, and officers of said Florida Central Railroad Company be declared to have no lawful title to such offices; that said defendants, Robert Walker, Robert H. Gamble, and the other defendants who were chosen directors of said Florida Central Railroad Company, as herein alleged by complainants, be declared to be the only proper representative of said Florida Central Railroad Company, or entitled as such to appear in this suit or otherwise act in respect of the interests of the stockholders of such company.

8. That defendants, Edward M. L'Engle and Robert J. Washington, be declared not to have any valid title to any stock in said Florida Central Railroad Company, and that as to any such stock which may have been acquired by said L'Engle, that he be decreed to hold the same subject to the claim herein alleged to exist in favor of complainants, and that he be held to have acquired the same with full notice of all the rights which are herein asserted by complainants.

9. That the bonds issued by the said defendants, E. M. L'Engle, as president, and said Foster, Fenwick, Stewart, Sawyer, and others, as directors of said Florida Central Railroad Company, be decreed to be null and void.

And may it please your honors to grant unto your orators writs of injunction, to be directed to said Western Division of the Western North Carolina Railroad Company, said Florida Central Railroad Company, and its stockholders, to said Edward M. L'Engle, said Robert J. Washington, enjoining them from instituting any proceedings at law, or in equity, in relation to said line of railroad from Jacksonville to Lake City, and its property, and from seeking to interfere with the possession thereof acquired by the said George F. Drew, governor, or from intermeddling therewith.

May it please your honors to make an order herein constituting and appointing George F. Drew, governor of the State of Florida, receiver of this court, with special power and authority to make purchases of railroad iron, material, and equipments suitable for use of said railroad, and to put said line of railroad in suitable condition for the carriage of freight and passengers, and to preserve the same from dilapidation
559 and destruction; for such purpose to apply the net earnings of said railroad thereto; and, if necessary, to make purchases on credit, to be reimbursed and paid by order of this court, and to constitute a charge on said property in like manner as the costs of the cause are by law provided; and that the said governor, as such special receiver, be authorized to demand and receive from said defendant, Walter Gwynn, treasurer, the said sum of money herein stated to be in his hands, under said order of said Supreme Court of the United States; and that the said treasurer deliver such money to said governor, which money the

said George F. Drew, governor, as such special receiver, be directed to use for the repair and preservation of said line of railroad; and that such fund be regarded in the hands of said receiver as a separate and distinct fund, to be disposed of by the decree of this court to be made herein, and subject to all proper claims, if any there be, against the same; and that the said George F. Drew, as such special receiver, be directed to render to this court an account of his actings under this order, at such specified times as may be prescribed therein.

And may it please your honors to grant unto your orators such other and further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

W. G. M. DAVIS,
Solicitor for Complainants.

UNITED STATES OF AMERICA,
Northern District of Florida:

Charles D. Willard, sworn, says that he is the authorized agent and attorney of each and every of the complainants in the foregoing bill mentioned; that he has received from them, and each of them, power in writing, properly authenticated, giving him authority to institute this suit, and to act for them generally in the prosecution of the rights which said complainants in said bill have set up; that he has for a long time been in correspondence with Jacobus Wertheim, a counsellor at law, residing at Amsterdam, in Holland, and who is employed, as deponent is informed and believes, by complainants to advise them in respect
560 to their rights as such bondholders; that the correspondence between deponent and said Wertheim was wholly upon such subject, and deponent was thereby informed as to the circumstances under which said bonds were purchased by complainants, and that they held the same.

Deponent further says that he has read the proceedings, or the greater part of them, which were instituted by divers plaintiffs in the courts of the United States and those of the State of Florida, as well as in the suits instituted in New York by the Western Division of the Western North Carolina Railroad Company; that he has seen and read proceedings of the stockholders and directors of the Florida Central Railroad Company, the sworn statements of S. W. Hopkins & Co., of Edward Houstoun, and has generally received information as to the matters in said bill set forth from various persons, attorneys, as well as others, who were familiar with such matters, and that from such means of knowledge he is able to swear and does depose that the facts in the foregoing bill of complaint set forth he believes to be true; that as to the ownership by complainants of the bonds in the bill mentioned, deponent says he believes that they are owned and held by said complainants, and that they purchased the same in good faith, believing them to be what they purported on their face to be, and such belief, deponent says, he asserts by reason of the statements made by said complainants, sworn to by them in Amsterdam, before the American consul, transmitted to deponent as such agent.

Deponent further says that the bonds of said complainants will shortly be received in the United States, and will be produced in this cause, of which fact deponent has been informed by a telegraphic dispatch sent by the Bank of Amsterdam to Mr. Adolphe Engier, of New York.

CHARLES D. WILLARD.

Sworn to and subscribed before me this 23d day of May, A. D. 1877.

FRED. T. MYERS,
Deputy Clerk United States Circuit Court, Northern District of Florida.

561 SCHEDULE B.

No. 501.] UNITED STATES OF AMERICA, [$1,000.

STATE OF (Florida coat of arms) FLORIDA.

Bond of the Florida Central Railroad Company.

Cut of train of cars.] [Cut of steamship.

Know all men by these presents that the Florida Central Railroad Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars, for value received, which sum the said Florida Central Railroad Company promises and agrees to pay to the State of Florida on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon at the rate of eight per centum per annum, payable semi-annually, on the first days of July and January in each year, on the presentation and delivery of the proper coupons, hereto attached.

This bond is one of a series of like tenor limited to sixteen thousand dollars per mile, issued in accordance with an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine, and given in exchange for bonds issued by the State of Florida to aid the Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road for an equal amount, in accordance with said act.

In witness whereof the said company has caused this bond to be signed and attested in its behalf by its president, and its common seal affixed at its office in this first day of January, in the year 1870.

{ FLORIDA CENTRAL RAILROAD CO., 1868. } GEORGE W. SWEPSON,
President.

H. H. THOMPSON, *Treasurer.*

Issued in accordance with the provisions of an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine.

January 1st, 1870.

562 *Governor's certificate.*

EXECUTIVE OFFICE,
Tallahassee, January 31, 1877.

I, George F. Drew, governor of Florida, hereby certify that the within is a true and correct copy of original bond No. 501 now on file in office of State treasurer.

GEORGE F. DREW, *Governor.*

SCHEDULE C.

No. 201.] UNITED STATES OF AMERICA, [$1,000.

STATE OF (coat of arms) FLORIDA.

Bond of the Jacksonville, Pensacola and Mobile Railroad Company.

Train of cars.] [Cut of steamship.

Know all men by these presents that the Jacksonville, Pensacola and Mobile Railroad Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars, for value received, which sum the said Jacksonville, Pensacola and Mobile Railroad Company promises and agrees to pay to the State of Florida, on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon at the rate of eight per centum per annum, payable semi-annually, on the first days of July and January in each year, on the presentation and delivery of the proper coupons hereunto attached.

This bond is one of a series of like tenor, limited to sixteen thousand dollars per mile, issued in accordance with an act of the legislature of the State of Florida, passed on the 24th of June, eighteen hundred and sixty-nine, entitled, "An act to perfect the public works of the State;" also an act amendatory thereof, approved January 28th, eighteen hundred and seventy, entitled, "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine, and given in exchange for bonds issued by the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company for an equal amount, in accordance with said act.

In witness whereof, the said company has caused this bond to be signed and attested in its behalf by its president, and its common seal affixed at its office in Tallahassee, this first day of January, in the year 1870.

[SEAL J., P. & M. R. R. CO.] M. S. LITTLEFIELD,
President.

563 Issued in accordance with the provisions of an act of the legislature of the State of Florida, approved the 24th of June, 1869, entitled "An act to perfect the public works of the State;" also an act amendatory thereof, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine.

January 1st, 1870.

STATE OF FLORIDA, EXECUTIVE OFFICE,
Tallahassee, February 14, 1877.

I, George F. Drew, governor of the State of Florida, do hereby certify that the within is a true and correct copy of bond No. 201 of the J., P. & M. R. R. Co., now on file in the office of the State treasurer.

GEO. F. DREW, *Governor.*

SCHEDULE D.

Memorandum plan.

(Bijlage A.)

For the reorganization of the Jacksonville, Pensacola and Mobile Railroad Company and the Florida Central Railroad Company of Florida, to be agreed upon by and between Frank R. Sherwin, agent of the owners and holders of the bonds of the State of Florida issued in aid of said railroad companies, of the first part; and the owners and holders of the first mortgage bonds of the Pensacola and Georgia and Tallahassee Railroad Companies of said State, issued under the provisions of the act of January 6th, 1855, generally known as the "internal improvement act," represented by Henry R. Jackson, of Savannah, in the State of Georgia, and Charles H. Simonton, of Charleston, in the State of South Carolina, of the second part.

The object to be sought in said reorganization shall be the formation, under the general incorporation laws of said State, of a new company, under the name and style of "The Jacksonville and Mobile Railroad Company," for the purpose of purchasing the present lines of constructed railroads between Jacksonville and Chattahoochee, and Tallahassee and St. Mark's, with branch at Monticello Junction, together with all their rolling stock, depots, machine-shops, and all their other property, and of completing the said line of road to Mobile, in the State of Alabama.

564 To this end it is agreed between the said parties that the line of completed railway, to wit, the roads extending from Lake City to Chattahoochee, and from Tallahassee to St. Mark's, known as the Jacksonville, Pensacola and Mobile Railroad, and the road extending from Jacksonville to Lake City, known as the Florida Central Railroad, together with all their depots, rolling-stock, machine shops, and all their other saleable property, shall be sold at public outcry, in accordance with law, so soon as the following antecedent arrangements, numbered "first" and "second," shall have been completed:

First. The said the parties to this agreement, shall within 30 days, select three persons, who shall act as trustees in discharge of the trusts hereinafter set out; any vacancy in their number occurring by death or otherwise to be filled by the surviving trustees.

Second. The said bonds and coupons of the Pensacola and Georgia and Tallahassee Railroad Companies, held by the said parties of the second part, and the said bonds and coupons of the State of Florida, issued in aid of the said the Jacksonville, Pensacola and Mobile Railroad Company, and the said the Florida Central Railroad Company, shall be placed in the hands or under the control of the said trustees so selected, for the purpose of said trust, within thirty days from the date of the acceptance of their appointment.

The said the governor shall offer at public sale, according to law, said line of railroads, together with all their depots, rolling-stock, machine-shops, and all their other property, or such portions of it as may be legally saleable; and at the said sale the said trustees shall bid for the said property so to be exposed for sale to the extent, if necessary, of the par value of the said bonds and past due coupons of the State of Florida so placed under their control, the aggregate amount in dollars and cents, of which said bonds and past due coupons shall be treated and received as cash at said sale by the said governor, and if such bid be the highest made at such sale or sales the said line of railroad, together with all its property as hereinbefore detailed, shall be struck off to the said trustees so bidding, and upon the delivery to the said the governor of the said bonds and past due coupons last mentioned, he shall immediately cause the said trustees so bidding to be placed in the actual possession of all said railroad property, and full title shall be made to said trustees by the governor, the same to be held by them subject to the following conditions, namely, in trust to be conveyed by them to the said Jacksonville and Mobile Railroad Company, after the following arrangements and conditions shall have been perfected and complied with:

First. Such title to the line of railroad now known as the Florida
565 Central, extending from Jacksonville to Lake City; and such
title to the Jacksonville, Pensacola and Mobile Railroad which extends from Lake City to the Chattahoochee River, and from Tallahassee to St. Mark's; and such right of franchise to continue the construction of said line of railway westward to the city of Mobile as may not be perfected in the said selected trustees by the said sale, as hereinbefore provided, shall be perfected in the said the Jacksonville and Mobile Railroad Company, through the action and agency of the said party of the first part, and shall be so perfected as not to leave any lien or incumbrance upon said last mentioned title or property which shall be superior to the special mortgage lien to be created as hereinafter provided. The provisions of this clause numbered first to be practically carried out by the said party of the first part within six (6) months from the date of this agreement.

Second. Title having been so perfected in the said The Jacksonville and Mobile Railroad Company, that company shall execute an obligation in writing to the said the selected trustees, stipulating that immediately after conveyance made to it the said railroad property, so to be purchased as aforesaid by them (the said selected trustees), the said The Jacksonville and Mobile Railroad Company shall cause the entire line of constructed railroads heretofore named to be bonded at the rate of not more than twelve thousand dollars ($12,000) per mile, which bonds shall be due forty years from date, bearing interest at the rate of five (5) per cent. per annum, payable semi-annually either in New York City or Amsterdam, Holland, at the option of the holders, principal and interest payable in gold, which bonds shall be a first-mortgage lien upon said line of railroad, its depots, machine-shops, rolling-stock, and all of its other property.

That distinct provision shall be made in said mortgage for the issue, in the first place, of a series of said bonds equal in amount only to the par value of said surrendered bonds and Georgia and Tallahassee Railroad Companies, in the event that the said lines of road formerly known as the Pensacola and Georgia and Tallahassee Railroads should be bid off by the said selected trustees at a sum below or not exceeding the aggregate amount of said last-mentioned bonds and past due coupons; but should the said last-mentioned roads be so bid off at a sum equal to or exceeding the aggregate amount of principal of said bonds and past due coupons and interest on said coupons, then the first series of bonds to cover the full amount of said last-mentioned aggregate, and this first and distinct series of bonds so issued, shall constitute a prior lien upon the said line of railroad and its said property, to secure the payment of
the interest and principal of the same when due; and the first said
566 series of bonds, when so issued, shall be delivered to the owners
of the said surrendered bonds and coupons of the said Pensacola

and Georgia and Tallahassee Railroad Companies, whereupon the said last-mentioned bonds and coupons shall be held by said trustees in trust, to be delivered to the trustees of the internal improvement fund of Florida for cancellation, so soon as all of the same class of bonds now outstanding shall have been surrendered to the said selected trustees, whether in exchange for the said new first mortgage bonds or otherwise.

That provision shall also be made in said mortgage that in case of default for one year by said new company in payment of interest on any of the bonds, foreclosure of said mortgage may be made for the entire amount of indebtedness secured by it, both principal and interest, and the said road and all of its said property may be sold, and the proceeds derived from such sale shall be first applied to the payment of the said first series of bonds, principal and interest, and the surplus, if any, shall be applied toward the payment of the remaining or second series of said bonds.

That provision shall also be made in said mortgage for the creation, at the expiration of three years from the organization of said company, of a sinking fund of one per cent. per annum in gold, payable semi-annually, upon its said bonded debt, which said sinking fund shall be semi-annually applied, as paid, to the redemption at par of the said bonds of said company, the numbers of which shall be selected by lot, and the said first series of said bonds of said company, issued as aforesaid, shall have priority of payment out of said sinking fund.

A draft of said contemplated bonds and mortgage, to be approved by the selected trustees, shall be appended as an exhibit to the said written obligation, and also a copy of the proposed charter of the said Jacksonville and Mobile Railroad Company, showing powers in the said new corporation to issue such bonds and to execute such mortgage.

It shall be further stipulated in said written obligation that a sufficient number of the second series of said bonds shall be set apart and used for the purpose of placing said line of constructed railroad in first class order and repair as to roadbed, rolling stock, and otherwise, and that said new railroad company shall be managed by a board of directors, consisting of not more than seven nor less than five members, who shall be named by the owners or holders of said State bonds, but who shall be acceptable to said selected trustees; and that in case of vacancy in said board of directors or officers of said company, by death, resignation, or otherwise, notice of any intended new appointment shall be given to the said selected trustees; and a protest in writing, 567 signed by the owners representing a majority of the said first series of bonds of said company, shall operate to prevent the appointment to fill said vacancy; this provision to continue in operation for the period of six years from the organization of the said new company.

It is also further stipulated and agreed that all funds necessary to meet the costs and expenditures incurred in such sale or sales, and in perfecting said titles thereafter, shall be supplied by the said party of the first part.

In witness whereof, we, the said parties to this agreement, have hereunto set our hands and affixed our seals interchangeably, this 12th day of January, A. D. 1877, at Savannah, Georgia.

FRANK R. SHERWIN.
HENRY R. JACKSON.
CHARLES H. SIMONTON.

Signed, sealed, and delivered in the presence of—
(geteekend) VINCENT L. STARR, N. P.

4412422 Ontvangen voor zegleregt Vijftig Cent.
Amsterdam, den vijftienden Februarij 1800 Zeven en Zeventig.
De ontvanger B. A. No. I.
KNIPSCHEER.

Geregistreerd te Amsterdam den Vijftienden Februari 1800 Zeven en Zeventig, Deel 108, blad 145 No. vak 1, twee bladen geen renvooi, ontvangen voor regt f 0.80 voor 38 opcenten f 0.305, te zamen een Gulden tien en een halve Cent. De ontvanger B. A. No. 1.
(geteekend) KNIPSCHEER.

Uitegeven voor Afschrift van vorenstaand stuk gedede-poneered onder de minuten van den ondergeteekende Jean Charles Gerald Pollones, Notaries, residerende te Amsterdam, blijkens acte den veertienden Februari 1800 zeven ze zeventig, ten zijnen overstann verleden.
(geteekend) J. C. G. POLLONES, *Notaris.*

Filed May 23d, 1877.

C. H. FOSTER, *Clerk,*
Per F. T. MEYRS, *D. C.*

Received and filed April 20th, 1878.

P. WALTER, *Clerk.*

Pages 568 and 569 omitted per stipulation.)

570 The President of the United States to the western division of the Western North Carolina Railroad Company:

You are hereby commanded and strictly enjoined that laying all other business aside and notwithstanding any excuse, you be and appear before the judges of our circuit court for the northern district of Florida on the first Monday in July next, at the clerk's office in Tallahassee, to answer to a bill of complaint exhibited against you in our said court by J. Fred. Schutle, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, et al.; and further to do and receive what our said court shall have considered in that behalf, and this you are not to omit.

Witness the honorable Morrison R. Waite, Chief Justice of our Supreme Court of the United States, this 23d day of May, A. D. 1877.

[SEAL.] C. H. FOSTER,
Clerk United States circuit court northern district of Florida,
By F. F. MYERS,
Deputy Clerk.

571 (Endorsed as follows:)

Executed the within subpœna by serving a copy thereof on W. W. Rollins, president of the western division of the Western North Carolina Railroad Company at Tallahassee, in the northern dist. of Florida, this the 23rd day of May, A. D. 1877.

SHERMAN CONANT,
U. S. Marshal,
By SAM'L QUAILL, *Dep'ty.*

572 The President of the United States to Edward M. L'Engle:

You are hereby commanded and strictly enjoined that laying all other business aside, and notwithstanding any excuse, you personally be and appear before the judges of our circuit court for the northern district of Florida on the first Monday of July next, at the clerk's office in Tallahassee, to answer to a bill of complaint exhibited against you in our said court by J. Fred. Schutle, Jans Prins, Adriannus Prins, Heinrich Ulrici, Elias Fuld, et al.; and further to do and receive what our said court shall have considered in that behalf. And this you are not to omit under penalty of five hundred dollars.

Witness the honorable Morrison R. Waite, Chief Justice of our Supreme Court of the United States, this 23d day of May, A. D. 1877.

[SEAL U. S. SUPREME COURT NORTHERN DISTRICT OF FLORIDA, 5TH CIRCUIT.]

C. H. FOSTER,
Clerk of U. S. circuit court northern district of Florida,
By F. F. MYERS,
Deputy Clerk.

573 Issued May 23d, 1877.
Returned and filed May 23d, 1877.

C. H. FOSTER, *Clerk.*
Per F. F. MYERS, *D. C.*

(Endorsed as follows:)

Executed the within subpœna by serving a true copy thereof on Edward M. L. Engle at Tallahassee in the northern dist. of Florida, this the 23rd day of May, A. D. 1877.

SHERMAN CONANT,
U. S. Marshal,
By SAM'L QUAILE, *Dep'ty.*

574 UNITED STATES OF AMERICA,
Northern district of Florida:

The President of the United States of America to the Florida Central Railroad Company:

We command you, and every of you, that you appear before the judges of the circuit court of the United States of America for the fifth circuit and northern district of Florida, at Tallahassee, in said district, on the first Monday, being the 7th day, of January, A. D. 1878 next, to answer to a bill of complaint exhibited against you by J. Fred. Schutte, Jans Prins, Adriannus Prins, Heinrick Ulrici, Elias Fuld, et al, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf. And this you are not to omit, upon pain of judgment by default being pronounced against you.

To the marshal of the United States, to execute and return.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States and the seal of this court, at the city of Tallahassee, in said district, this 3d day of December, A. D. 1877.

[SEAL U. S. CIRCUIT COURT, NORTHERN DISTRICT OF FLORIDA.]

CHAS. H. FOSTER, *Clerk.*

Issued Dec. 3d, 1877.
Returned and filed Dec. 8th, A. D. 1877.

CHAS. H. FOSTER.

575 (Endorsed as follows:)

Executed the within subpœna by delivering a true copy thereof to Patrick Houston, director of the Florida Central R. R. Company, Aaron Barnett, president of said company, not being within the district, and their being no secretary or treasurer of said company known to me after enquiring. Such service is made by direction of the solicitor for complainants. Done at the city of Tallahassee, this the 6th day of December, A. D. 1877.

SHERMAN CONANT,
U. S. Marshal,
By SAM'L QUAILE, *Dep'ty.*

576 The President of the United States to Joseph B. Stewart:

You are hereby commanded and strictly enjoined that laying all other business aside and notwithstanding any excuse, you personally appear and be before the judges of our circuit court for the northern district of Florida on the first Monday of July next, at the clerk's office in Tallahassee, to answer to a bill of complaint exhibited against you in our said court by J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrick Ulrici, Elias Fuld et als.; and further, to do and receive what our said court shall have considered in that behalf, and this you are not to omit under penalty of five hundred dollars.

Witness the honorable Morrison R. Waite, Chief Justice of our Supreme Court of the United States, this 23d day of May, A. D. 1877.

{ SEAL U. S. CIR. CT. NORTHERN DIST. OF FLA. }

C. H. FOSTER,
Clerk U. S. Circuit Court for Northern District of Florida,
By F. T. MYERS,
Deputy Clerk.

Filed May 23, 1877.

C. H. FOSTER, *Clerk,*
By F. F. MYERS, *D. C.*

577 (Endorsed as follows:)

Executed the within subp'a by serving a copy thereof upon Joseph B. Stewart, at Tallahassee, Florida, in the northern district of Florida, this 23rd day of May, A. D. 1877.

SHERMAN CONANT,
U. S. Marshal,
By SAM'L QUAILL, *Dep'ty.*

(Pages 578 and 579 omitted per stipulation,)

580 UNITED STATES OF AMERICA,
Northern District of Florida:

The President of the United States of America to J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J. Brunnekruff, J. H. Grem, Willeminer Van Tyer Van Taar, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaur, jr., Jacobus Wertheim, P. Van Reysen, Mey de Beneditby Beer, Gerard A. Heineken, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyen, N. J. Franket, Johannes William Donk, Vanderstoop, and Burg, the Western Division of the Western North Carolina Railroad Company, the Jacksonville, Pensacola and Mobile Railroad Company, George F. Drew, governor of the State of Florida, Walter Gwynn, and Robert J. Washington:

We command you and every of you that you appear before the judges of the circuit court of the United States of America for the fifth circuit and northern district of Florida at Tallahassee, in said 581 district, on the first Monday, being the third day of September next, to answer a cross-bill of complaint exhibited against you by the Florida Central Railroad Company, in the case of J. Fred. Schutte, Jan Prins, and others vs. The Western Division of the Western North Carolina Railroad Company and others, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf. And this you are not to omit upon pain of judgment by default being pronounced against you.

To the marshal of the United States to execute and return.

Witness the honourable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Tallahassee, in said district, this second day of August, A. D. 1877.

[SEAL] (S'g'd) CHARLES H. FOSTER, *Clerk*,
By F. T. MYERS, *D'p'ty Clk.*

JAMES M. BAKER,
Solicitor for Compl't.

MEMORANDUM.—The above-named defendants are notified that 582 unless they shall enter their appearance in the clerk's office in said court at Tallahassee aforesaid, on or before the day to which the above is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

(Signed) CHARLES H. FOSTER, *Clerk.*

Filed August 24, 1877.
(S'g'd) C. H. FOSTER, *Clerk*,
By F. T. MYERS, *D. C.*

Executed the within subpœna by serving a true copy thereof on Walter Gwynn, at Tallahassee, in the northern district of Florida, this the 3rd day of August, 1877.

SHERMAN CONANT,
United States Marshall,
By SAM'L QUAID, *Dep'ty.*

Served the within subpœna upon the J., P. & M. Railroad Company by delivering a copy thereof to M. S. Littlefield, president of the said company, at Jacksonville, within the northern district of Florida, this 4th day of August, 1877.

S. CONANT,
U. S. Marshal.

583 Executed the within subpœna by serving a true copy thereof on Mrs. Drew, wife of George F. Drew, governor of the State of Florida, at Ellaville, in the northern district of Florida, this the 23rd day of August, A. D. 1877.

SHERMAN CONANT,
United States Marshal,
By SAM'L QUAIDE, *Dep'ty.*

I hereby appear for the defendant, Walter Gwynn, treasurer, as on the first Monday in September, A. D. 1877, to the cross-bill herein.

GEORGE P. RANEY,
Attorney for Walter Gwynn, Treasurer of Florida.

Returned and filed Aug. 24th, 1877.

CHAS. H. FOSTER, *Clerk*,
By F. T. MYERS, *D. C.*

584 *The separate answer of the Western Division of the Western North Carolina Railroad Company.*

United States circuit court, northern district of Florida.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS Prins, Elias Fuld, et al., complainants,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company; The Jacksonville, Pensacola & Mobile Railroad Company; The Florida Central Railroad Company, et al., defendants.

The Western Division of the Western North Carolina Railroad Company, by protestation, not admitting any of the matters and things in complainants' bill to be true, as therein alleged, to be good and sufficient in law to be answered unto, but reserving all and every exception to the manifold errors and insufficiencies therein contained, for answer thereto, or so much thereof as this defendant is advised is material and proper it should answer unto, answering, says:

1st. This defendant admits that the trustees of the internal improvement fund of the State of Florida, on the 20th of March, 1869, sold the Pensacola & Georgia and Tallahassee Railroads, as in complainants' bill alleged.

2d. This defendant does not admit that said sale was fairly conducted or executed according to law, but does admit that the said two (2) roads sold for the sum of $1,214,000, but as to whether such sum exceeded the amount of the principal of the bonds referred to, as alleged in complainants' bill, this defendant has no knowledge.

585 3d. This defendant admits that a party, called F. Dibble and associates, purchased such roads at such sale, but denies most positively that said Dibble and associates paid a dollar of purchase money for said roads at the time of said sale, or at any other time, but, on the contrary, the only consideration paid for said roads was $963,300 of Pensacola & Georgia and Tallahassee Railroad bonds, which were the property of this defendant, fraudulently used and appropriated for the purpose of the purchase of said roads, as will be hereinafter stated.

4th. Defendant admits that the said trustees of the internal improvement fund made and executed two separate deeds to said F. Dibble and associates, conveying said two railroads, reciting therein the payment and receipt of the sum of $1,220,000 for the said Pensacola & Georgia Railroad, and the sum of $195,000 for the purchase of said Tallahassee Railroad, which deeds were delivered to said F. Dibble and associates, who were placed in possession of said railroads together with all their property, but this defendant states that said recitals of payment were absolutely false, there being no cash paid whatever, nor any real payment except the said $960,300 of Pensacola & Georgia and Tallahassee Railroad bonds, the property of this defendant, as aforesaid, the same having been purchased with its money fraudulently used and appropriated by its fiduciaries and agents, Geo. W. Swepson and Edward Houstoun, as will be hereinafter stated.

5th. Defendant has no knowledge of the information lately received by the complainants, as alleged in the IV paragraph of their bill, as to the fact "that part of said purchase money was accepted by said trustees in said bonds issued by the said corporations" in payment for said

railroads, but avers that the fact that such payment was made and accepted has been of general notoriety since the day of said sale, and defendant further admits that said bonds, so belonging to this defendant, were cancelled and burned by the said trustees of the internal improvement fund, as alleged, but not, however, immediately after the said sale, on the 20th of March, 1869, but that said bonds were destroyed on the 26th day of February, 1872, to prevent their being pursued and reclaimed by this defendant, and the defendant further admits that the
586 balance of the purchase money for said roads, over and above
the said $960,300 paid with the property of this defendant, was covered by a false and fraudulent check given by George W. Swepson for about $472,065, which was never paid and not intended to be paid when given, unless a fund for that purpose should be created by the sale of bonds to be issued by said railroads when reorganized into a new company by or in the name of F. Dibble and associates, and that considered in the light of a cash payment, the giving and accepting of said Swepson's check was a mere sham and fraud, but as to whether the "said Swepson was a man of good credit, reputed to be worth at least half a million of dollars, and had that amount in Florida," as alleged by complainants, this defendant has no knowledge, but this defendant denies the said trustees of the internal improvement fund acted "within the scope of their authority and in good faith" when they accepted Swepson's check in lieu of cash, and left it with him to collect and purchase up the 472,000 of outstanding Pensacola & Georgia and Tallahassee Railroad bonds, as alleged by the complainants' bill.

6th. This defendant denies the V, VI, VII, and VIII paragraphs of complainants' bill and the matters and things as therein alleged, because all and singular the said matters are so stated by the complainant as to studiously avoid and conceal or misrepresent the real facts as they occurred, which defendant avers were substantially as follows:

a. That when the said Dibble and his associates became the successful bidders, and hence purchasers, of said Pensacola & Georgia and Tallahassee Railroads, on the said 20th day of March, 1869, by bidding therefor $1,415,000, as aforesaid, a sum wholly beyond their means to pay, that they made such bid with the expectation of inducing said Swepson to use the said $960,300 of Pensacola & Georgia and Tallahassee Railroad bonds, so belonging to this defendant, as aforesaid, in payment for said road, which he, the said Swepson, did so use and apply as aforesaid, but not on the day of purchase, nor till about the 22d of April, 1869, following; that on the day of purchase there was in fact nothing paid; but, six days thereafter, to wit, on the 26th day of March, 1869, the said Swepson, in a gross breach of trust, and in utter disregard of his duty as the trustee, agent, and fiduciary of this defendant, entered into a written agreement whereby he, said Swepson, agreed to advance, use, and appropriate the said $960,300 bonds of this
587 defendant in payment for said roads, and to give his, said Swep-
son's check, or promise to pay for about $472,065, which, added to the said $969,800 of bonds, was to make up the total amount of $1,415,000 bid for said roads, with the addition of certain charges, as will better appear by a copy of said agreement of the 26th of March, 1869, marked Schedule No. 1.

b. That pursuant to said purchase and agreement, and on the 8th day of April, 1869, the said trustees of the internal improvement fund, in further consummation of said scheme of sale and purchase, executed and delivered a deed of conveyance of the Pensacola & Georgia Road for the express consideration of 1,220,000 dollars, which said deed is made part hereof, marked Schedule No. 2, and a deed of conveyance of the said Tallahassee Railroad for the express consideration of $195,000, which said deed is made part hereof, marked Schedule No. 3.

c. That said deeds, however, though executed and acknowledged on the said 8th day of April, 1869, were not, in fact, delivered to said F. Dibble and associates till on or about the 22d day of April, 1869, at which time the said $960,300 of bonds, so belonging to this defendant, as aforesaid, were paid over to said trustees of the internal improvement fund, and which was the only real payment made for such roads, as hereinbefore stated.

d. That before said bonds were so paid over by said Swepson, and before the delivery of the same, the said Swepson received from the said F. Dibble and associates, a conveyance and transfer in special trust of both the said Pensacola & Georgia and Tallahassee Railroads by the transfer and delivery to him of both of said deeds of conveyance of the 8th of April, A. D. 1869, being Schedules No. 2 and No. 3, as hereinbefore mentioned, and which were so transferred in trust to said Swepson, as provided in said agreement of the 26th of March, 1869 (Schedule No. 1), to secure the said $960,300 of bonds, and further to secure the said Swepson for giving his said check or acceptance for the said $472-065, as will more fully appear by said conveyance in trust to said Swepson, made part hereof, marked Schedule No. 4. That this trust conveyance never was recorded, but was kept secreted from the knowledge of this defendant.

e. That by the terms of said agreement of the 26th of March, 1869, and the said trust conveyance of the 22d of April, 1869, it was agreed that said F. Dibble and associates should procure an act of incorporation, with authority to issue bonds for the use of said Swepson, 588 as provided in said agreement and trust aforesaid, and that pursuant thereto, and on the 24th day of June, 1869, the legislature of the State of Florida did pass an act for the relief of said Dibble and associates, incorporating them as a body corporate and politic, under the name and style of the "Tallahassee Railroad Company," as will better appear by said act of incorporation, made part hereof, marked Schedule No. 5.

f. That by the 6th section of said act, the said Tallahassee Railroad Company was authorized to issue bonds of such denomination and at such rate of interest as it might choose to do, and secure the same by deed of trust on the franchise and property, real, personal, and mixed, of the said Pensacola & Georgia and Tallahassee Railroads, incorporated by said act of the Tallahassee Railroad Company, but expressly reserving a prior equity and lien in favor of the said trust agreement and conveyance of the 22d of April, 1869, in the following words, that is to say: "Provided, That any deed of trust, mortgage, conveyance, bond or bonds, or security which may have been executed, made, created, or contracted for, as a lien on said railroads or otherwise, by said Franklin Dibble, in behalf of himself and his associates prior to the passage of this act, shall be valid and effectual to all intents, either at law or in equity, as a lien or mortgage or security on said railroad, as if the same had been made by virtue of this act, and shall in nowise be affected by any provisions thereof;" and this defendant avers the fact to be that said statutory reservation and lien had reference solely and exclusively to said agreement of the 26th of March, 1869, and trust assignment of the 22d of April, 1869, schedules No. 1 and No. 4, respectively.

g. That pursuant to said act of incorporation, the said Dibble and associates resolved themselves into a company, as therein provided, and accepted the said charter, and resolved themselves into a body corporate, by choosing a board of directors, and electing said F. Dibble president and F. H. Flagg treasurer of said Tallahassee Railroad Company.

And that, further complying with said trust agreement, the said Tallahassee Railroad Company, so organized, authorized the issuing of, and did, in part, issue, 1,500 bonds of the denomination of 1,000 dollars each, which were signed by F. Dibble, president, secured by mortgage on said Tallahassee Railroad, and in that condition were delivered to the president and fiduciary of this defendant, who still holds the same in trust for this defendant, one of which (numbered 2) is made part hereof, marked schedule No. 6.

589 *h*. And this defendant, further answering, states the fact to be that the existence and a knowledge of the whereabouts of said trust assignment, schedule 5, only came to the knowledge of this defendant within the last two years, when the same was surrendered to its custody by Milton S. Littlefield, and that the said bond (schedule 5) has only come into the possession of this defendant since the commencement of this suit.

That on the same 24th of June, 1869, the day on which the said Tallahassee Railroad Company was incorporated as the owner of the said Pensacola & Georgia and Tallahassee Railroads, extending from Lake City westward, to Quincy, &c., the legislature of Florida incorporated another company, called the Jacksonville, Pensacola & Mobile Railroad Company, of which this defendant's trustees and fiduciaries, George W. Swepson and Milton S. Littlefield, together with J. P. Sanderson, J. L. ReQua, and William H. Hunt were incorporators, but which said company was purely and entirely a mere creation upon paper, being possessed at the time of its corporation of neither road, route, or right of way, and never expected to have any railroad, but was expressly designed to become, in some way, possessed of the said Tallahassee Railroad, so purchased and paid for by this defendant's said $960,300 in bonds, as aforesaid.

i. But this defendant, further and especially answering paragraph V of complainant's bill, expressly denies the allegations therein contained, that "Afterwards, the said Tallahassee Railroad Company and said Dibble and associates conveyed the said railroads" (meaning the Pensacola & Georgia and Tallahassee Railroads), "to the said Jacksonville, Pensacola & Mobile Railroad Company, of which George W. Swepson owned nearly the entire stock," and denies that any such conveyance ever was made at any time, and that the statements in complainants' bill, in that behalf, are wholly untrue.

j. That the only conveyance ever attempted to be made by said F. Dibble and associates was a conveyance partially executed in the year 1870, in the shape of a deed of release from said F. Dibble and associates to the said Tallahassee Railroad Company, but which never was fully executed, as will better appear by a copy of such conveyance, so partially executed, but not acknowledged and without date, except the words "day of A. D. 1870," and which was never recorded, as will be seen by a copy thereof made part of this answer, marked schedule No. 7.

k. But this defendant avers the fact to be that the money with 590 which the said Swepson and his agents purchased the said Pensacola & Georgia and Tallahassee Railroad bonds, and that consequently the said bonds, when so purchased, took the place of said money and became the property of this defendant; and that when the said Swepson, further acting without the knowledge of this defendant, used the said bonds to purchase the said Pensacola & Georgia and Tallahassee Railroads, that said roads took the place of said bonds and became the property of this defendant, and that the said agreement of the 26th of March, 1869, and the said trust assignment of the 22d of April, A. D. 1869, made and executed pursuant thereto, and the said 1,500 papers or tokens called bonds, signed by said F. Dibble, president, in the year 1869, and the said conveyance partially executed on the " day of A. D. 1870," and signed by F. Dibble, Alonzo Huling, J. L. ReQua, E. M. Cheney, Wilkinson Call, James M. Baker, and Silas L. Niblack (schedule No. 7), each and all inured to, and in equity vested in and became the property of this defendant, as the cestui qui trust of the said Swepson and Littlefield, and that defendant henceforth was and now is the real owner of said railroads, as this defendant will more distinctly maintain by its cross-bill, made part of this answer.

7th. And this defendant, further and more specifically answering and correcting the many misstatements, evasions, and suppressions of facts contained in the VI paragraph of complainant's bill, states the fact to be that there never was any transaction between the State of Florida or its governor and the J., P. & M. Company, as therein stated, but that the truth as to such matter is substantially as follows: That when the said J., P. & M. Company was so incorporated as aforesaid, on the said 24th day of June, A.D. 1869, that, among other provisions and by the 9th section of said act, the State of Florida was attempted to be authorized to issue and exchange the bonds of the State for the bonds of the said J., P. & M. Company to the extent of $14,000 per mile, upon the terms and conditions therein stated. But the defendant avers that said act was wholly inoperative, because, as stated, the said J., P. & M. Company did not own a foot of railroad upon which to issue or exchange a single bond; and all statements or assumptions in said complainant's bill are wholly false and untrue.

That the real transaction about said bond issue was substantially as follows:

591 *a.* The said J., P. & M. Company, owning no railroad whatever, was a mere paper creation gotten up by the said Swepson and Littlefield, who, as such presidents, agents, trustees, and fiduciaries of this defendant, were seeking a means to further use and fraudulently conceal and appropriate the said $960,300 of bonds belonging to this defendant, and invested in the purchase of said Pensacola & Georgia and Tallahassee Railroads, on the said 20th and 26th days of March, and 8th and 22d days of April, 1869, as hereinbefore stated; and for that purpose procured the incorporation of said J., P. & M. Company, which, as aforesaid, owned no railroad whatever, but with the intention of in some way transferring to it the actual and existing railroads of the said Tallahassee Railroad, extending from Lake City to Quincy and from Tallahassee to St. Mark's. But, as before stated, no such conveyance was ever actually made.

b. That, with a view of accomplishing such fraudulent purposes, the said Swepson, Littlefield, and others co-operating and conspiring with them in that behalf, procured the passage of an act on the 28th day of January, 1870, amending the said act of the 24th of June, 1869, incorporating the said J., P. & M. Company; and by the second section of said amended act caused the following statutory contract and agreement to be created and declared to exist, providing for the issue and exchange of bonds between the State of Florida on the one part, and the said J., P. & M. Company on the other part, and upon the terms and conditions therein stated, as follows:

"In order to aid the said Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvements of the State, the governor of the State is hereby directed to deliver to the president of the said company coupon bonds of the State to an amount equal to sixteen thousand dollars per mile of the whole line of road and length of railroad owned by or belonging to said Jacksonville, Pensacola & Mobile Railroad Company, in exchange for first mortgage bonds of said railroad company of the denomination of one thousand dollars, when the president thereof shall certify upon his oath that the road, or part of road, for which he asks for an exchange of bonds is completed and is in good running order."

And by "section 4" of said act this further statutory contract and agreement was declared to exist, viz:

"That the governor shall, for the purpose of further aiding 592 said Jacksonville, Pensacola and Mobile Railroad Company in the speedy construction of its road, deliver to the president of said company coupon bonds of this State of the same character as those above described in this act, to the amount of sixteen thousand dollars per mile, upon receiving for and from the president of said company first mortgage bonds of like amount on any part or portion of the road between Quincy and Jacksonville; provided, however, that State bonds under this section shall not be exchanged for first mortgage bonds for a greater length than one hundred miles of any part of railroad between Quincy and Jacksonville."

And this defendant states that these two statutory contracts and agreements were wholly and exclusively declared to exist between the State of Florida and the said J., P. & M. Company; that the Florida Central Railroad Company was in no manner a party, but was a total stranger to said statutory contract and agreement, as this defendant will hereinafter more fully state.

c. That under these statutory contracts and agreements, and no other, the State of Florida did, in the year 1870, make, sign, and execute 4,000 papers called bonds, of the denomination of $1,000 each, and numbered from 1 to 4000 respectively, which were recorded in a book provided for the purpose in the office of the treasurer of the State of Florida as bonds issued to the Jacksonville, Pensacola and Mobile Railroad Company, and to no other railroad or corporation; the Florida Central Railroad not being mentioned, or in any manner included therein.

d. That of these 4,000 papers called bonds, 3,000, numbered from 1 to 3000 inclusive, were by the State of Florida delivered to the said J., P. & M. Company, during the year 1870, and not 4,000, as falsely alleged in complainant's bill. And this defendant avers that the other 1,000 papers called bonds, numbered from 3001 to 4000, never were at any time delivered to or in the possession of the said J., P. & M. Company, or by it received from the State of Florida, and never were in any manner used or applied for its benefit in any respect; but that said 1,000 papers called bonds, numbered from 3001 to 4000 aforesaid, were, by the State of Florida, through its governor, on the 11th day of January, 1871, fraudulently used and applied for the payment and discharge of private debts and obligations, as will be hereafter stated; and that the statement in complainant's bill that the said "J., P. & M. Com-

pany obtained from the governor of Florida, Harrison Reed,
593 four thousand bonds of one thousand dollars each, which were
signed by said governor in accordance with the laws incorporating the said J., P. & M. Company, in the year 1870," is not true as stated, or consistent with the facts.

8th. This defendant, further and more specifially answering the VII paragraph of complainant's bill. denies "that the said J., P. & M. Co. delivered to the governor of said State, in exchange for said four thousand bonds, while he received from him a like amount of bonds, three thousand of which were executed by the said J., P. & M. Co., and one thousand by the Florida Central Railroad Company," as in complainant's bill most falsely alleged. On the contrary, as before stated, the said Jacksonville, Pensacola & Mobile Railroad Company never received from the State but 3,000 of said papers called bonds, and never delivered to the State but 3,000 of the said Jacksonville, Pensacola & Mobile Railroad lease papers called bonds in exchange therefor; said State bonds so received being numbered from 1 to 3000 inclusive. That not a bond of the Florida Central Railroad Company ever was in the possession of the Jacksonville, Pensacola & Mobile Railroad Company, or by it delivered to the State for any purpose, nor was any bond of the State ever delivered in exchange for the alleged Florida Central Railroad bonds, to or for the use or benefit of the said Jacksonville, Pensacola & Mobile Railroad Company, as falsely pretended by complainant's bill.

That the said Florida Central Railroad Company was chartered on the 29th day of July, 1868; that no power was granted by said charter to issue or create $1,000,000 of 8 per cent. bonds, payable to the State of Florida for the benefit of the said Jacksonville, Pensacola & Mobile Railroad Company, or for any other purpose; as will better appear by the terms of said charter made part hereof, marked Schedule No. 8.

And this defendant further denies that said Florida Central Railroad Company ever, by any contract or agreement with the said Jacksonville, Pensacola & Mobile Railroad Company, or by any order or resolution of its stockholders or directors, agreed to or bound itself to impose a debt of $1,000.000, bearing 8 per cent. interest—being nearly double the par value of its capital stock of $550,000—and which was thereby charged with a positive annual debt of $80,000 per annum, which
was a burden and obligation wholly beyond its power to meet
594 or pay; and further agreeing that if this enormous debt was not
paid, that the State, without notice, through the governor, should seize and sell the road of said company to pay such enormous debt, no part of which was designed to be applied or expended for the use or benefit of the said Florida Central Railroad Company, or under the control of its officers, nor under or by virtue of any agreement or obligation whatever on the part of the said Jacksonville, Pensacola & Mobile Railroad Company, the State, or any body else, to see that the proceeds of the said $1,000,000 of bonds thus extorted of it should be used or applied in any manner for its benefit, as falsely assumed by the said complainant's bill.

And this defendant states that the said $1,000,000 of bonds of the said Florida Central Railroad Company was fabricated, procured, and placed in the hands of the State of Florida by the following false and fraudulent means, and to which the said State was a party and fraudulently participated, viz:

a. That in the month of April, 1870, George W. Swepson, without any lawful right or authority, and without the knowledge or consent of the Florida Central Railroad Company, caused the said 1,000 papers called bonds to be issued in the name of said company, purporting to be issued under said act and statutory agreement of the 28th of January, 1870, between the State of Florida and the said Jacksonville, Pensacola & Mobile Railroad Company, agreeing and promising to pay the State of Florida $1,000 on the face of each bond—or, in all, one million ($1,000,000) dollars—thirty years after date, with interest at the rate of 8 per cent., or $80,000 a year interest.

b. That said Swepson signed said pretended bonds as president, but desiring to conceal the execution and existence of said $1,000,000 of bonds, did not send them to the company for the signature of its treasurer, F. H. Flagg, but caused them to be signed by one H. H. Thompson as treasurer, who, in fact, never was either treasurer or any other officer, or even a stockholder of said company, but a total stranger to its affairs, and who falsely and fraudulently assumed such office of treasurer for the purpose of circulating said bonds.

c. That after said bonds were so falsely and fraudulently signed by said Swepson and Thompson, they were brought to a place near the office of the said company, where, without its knowledge or authority, its corporate seal was affixed to said papers called bonds.

d. That said bonds were not created or designed to be used for
595 the benefit of the said Jacksonville, Pensacola & Mobile Railroad
Company, but designed to pay and discharge certain private debts and transactions between Milton S. Littlefield and Edward Houstoun, as shown by three certain contracts, dated the 13th and 30th days of May, and 7th day of June, 1870; copies of which are made part hereof, marked Schedule No. 9, 10, and 11, respectively.

e. That for the purpose of consummating the purposes declared in these three agreements last above mentioned, and especially the agreement of the 30th of May, 1870 (Schedule 10), the said Littlefield and Houstoun convened what they called a stockholders' meeting, on the 2d day of June, 1870; there being present only 30 shares of stock besides the stock represented by said Littlefield and Houstoun, the whole of which was pledged to said Houstoun, who also held the said 1,000 papers called bonds; and without reading or spreading said bonds on the records of the company, passed a resolution pretending to adopt the bonds so signed by Swepson and Thompson, but which resolution at the same time pledged said bonds to the payment of said private debts specified in said agreement of the 30th of May, 1870 (Schedule 10), entered into just two (2) days previously, between said Houstoun and Littlefield.

f. That subsequent thereto, and on the 21st day of November, 1870, the said Florida Central Railroad Company rescinded the said resolution of the 2d of June, 1870, and ordered the said Swepson-Thompson bonds to be destroyed; as will be seen by a copy of said resolution, made part hereof, marked Schedule No. 12.

g. That said rescinding resolution was made known to the State of Florida and all parties connected with said bonds, and their use and issue was also enjoined by the Hon. R. H. Gamble and Hon. James D. Westcott, jr., when, on the 11th day of January, 1871, the State of Florida connived with said Houstoun and Thomas B. Coddington, and exchanged and delivered to said Coddington the said bonds of the State of Florida, numbered above 3000, that were so issued under said statutory contract of the 28th of January, 1870—that is, the so called State bonds numbered from 3001 to 4000—and received therefor the said false and fabricated bonds created by said Swepson and Thompson in the name of the said Florida Central Railroad Company, not, how-

ever, to be applied to the use or benefit of the Jacksonville, Pensacola & Mobile Railroad Company, but to pay and discharge the same identical debts and obligations specified in said agreements—Nos.
596 9, 10, and 11—and certain other debts and obligations; as will
more fully appear by the written agreement and receipt in trust, signed and executed between said Coddington and Houstoun, dated January 11, 1871, made part hereof, marked Schedule No. 13.

h. That said Coddington received said bonds as the agent of the State of Florida, and not for the use or benefit of the said Jacksonville, Pensacola & Mobile Railroad Company, but to be applied to the private and personal uses named in said trust receipt (Schedule 13), the governor of Florida being personally interested therein, and is responsible for the outgoing of said 1,000 papers called bonds, numbered above 3000, and which it is shown were not delivered to the said Jacksonville, Pensacola & Mobile Railroad Company, as falsely pretended in complainants' bill.

i. That 224 of said State bonds numbered above 3000, to wit, those numbered from 3777 to 4000, inclusive, were cancelled, leaving but 776 of the said State bonds above 3000 outstanding, and that of these 208 were pledged by one John Collinson to pay interest on the said State bonds, and are still so pledged and never were sold, and the remaining 586 are in a bank in London, as the property of the State of Florida, which fully accounts for the 1,000 State bonds alleged to be a charge on the Florida Central Railroad Company.

j. That the said statutory agreement, as provided in said second section of the act of January 28th, 1870, made it condition precedent that said so-called State bonds should only be issued to said Jacksonville, Pensacola & Mobile Railroad Company when the president thereof should "certify upon his oath" that certain facts existed, and that not such certification upon oath ever was made or given by the president of said company, so that the condition upon which said State bonds were to issue never in fact transpired.

k. That the said pretended Florida Central bonds never were fully executed, there being two blanks on the face thereof—first, a blank as to the place where said pretended bonds were executed, and a blank as to the signature certifying to the correctness of the issue of the same, as shown by the Complainants' Schedule B, and that the said bond is not a finished or executed paper.

l. That said so-called bonds are not the act and deed of the said Florida Central Railroad Company, or a valid debt or obligation against its franchise and estate, and this defendant denies that "the execution and delivery of said bonds was done by the said companies
597 in order to comply with the terms of the law incorporating the
said Jacksonville, Pensacola & Mobile Railroad Company."

9th. Defendant, further and more specifically answering paragraph VIII of complainants' bill, denies "that when the said bonds were executed by the said Florida Central Railroad Company that Milton S. Littlefield owned a large majority of its capital stock," but avers to the contrary that a large majority of the said Florida Central stock was purchased by the money belonging to this defendant, by its president, agent, and fiduciary, George W. Swepson, through said Houstoun and Littlefield, in the year 1869, and previous to the act of January 28th, 1870, creating the said statutory contract and agreement between the State of Florida and the said Jacksonville, Pensacola & Mobile Railroad Company for the issuing and exchanging of said bonds, and that long before the defendants, or any of them, had purchased or even heard of said State bonds, this defendant was the lawful and equitable owner of full nine tenths of the capital stock of said Florida Central Railroad Company, and which never was the property of said Swepson, Houstoun, or Littlefield, but that said stock was at all times the property of this defendant, and of which it is now in the lawful possession.

And this defendant avers that it is absolutely untrue "that the one thousand bonds issued as bonds of the Florida Central Railroad Company, and delivered to the governer, were caused to be executed by the joint action of said Houstoun and said other stockholders in order to enable the said Jacksonville, Pensacola & Mobile Railroad Company to obtain from the governor of Florida State bonds (so called), with the understanding and agreement that said bonds should be sold, and said Littlefield should make payment for the stock purchased from said Houstoun," &c., as alleged in said complainants' bill, and defendant avers that said allegations, and the whole of the allegations of said section VIII, is the mere invention of a convenient story on the part of the complainants to avoid the effect of the fact that not one of the State bonds numbered above 3000 were ever used or pretended to be used for the benefit of the Jacksonville, Pensacola & Mobile Railroad Company, which had no more to do with said bonds than any other total stranger.

That this defendant is advised of matter of fact, and so charges, that there is no truth whatever in the allegations in the complainants' 598 bill that in the year 1874, or at any other time, that the Florida Central Railroad, or the property and franchise of its company, ever in any manner became merged in the Jacksonville, Pensacola & Mobile Railroad Company, or at any time, or for any purpose, formed part of its property and estate, and that all statements to that effect in complainants' bill are wholly untrue.

10th. This defendant has no knowledge of what advice the said Jacksonville, Pensacola & Mobile Railway Company, or its agents, gave to persons in England or elsewhere, but from information, which defendant believes to be true, it states and charges as fact that a knowledge, or the correct means of knowledge, of the real character of said State bonds was at all times accessible to the complainants, and defendant avers that complainants, in fact, had proper and legal notice of the false and fraudulent character of said bonds.

That on the 10th day of December, 1871, the said Jacksonville, Pensacola & Mobile Railroad Company passed a resolution declaring to all the world the fraudulent character of said bonds, and caused the same to be published to the public and a copy of it addressed to John Conlinson and S. W. Hopkins & Co., the parties selling said bonds in New York and London, a copy of which said resolution is made part hereof, marked Schedule No. 14.

That notice was also given as to the Florida Central Railroad bonds by the suits brought by said Gamble and Westcott, who enjoined the issue of the same on the 7th day of January, 1871, and which injunctions are still in force and were in force while said State bonds, numbered above 3000, alleged to be exchanged for Florida Central Railroad bonds, were by the fraudulent acts and connivance of the State of Florida, on the 11th day of January, 1871, removed by said Coddington from the State. And that in consequence of said notorious acts and proceedings, the said Boissevain telegraphed from Amsterdam to the governor of Florida, the 18th day of December, 1870, as follows:

Being negotiating four million bonds issued by your State to the Jacksonville, Pensacola & Mobile Railroad, beg to know, by telegraph from you, whether provision made for payment of interest; whatever result of railroad traffic; financial position of State really sound, and bonds undoubted security.

(Signed) BOISSEVAIN.

599 That to this dispatch the governor of Florida replied as follows:

Bonds recently recalled by the company; no provision will therefore be made for interest.

(Signed) REED, *Governor*.

That besides the foregoing notice to the complainants, this defendant had discovered the fraudulent use of the proceeds of about $6,000,000 of bonds paid to it by the State of North Carolina for subscription to its capital stock, which by its agents and fiduciaries, George W. Swepson and Milton S. Littlefield, and one Edward Houstoun, who co-operated with Swepson and Littlefield, with a knowledge of their position as fiduciaries and trustees and fraudulent acts, and that defendant had called for a settlement, which had occurred on the 16th day of April, 1870, showing a debt due this defendant of about $1,287,000, and that an agreement had been made for the payment of the same, which having been violated, led to suits being brought in the Supreme Court of New York in the year 1870 and 1871, against Houstoun and Littlefield and others, all of which were acts of public notoriety and legal notice of the rights and liens of this defendant to and upon the stock and bonds referred to in complainants' bill.

But this defendant, further answering, states the fact to be that when the settlement of the 16th of April and other and subsequent settlements and attempts at paying this defendant occurred on the part of said Swepson, Littlefield, and others, that this defendant supposed the bonds issued by the State of Florida, under said statutory contract and agreement, created by the said act of the 28th January, 1870, were good and valid securities, and the money to be paid this defendant would lawfully proceed therefrom, but that it subsequently transpired that the said statute and statutory contract and agreement was declared to be unconstitutional and null and void, and constitutes no consideration whatever for a means of consummating said settlement with this defendant, as will be hereafter more specially stated.

11th. This defendant, upon information, believes it is true, and therefore admits the allegations in the X paragraph of complainants' bill, that the bonds issued by the State of Florida, under said statutory agreement aforesaid, were issued alone to the Jacksonville, Pensacola & Mobile Railroad Company, and in no manner to or upon the credit of the Florida Central Railroad Company, and defendant further admits
600 that it is true that it was represented by the parties dealing in said State bonds in "England, Holland, Germany, and France," that the Florida Central Railroad was consolidated with the Jacksonville, Pensacola & Mobile Railroad, and further admits that the bankers in London respected such representations to the bankers in Amsterdam that such consolidation had taken place, but this defendant avers that such false representations did not constitute the fact of the consolidation alleged, or prove such to be true, and that the fact of such pretended consolidation was a matter which must be shown by record proof, and not by the assertion of bond speculators in London and Amsterdam, or elsewhere, and of which the complainants and all others dealing in said bonds must take notice and act upon at their peril, and

that the statements made to them were quite sufficient to put them on the inquiry, which they failed to pursue.

That so far from there being any such consolidation of the said Florida Central with the said Jacksonville, Pensacola & Mobile Railroad Company, that at and during the very period referred to the Florida Central Railroad was acting, as it ever has acted since its incorporation on the 29th of July, 1868, as a separate and independent body corporate and politic, electing its own board of directors, president, and other officers, and by its said officers, and in its corporate name, was suing and defending suits in the courts of justice, and among other things, as alleged by the complainants' bill, was making and issuing the very $1,000,000 of bonds now in the hands of the State of Florida, and to which the complainants are now seeking to make claim, although by their own showing they expose the fact that they never gave any credit whatever or purchased any State bonds which they supposed to be secured in whole or in part by the franchise and estate of the said Florida Central Railroad Company.

12th. This defendant has no knowledge or information, and hence neither admits or denies the allegations in the XI paragraph of complainants' bill, as to the number of bonds they hold, or when purchased, or for what consideration, but will insist upon full and specific proof thereof; but defendant expressly denies the allegations as made about the agency of Charles D. Willard, or that he is authorized to speak for any considerable number of State bonds, or the holders thereof, and denies that said Willard, or his solicitor, has any authority whatever to bring this suit.

601 Defendant, further answering, admits that the interest was paid on the whole of said State bonds up to January, 1873, as alleged in said paragraph XI of complainants' bill; but this defendant at the same time avers that the admitted payment of such interest shows there was no cause for the State of Florida to seize the said Jacksonville, Pensacola & Mobile Railroad Company and the Florida Central Railroad Company for the pretended non-payment of said interest in 1872, whereby the said roads have been kept in the hands of receivers from that time to the present, greatly to their injury.

But defendant does not admit, but denies, the allegations in complainants' bill in the last part of paragraph XI, that the complainant was advised or believed that the said interest so paid was paid by the State of Florida on its said bonds, and states that the complainants were fully advised by the proceedings in the court of chancery in England that the said interest was to be paid, and was paid, by the use or hypothecation of about 200 of the State bonds numbered above 3000, and which constitute the very bonds represented by the complainants in this suit, and in the affidavit of G. M. Boissevain, set forth in the petition of C. D. Willard to the governor of Florida, asking the seizure of the said Florida Central Railroad, and that the allegations of the complainant in reference to these bonds are not true or made in good faith.

And this defendant does not believe that the complainants, or any one of them, are aware of the existence of this suit, or the allegations made in their name. That they were not seeking to assert any such claims till urged to do so by said Gleason, Sherwin, Willard and others, as hereinafter stated, and that this whole proceeding is a fraud upon this honorable court, as it is a fraud upon the defendant, and an imposition as well as a fraud upon the complainants in whose name it is being prosecuted.

13th. This defendant has reason to believe, and does believe, that the parties referred to in the XII paragraph of complainants' bill are, or claim to be, the holders of the class of bonds called the Pensacola & Georgia and Tallahassee Railroad bonds, and defendant admits that said bonds, amounting in all to about $472,065, with interest since March 20, 1869, were attempted to be paid by a sham and fraudulent check, given by George W. Swepson, which was not intended to be paid when given, and of course was not paid at any time subsequent thereto.

602, 603 But this defendant denies that such fraudulent pretence of payment changed any right of the holder of said $472,065 of Pensacola & Georgia and Tallahassee Railroad bonds at the time such sham and false sale and purchase was made, on the 20th day of March, 1869, or at any time subsequent thereto, and that the said Pensacola & Georgia and Tallahassee Railroad bonds are a first and prior lien on the said road, both in law and equity, and are especially a prior lien over and above the papers called bonds issued by the State of Florida in exchange with the Jacksonville, Pensacola & Mobile Railroad Company, even were said last-named bonds possessed of any validity, or capable of conferring or creating any rights whatever—which this defendant is advised they can do.

14th. This defendant denies that it and Milton S. Littlefield, James M. Baker, Charles B. Fenwick, claiming to be stockholders, held an illegal meeting to elect a board of directors, and then held an illegal directors' meeting, and chose E. M. L'Engle president, and Jas. M. Baker, W. J. Lawton, M. S. Littlefield, N. K. Sawyer, J. C. L'Engle, Jos. B. Stewart, Charles B. Fenwick, and George R. Foster directors, none of whom were stockholders, as falsely averred in paragraph XIII of complainant's bill. On the contrary, this defendant states that being the lawful and equitable owner of more than nine-tenths of the capital stock of the said Florida Central Railroad, and finding that its affairs were wholly neglected, and that no election for directors had been held according to its charter and the requirements of law, took pains to try to find those who claimed to be directors, but could find no such persons and could not find the books, records, and archives of said company, nor the seal thereof, nor any one who could give the least information about the same, or if any of the persons inquired of had such information they refused to impart it to the counsel of this defendant, though he inquired of Edward Lewis, Robert Roche, Chas. E. Dyke, E. M. L'Engle, M. S. Littlefield, and D. S. Walker, and others not now remembered.

That, failing to find any board of directors, or any persons who admitted themselves clothed with the duties of directors, this defendant, owning full nine-tenths of the stock as aforesaid, united with other stockholders, and, after consultation, resolved to call a meeting of the stockholders to elect a board of directors, and did call such meeting for the 29th day of January, 1877, at which there convened a meeting of stock exceeding 4,800 shares, counting the 4,370 shares 604 belonging to this respondent, when it was ascertained that the complainants in this suit, or some of them, represented by one Frank R. Sherwin, had instituted a collusive suit against or with certain parties in Savannah, Georgia, for the especial purpose of embarrassing the rights of this defendant, and to make the said Florida Central Railroad Company an easier and more convenient prey to the purposes of the said memorandum plan (Exhibit D), made part of complainants' bill, which was signed by said Sherwin on the part of the complainants on the 12th day of January, 1877.

That defendant and the other stockholders (not parties to said memorandum plan) being thus fraudulently interfered with in the election of a board of directors, willing to and interested in protecting, and not parties to a scheme to wreck and destroy, the said Florida Central Railroad Company, under advice of counsel, applied by its petition to the circuit court for Duval County, State of Florida, a court of competent jurisdiction, setting forth the facts in the premises, and prayed for an alternate writ of mandamus, which was granted on the 14th and returnable on the 27th day of February, unless cause was shown to the contrary on the 26th at 10 o'clock a. m. of that day, and ordered the said writ to be advertised in a daily paper for ten days, and which was kept so advertised as ordered, so that all parties might have notice.

That on the return day of said writ the granting thereof was opposed by Robert Walker, claiming to hold ten shares of stock, and P. Houstoun, claiming to hold ten shares, and by Edward Lewis, holding 50 shares; but it transpired that the name of said Lewis was used without his authority, so that the only stockholders that opposed the writ were said Walker and Houstoun, holding ten shares each, and both claiming to be directors of the said company. That besides the said Walker and Houstoun, the said writ was opposed by the complainants through said Frank R. Sherwin, for whom H. R. Jackson and Hon. H. Bisbee, jr., their counsel, interposed a demurrer to said writ and petition, which was argued for several days, when the case was taken under advisement by the court till the 9th day of March, 1877, when a decision was rendered, overruling the demurrer of the said Sherwin for the complainants and gave the complainant five days, or until the 14th of March, to make further answer to the alternate writ, and no cause being shown or further answer made, the peremptory writ was granted on the said
605 15th March, when an election was duly held and a board of directors elected according to law, and that any and all allegations of fraud set up in the name of the complainants, and sworn to by said Charles D. Willard as their attorney in fact, whether real or pretended, is wholly false and gratuitous.

And this defendant further states that an appeal was prayed in the name of the said Sherwin, and granted by the court, and ten days' time allowed to perfect the same by said Bisbee and Jackson, as counsel, but that the same was abandoned, and that after due and proper return being made thereto, the said peremptory writ was returned and discharged, as will more fully appear by said proceedings when produced and inspected.

And this defendant avers that the allegations that this suit is prosecuted in the interest of George W. Swepson, or for his benefit in any respect, is wholly false.

15th. In answering to the XIX paragraph of complainants' bill, these defendants deny all right or power of the governor to seize said railroads, or either of them, and denies that the Florida Central Railroad, now or at any time, formed part of the Jacksonville, Pensacola & Mobile Railroad, as has been hereinbefore stated.

16th. Answering the XV paragraph of complainants' bill, this defendant denies that the prior lien of the Pensacola & Georgia and Tallahassee Railroad bonds has ceased to exist, but avers that the same remains in full force, as hereinbefore stated.

And defendant utterly denies the right of the governor to accept the said repudiated State bonds in payment for the said railroads, as the same are not a lawful consideration for any purpose, and cannot be accepted by the governor, who is required to sell said roads for lawful money of the United States, and nothing else.

17th. This defendant, in answer to the XVI paragraph of complainants' bill, admits the fact to be, as herein alleged, that Frank R. Sherwin, assuming to act in the name of the complainant, did enter into a scheme, called the "memorandum plan," for reorganizing the Jacksonville, Pensacola & Mobile and the Florida Central Railroads, dated the 12th
day of January, 1877, and further admits that by said "memo-
606 randum plan" the governor of Florida was required to seize and
sell said railroads to certain parties, called trustees, therein
named, and to allow such persons to bid the full amount of the principal and interest of the said null and void bonds of the State of Florida, which the said governor was bound to receive as cash, and thereby violate the law or statute under which he assumed the power to seize and sell said road, which requires him to sell the same for "lawful money of the United States, and nothing else," and further admits that upon said bid any payment being made, the governor was bound to convey the whole of said railroads, with complete title, to the purchasers named in the said "memorandum plan," and put the same in immediate possession thereof, as shown by complainants' bill and Schedule D, and which is part of this answer, marked Schedule XV.

But this defendant avers the whole of said proceedings and the making of said "memorandum plan" agreement was a fraudulent scheme and conspiracy, gotten up between said Frank R. Sherwin, Charles D. Willard, and others, who, at the date thereof, had no power or authority to use the name of the complainants, or any of them, but used the seizures of the roads, which by their false and fraudulent petition, written by said Williard, and sworn to by said Sherwin, they had induced the governor to make on the 30th day of December, 1876, certified under the great seal of this State, and added to which was the said "memorandum plan," with the assurance that the governor of Florida was a party to the same, and would make the forced sale therein provided for the consummation of said plan, as the means of inducing the complainants to give them said power of attorney, none of which are dated previous to the first of March, 1877, and long after the date of said seizure and memorandum plan, which is made part of the complainants' bill (Schedule D), asking the same to be enforced by the decree of this court, though in direct violation of the law under which the governor was to assume to seize and sell said railroads.

18th. This defendant, answering the XVII paragraph of complainants' bill, avers that it is untrue as therein alleged and pretended that there was any meeting of the stockholders in the year 1875, at Tallahassee or elsewhere, who had at any time consolidated the Florida Central Railroad with the Jacksonville, Pensacola & Mobile Railroad Company, or
who had at any time pledged, or who ever had the authority to
607 pledge the Florida Central Railroad to the payment of the com-
plainants' bonds as falsely assumed in complainants' bill.

That there was no election of a board of directors made or organized at the time named.

That the attempted election which proposed to allow the executors of Edward Houstoun to assume to vote the stock, that was in truth the property of this defendant, the certificates representing which were fraudulently retained by said Houstoun before his death, was wholly false, and no board was elected and installed in office, or president or other officers chosen, and the parties in the bill, mentioned as directors, never attempted to take charge of or in any manner protect the property of the said Florida Central Railroad, but permitted the same to go to waste and its books and archives to be scattered and its seal lost, as hereinbefore stated, and in consequence of which this defendant appealed to the courts for the protection of its rights by applying for the writ of mandamus, as hereinbefore stated.

And this defendant, further answering, denies that the Florida Central Railroad Company has ever been dissolved, but, on the contrary, avers that the said company, as organized under its charter, on the 29th day of July, 1868, has ever continued to be, and now is, a lawful body corporate and politic, possessed of its franchise and estate, however much abused and neglected by those who have plundered it of its earnings or attempted to destroy its existence, and defendant avers that said company cannot be dissolved even for the laudable purpose of liquidating the repudiated and annulled bonds of the State of Florida, as claimed in the complainants' bill, and that it is happily rid of the control of the persons asked to be regarded as directors for the benefit of the complainant.

19th. This defendant, answering the XVIII and XIX paragraphs of complainants' bill, denies that the adjudications and proceedings therein alleged affects, or in any manner binds, the right of this defendant, or that the said proceedings or adjudications are of such character as to create a res adjudicata in the subject matter of this suit, or as to the parties thereto. That neither the complainants nor any other holders of the so-called Florida State bonds were parties to said suits, or either of them, and hence could not be bound thereby. That the decision rendered in the Holland case, after deciding that the act of the 28th of January, 1870, creating the statutory agreement and contract for
608 the exchange of bonds between the State of Florida and the Jacksonville, Pensacola & Mobile Railroad Company was unconstitutional, null, and void and had no further jurisdiction over the case, and certainly had no right or power to proceed to make a new contract between the Jacksonville, Pensacola & Mobile Railroad Company and persons who might hold the annulled bonds of the State of Florida, and that such further adjudication was extra judicial and had not the force of law.

That in the proceedings against the Florida Central Railroad, when the court found and decided that the State of Florida had no cause of action and dismissed its bill, it had no power to make a further decision in the cause, determining the rights between the said company and any holders of the bonds of the State of Florida, which the same court had declared unconstitutional and void, and that the decision so made was extra judicial and a mere obiter dictum, and not entitled to the force and effect of law as against the rights of this defendant.

And this defendant further avers that said decision in the case of the Florida Central Railroad Company, besides being extra judicial, and a mere obiter dictum, as stated, was procured upon a wholly false assumption of facts, of which there was no proof offered before the court, but of which there is now discovered positive proof to the contrary. That among other things, there is now brought before this court written proof, discovered since the said trial, and not before the said State court, that the $1,000,000 of bonds of the State claimed to be exchanged against the Florida Central Railroad Company, were not issued to, received by, or used for the benefit of the said Jacksonville, Pensacola & Mobile Railroad Company, but, on the contrary, were by the fraudulent connivance and participation of the State of Florida, which, through its governor, conspired with Edward Houstoun and Thomas B. Coddington for that purpose, caused said $1,000,000 of bonds of the State of Florida (alleged to be exchanged for the said Swepson-Thompson bonds issued in the name of the Florida Central Railroad Company) to be placed in the hands of said Coddington, as trustee for said Houstoun, and as agent for the State of Florida, to be applied to the payment of private debts and obligations of said Houstoun and others mentioned under a private and secret trust to that effect, dated the 11th day of January, 1871, as hereinbefore stated, and this defendant submits that had such proof been fully placed before said State court, that no decision so utterly in disregard of the facts and law of the case, subverting and disregarding any and every principle of right and 609 justice, could or would have been made, and denies that said decisions, or either of them, for the foregoing, as well as for other reasons, conferred any rights at law or in equity upon the complainants as alleged in their said bill.

20th. This defendant, further answering, denies that the governor of Florida was created a trustee by said statutory contract and agreement between the State of Florida and the J., P. & M. Co. by said act of the 28th January, 1870, for the complainants or any other holders of the bonds of the State of Florida. That the only trust created by said act and statutory contract was that after the treasurer of the State should invest certain moneys to be derived from a sale for cash "in the securities of the United States to be held by the State of Florida in trust for the bondholders until such bondholders shall demand the same, upon which demand the treasurer shall immediately turn over or pay said securities to the bondholders."

That this is the only trust created by said statute, and does not apply to the governor, who cannot be made or declared a trustee for any purpose according to the terms of said statute, or without the making of a totally new agreement, which this defendant is advised it is not competent to create by mere assertion or construction. That to create a trustee as between the parties is an act and fact to be proposed and assented to by both the contracting parties—that is, the State and the companies—and must be made part of the act to operate as law, or be binding on the parties, which has not been done by the legislature and cannot by the court in the present case.

21st. This defendant is not able to discover to what particular suit the J., P. & M. Co. is alleged to have been a party, in the 20th paragraph of said bill of complaint, or what denials may or may not have been made by Milton S. Littlefield, as president or otherwise, but denies, as hereinbefore stated, that said proceedings in any manner affect or conclude the rights of this defendant more than the rights of the complainants who were not parties thereto.

22d. This defendant has no knowledge what surveys of the said railroads the complainants may have caused to be made, or for what 610 purpose, but denies their right to interfere or intermeddle in the affairs of said roads or either of them, and denies the right of the complainants to claim or handle any funds in the treasury of the State derived from said roads, or either of them, and denies that the governor of the State of Florida can lawfully be made a receiver of this court for any purpose as prayed in said bill of complaint.

And this defendant is advised and so avers that if the arbitrary political intermeddling and speculating purposes now being fostered under the seizures of the governor shall be abandoned and the property surrendered to the parties who own them, and who are alone interested in taking care of them, they will soon be put in as good repair as they were five years ago when the game of arbitrary seizure commenced under cover of said void statute of the 28th January, 1870.

That the earnings of said J., P. & M. Road alone have been over $140,000 per year, if rightly handled and accounted for, and the roads should have been kept in good repair if the earnings had been lawfully used, but being under arbitrary seizure, with no personal responsibility to the companies and their stockholders, the real owners of the same, their earnings have been squandered and the roads allowed to go to ruin, while the hands of the companies are tied by the acts of the governor, who has, in truth, no power to control the persons he appoints to manage the roads, and should not be clothed with further power to do harm to the property of the companies, to whom he is in nowise responsible.

And defendant denies the right of the governor of the State to use or appropriate the said $40,000, or any portion thereof, placed in the hands of the treasurer of Florida as the earnings of said Jacksonville, Pensacola & Mobile Railroad Company, and insists, as before stated, that the earnings of the said road, if honestly used, are sufficient to keep the same in repairs, and that the said company, if restored to the control of their road (now five years out of its possession), will keep it in repair from its earnings and save a surplus besides to pay its debts with. That the said road was earning money when the State usurped control of it in 1872, and would have done so ever since had it been handled upon correct business principles, and its earnings not illegally squandered.

23d. This defendant denies the allegation in the XXII paragraph of the
complainants' bill, that "the Western Division of the Western
611 North Carolina Railroad Company united with said Littlefield,
said Swepson, and said S. W. Hopkins & Co. in procuring the
governor, Harrison Reed, to issue and deliver said State bonds," andt
charges that said allegation and every part thereof was made withou
the least regard to truth.

That defendant never, at any time, or in any way, had or held any communication with the governor of Florida at or during the period of said false and fabricated bond issue, and never at any time saw, touched, or handled one of said State bonds or company's bonds.

That the first knowledge this defendant ever had that any of its moneys had been invested in the Florida railroads was at the settlement which it exacted of its agents and fiduciaries, Swepson and Littlefield, on the 16th day of April, 1870, which was reduced to writing and is made part hereof, marked Schedule No. 16, and which was understood as follows:

a. That by the terms of said agreement the sum of $1,287,436 of the assets of this defendant, or the avails thereof, had been fraudulently used and appropriated by the said Swepson and Littlefield in the purchase of stock of the Florida Central Railroad and in payment for the Tallahassee Railroad, now known as the Jacksonville, Pensacola & Mobile Railroad; but just how and in what manner this was done was not disclosed. All that this defendant knows is what the writings themselves contained.

b. That the said paper further disclosed that Swepson had transferred the whole of said fraudulent investments in the said Florida railroads to Littlefield, subject to the payment of said $1,287,436 of the money of this defendant, so fraudulently embezzled, used, and appropriated by its said agents and fiduciaries, as aforesaid, to pay which a lien on the said railroads was given, as provided in said paper or deed (Schedule

16). That except as stated in said paper, this defendant had no knowledge of any bond issue by the State of Florida in exchange for railroad bonds, nor was it discovered for what purpose the said bond issue was made. The declaration that "whereas said Littlefield has received authority from the legislature of the State of Florida and from the several railroads to receive bonds to be issued by and for account of the several railroad companies, which bonds are to be exchanged for the bonds of the State of Florida, to be issued for the purpose of aiding the finances of the several railroad companies, all of which bonds are now in 612 a state of preparation," was all the information this defendant had on the subject of said bonds, and being completely at the mercy of its fraudulent agents and fiduciaries, who misused its money, accepted the proposed payment as therein provided, supposing that the said bond issue referred to by the State of Florida and the railroad companies was and would be a valid and full issue of bonds, according to law, and of an unimpeachable character, and not a fraudulent creation, under an unconstitutional and void statute, whereby the pretended bonds of the State being of no value would only serve to encumber the $1,287,436 of this defendant as invested in said railroads, soon to be repudiated and declared null and void. Of these things the defendant had no knowledge or means of protecting itself, and relying upon the good faith of the acts of the State of Florida in any bond issue it might make, as stated in said agreement, acquiesced therein.

c. That on the same 16th day of April, 1870, a further writing was proposed and entered into between this defendant and its agents and fiduciaries, the said Swepson and Littlefield, which is also made part hereof, marked Schedule No. 17.

d. That by the terms of this last-named agreement the terms of the agreement above mentioned (Schedule 16) were modified as to the payments in such a way as to reduce the amount of the fraudulently appropriated funds of this defendant, to be collected out of the Florida railroads, to the sum of $880,000, by substituting for the difference over and above the last-named sum other securities, as will be seen by said last-named paper.

e. That no bonds, or the proceeds thereof, was ever paid to this defendant under said agreement, but, on the contrary, the defendant being advised that the same securities and interests had been pledged to other parties; that a scheme was in progress between Swepson, Houston, and Littlefield, concocted subsequent to the said 16th day of April, 1870, whereby the whole of defendant's stock and interest in the said Florida Central Railroad was to be sacrificed by means of a fraudulent sale, to take place in New York on the 4th day of October, 1870, in order to prevent the same and to recover possession of the stock and bonds so assigned to it as aforesaid, did, on the 3d day of October, 1870, in the supreme court of New York, institute a suit against the said Houstoun, Littlefield, and others, enjoining said attempted sale, and as part of such proceedings this defendant procured the affidavit of said Swepson, which is made part hereof, marked Schedule 18.

613 *f.* That by this affidavit the defendant was for the first time advised of the actual facts and manner, and for what precise purposes its money had been fraudulently used and appropriated by the said agents, trustees, and fiduciaries, as aforesaid, and henceforth adopted all the means in its power to get possession of the stock of the said Florida Central Railroad and Jacksonville, Pensacola & Mobile Railroad Companies, which it finally did, and is now in the use and enjoyment

thereof as a property to the fullest extent that the litigations involving said railroads will permit.

g. That about the time the suit above mentioned in the superior court of New York was commenced against said Houston, Littlefield and others, in October, 1870, it came to the knowledge of this defendant that the said bonds mentioned in said settlements and assignments of the 16th of April, 1870, were, in truth, in London for sale, and that not a dollar of the proceeds thereof was going to be paid to this defendant. That Nicholas Woodfin, esq., the chairman of a commission appointed to represent this defendant's interests, went to London and found it to be true, as reported, that the said bonds were on the market for sale, represented by said Littlefield, S. W. Hopkins & Co., and John Collinson, who seemed authorized to speak and act in refereuce to said bonds, when the said Woodfin made known the object of his mission and the fraud that had been perpetrated upon this defendant in the use of its money and the violation of said agreement of the 16th of April, 1870, in the removal of said bonds to London, and declared his purpose to institute legal proceedings, when on the 10th of November, 1870, and for the declared purpose of avoiding litigation and doing what was honest and just, another settlement was proposed by said Littlefield, Hopkins & Co., and others, reduced to writing, which is made part hereof, marked Schedule No. 19.

h. That this last named settlement referred to and made part of the said settlement of the 16th of April, 1870, in Washington, further provided for the shipping of certain iron, and then, as a further and final closing up of the transaction, sold to and set apart to this defendant 800 of "bonds of the State of Florida of the denomination of one thousand dollars each, the number of said bonds to be designated by the party of the first part, but with the express stipulation that the said bonds are to be left with Messrs. Hopkins & Co., for sale at such prices as the said party of the second part may direct."

614 *i*. That, as a further part of this settlement, an order was given for the said 800 bonds by the said Littlefield to the said Hopkins & Co., and accepted by said firm under date of November 16, 1870, as follows:

LONDON, *November* 16, 1870.

NICHOLAS WOODFIN, Esq.,
Chairman of the Committee of the
Western Division of the Western
North Carolina Railroad Company:

SIR: In accordance with my understanding with you, dated the 10th day of November, 1870, I herewith enclose you an order on Messrs. S. W. Hopkins & Co. for the bonds.

I remain your obedient servant,

M. S. LITTLEFIELD,
President J., P. & M. R. R. Co.

That said order, on the day of its date, viz, November 16, 1870, was presented to said Hopkins & Co., who accepted the same by the following communication:

58 OLD BROAD STREET,
London, E. C., November 16, 1870.

NICHOLAS WOODFIN, Esq.,
Chairman of the Commissioners of the
Western Division of the Western
North Carolina Railroad Company:

SIR: We are in possession of your favor of this day's date, covering order from M. S. Littlefield, president of the Jacksonville, Pensacola & Mobile Railroad Company, dated November 16, 1870, for eight hundred Florida bonds. We accept the said order and agree to hold the within described bonds as agent for the Western Division of the Western North Carolina Railroad Company, subject to the order of the commissioners.

We remain, sir, your most obedient servants,

S. W. HOPKINS & CO.

j. That no bonds were delivered to or ever shown the said Woodfin, as described therein; who left for America, not suspecting that the whole proceeding was a trick and fraud from the start, and a mere contrivance to get him to leave London and for no other purpose, which this defendant avers and charges is true. The said Hopkins & Co. were not the holders of a single Florida State bond, or a bond of any kind, subject to the order of said Littlefield, or that was intended to be paid to said Woodfin for this defendant, and that the giving of said order by said Littlefield for said bonds, and the order to deliver said iron, and the acceptance of said orders by said Hopkins & Co., was a mere conspiracy and fraud, concocted by said Hopkins & Co. and Littlefield to deceive and impose upon said Woodfin, who had no suspicion thereof, and that in point of fact every bond had been parted with by said Hopkins 615 & Co. previous to the giving and accepting of said order, and the proceeds thereof applied to other and different purposes, and that not a single bond, or a dollar as the proceeds thereof, was ever delivered to this defendant under said agreement of the 10th and order of the 16th of November, 1870.

k. That said commissioners, so acting on the part of this defendant, finding they were thus deceived and defrauded, sought relief in the courts of justice, when they discovered that the 1,000 bonds delivered by the State of Florida to said Houstoun and Coddington, on the 11th of January, 1870, had passed to the possession of Hopkins & Co., in London, and immediately attempted to assert the rights of this defendant thereto, when they were assured that said bonds should be held to their use to the number of 800, without further litigation, and that their draft for (£10,000) ten thousand pounds sterling would be honored and paid by said Hopkins & Co., whereupon to test the truth of this assertion, drew the following draft, as prepared for their signatures:

NEW YORK, *April* 3, 1871.

Messrs. S. W. HOPKINS & CO.,
58 *Old Broad street, London:*

GENTLEMEN: We have this day (by our chairman, N. W. Woodfin, esq.) drawn on you at sixty days' sight for (£10,000) ten thousand pounds sterling, as an advance against eight hundred (800) Florida State eight per cent. gold bonds, held by you for negotiation for account of the commissioners of the Western Division of the Western North Carolina Railroad Company.

We are, gentlemen, yours respectfully,

N. W. WOODFIN.
W. W. ROLLINS.
J. L. HENRY.

That this draft was accepted and paid at its maturity by said Hopkins & Co., but no other payment ever was made and no bonds of the

State ever were delivered to or for the use of this defendant, and none of the bonds numbered above 3,000 were sold or used, except about 200 which were pledged to pay the interest due January, 1873. 560 now in bank in London, subject to the order of the State of Florida, and 224 cancelled, which accounts for the State bonds above 3,000, as aforesaid.

This defendant states that the foregoing is a correct statement of its acts and transactions in connection with the so-called Florida State bonds; that it had no knowledge of said bonds, except as disclosed in the assignment made to it on the 16th of April, 1870, and as further stipulated on the 10th day of November, 1870, in payment for its money fraudulently used in the purchase of said Florida railroads, as shown in said agreement of the 16th of April, 1870, when, to secure
616 said payment of said money to this defendant, the said assignment of the stock of said roads to this defendant was made, transferring to this defendant all and singular the stock of said companies, as hereinbefore stated, and the allegations in the complainants' bill that this defendant had anything to do with any transactions with, or made any representations, to the governor of Florida about said bonds is wholly untrue.

Further answering said bill, defendant avers that it has and does contend there was no valid bond or obligation created by or under said statutory contract and agreement of the 28th of January, 1870, either by the State or by the companies, and that none of the companies' bonds ever passed into the hands of the complainants, or has in any manner ever been their property.

24th. In answer to the XXIII and XXIV paragraphs of complainants' bill, this defendant denies the truth of the matters as therein alleged, and insists that the same are *res inter alia* and do not concern the complainants, who have no right to intermeddle therein.

25th. This defendant denies the allegation in the XXV paragraph of complainants' bill, that by reason of any transactions or agreements between Milton S. Littlefield and George W. Swepson that Littlefield purchased the $103,000 of Pensacola & Georgia and Tallahassee Railroad bonds which are now deposited in the registry of this honorable court, and denies that said bonds were paid for with money received from the complainants or any one else as the purchasers of the so-called State bonds, but avers and charges the fact to be that said $103,000 of Pensacola & Georgia and Tallahassee bonds were part of the bonds purchased by said Swepson, the president, agent and fiduciary of this defendant, who fraudulently used and appropriated a portion of the said $1,287,436 aforesaid for that purpose through said Edward Houstoun, previous to the 20th day of March, 1869, and long before the passage of the act creating and entering into the statutory agreement and contract of the 28th January, 1870, between the State of Florida, and the Jacksonville, Pensacola & Mobile Railroad Company for the issue and exchange of bonds, and were surrendered by said Littlefield and transferred to this defendant long before the commencement of this suit, and are now held to its use by the master of this court, and will
617 not be delivered to the trustees of the internal improvement fund, except to be received and liquidated as the property of this defendant upon an equal footing with any other portion of said $472,075 of outstanding bonds which constitute, as in law and equity they do, a prior lien upon the said Jacksonville, Pensacola & Mobile Railroad Company, and which is the only manner in which the said trustees have any lawful right to deal with said bonds.

26th. This defendant admits that in the multitude of fraudulent trans-

actions in using and appropriating the assets and money of this defendant, which occurred between Houston, Swepson, and Littlefield in the year 1870, that 4,370 shares out of the 5,550 shares constituting the capital stock of the Florida Central Railroad Co. were, about the month of May, 1870, unlawfully pledged by Swepson and Littlefield with said Houstoun, as alleged in paragraph XXVI of complainants' bill, to cover a debt contracted in the name of Littlefield to the amount of about $163,000 for the pretended purchase of about 1,300 shares of said stock, and in which same transaction the $1,000,000 of so-called bonds of the Florida Central Railroad Company, created without authority of law, signed by Swepson and Thompson, were also pledged with Houstoun after the same property and every part of it had by said deed and transfer of the 16th of May, 1870, been duly assigned and set apart to this defendant to secure the repayment of its $1,287,436, so fraudulently used and invested by said Swepson, Houstoun and Littlefield, each party knowing the same to be the property of this defendant, or held for its use. And defendant avers and charges that the object of said pledge to Houstoun, and the executing of the said three (3) agreements between Swepson, Houstoun, and Littlefield of the 13th and 30th days of May, and the 7th of June, 1870, were fraudulent contrivances to place said stock and bonds in an attitude to be sold beyond the reach of this defendant, and from under the said assignment of the 16th of April, 1870, and which was attempted and being done on the 3d day of October, 1870, when this defendant, by its suit in the supreme court of New York, stopped the same by suing said Houstoun and Littlefield, when the former fled from the city of New York to escape the commands of the law, as aforesaid, and never returned to that city during his lifetime.

And this defendant, further answering the complainants' allegations,
618 states that said Houstoun, after he fled from New York, was sued in New Jersey and Philadelphia by other parties, and a judgment was obtained against him by T. L. Clingman, and to avoid the said proceedings, and after he was paid by said Littlefield in full the sum of $163,000, with interest thereon, and the additional sum of $5,000 as damages arbitrarily charged upon said Littlefield for his, Houstoun's, escape from New York with said stock, making in all about $179,000 cash he received on the 12th day of April, 1871, he then, instead of delivering said stock and bonds to the defendant, to whom he knew they belonged, or instead of returning to the supreme court of New York, where he knew of the law from which he had escaped by flight, demanded them, he arbitrarily and of his own motion assigned the same in trust to one M. D. Papy, who was his counsel and adviser, and who conspired with and aided him in his schemes of peculation and misuse of the property of this defendant, by afterwards having the same seized under a collusive writ of ne exeat, sworn out in the superior court of Chatham county, Georgia, and had the stock placed in the hands of T. Mayhew Cunningham, after fraudulently transferring the certificates of stock to his own name, where, in truth, the said certificates of stock are supposed to be, and where, by another collusive suit in the same court, in the name of Frank R. Sherwin, Gideon M. Boissevain, and Charles Mueller, they were enjoined as part of the memorandum plan, on the 13th day of January, 1877.

But this defendant avers and charges that it was this very series of fraudulent practices against its right of property as a body corporate and politic that it was compelled to apply for the writ of mandamus before the circuit court for Duval County, Florida, on or about the 15th day of February, 1877, and to seek the aid of the law in causing said stock to be voted in the election of a valid board of directors for the said Florida Central Railroad Company, and then as soon as this honorable court convened in April, 1877, caused a trustee to be appointed to fill the so-called Papy trust, and which trustee at the ensuing annual election again voted said stock in the election of the present board of directors, who appear here and invoke the protection of this court in the discharge of their lawful duties.

27th. And defendant, further answering complainants' bill, states the fact to be that the title of this defendant as a body corporate and 619 politic to the 4370 shares of the capital stock of the Florida Central Railroad Company, and the title to the entire capital stock of the Jacksonville, Pensacola & Mobile Railroad is founded upon the fact that the funds of this defendant were by its agents and fiduciaries, Swepson, Houstoun, and Littlefield, without its knowledge or authority, fraudulently invested in the purchase of the said 4,370 shares of the capital stock of the said Florida Central Railroad Company, and in purchasing the $960,300 of the Pensacola & Georgia and Tallahassee Railroad bonds, which were the sole consideration paid in the purchase of the said Pensacola & Georgia and Tallahassee Railroads on the said 20th day of March, 1869, as aforesaid, and which said roads, after the said act of incorporation of the said F. Dibble and associates, under the name of the said Tallahassee Railroad Company, on the 24th day of June, 1869, was consolidated into and with the said Jacksonville, Pensacola & Mobile Railroad Company, incorporated on the same day, as hereinbefore stated.

28th. That as a means of refunding to this defendant its money so used and fraudulently appropriated for the purposes aforesaid, to the amount of $1,287,000, as aforesaid, the said deed of assignment and transfer was made by said Swepson and Littlefield to this defendant on the said 16th day of April, 1870, and the several subsequent assignments in further fulfilment thereof, whereby this defendant was placed in the lawful possession of the said stock of said railroad companies. That of the stock of the Florida Central Railroad Company this defendant is in possession of the stock represented by certificates numbers 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 57, 58, 59, 79, 80, besides stock to the amount of about 700 shares represented by other certificates held by said Littlefield and others, and making about 5,000 shares of said stock.

That of the said stock of the said Jacksonville, Pensacola & Mobile Railroad Company, this defendant, for the reasons before stated, is the lawful and equitable owner of the entire sixty thousand (60,000) shares, and is in the actual possession of fifty-one thousand six hundred and sixty-eight (51,668) shares of said stock of said Jacksonville, Pensacola & Mobile Railroad Company, represented by certificates numbered 6, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 25, 27, 30, 33, 34, 35, and 36, and this defendant claims the lawful right to reclaim and reduce to possession the remainder of said 60,000 shares of said last named company.

620 And this defendant avers that the said stock above mentioned and each and every part thereof is the property of this defendant, and in its lawful possession, and that the same and no part thereof, or the said railroads or either of them, are in no manner subject to any debts, equities, or demands of the complainants or any of them, and that any and all pretenses to the contrary are unlawful, inequitable, and false.

29th. And this defendant, answering the supplemental bill filed by the complainants, says it is true that this court did appoint Aristides Doggett, esq., the master in chancery of this court, a trustee in the place of M. D. Papy, deceased, to hold and represent the said 4.370 shares of stock described in the said trust deed executed by said Edward Houstoun and S. W. Hopkins to said M. D. Papy on the 12th day of April, 1871, and that said Doggett did, as such trust and as his lawful duty required, convene with said stockholders of the said Florida Central Railroad Company at their annual meeting, convened pursuant to notice duly published, on the 11th day of April, 1877, and which stood adjourned till the 28th day of May, 1877, when the board of directors were elected, composed of the persons named in the complainant's bill, and are now in the lawful discharge of their duties as such board of directors; but this defendant denies any and all charges of fraud or combination in said election of directors, or that the same was intended to impair, hinder, or delay any rights whatever of the said complainants or any one else, and that any allegations in this behalf are untrue.

30th. This defendant, further answering, is advised that the allegations of the complainants' bill, even admitting the same to be true, are not good and sufficient in law to entitle the complainants to the relief prayed or any part thereof, and this defendant reserves the right to rely upon the insufficiency of the complainants' bill and all and singular the matters therein alleged with the same effect in law as if this defendant had specially demurred thereto in manner and form as prescribed by the rules of this court.

31st. And this defendant, further answering, avers and charges the fact to be that the said complainants are not the holders of any 621 bonds or other evidences of debt of the said Florida Central or Jacksonville, Pensacola & Mobile Railroad Company or either of them, and that said complainants are not a party to any contract, agreement, or undertaking by or on the part of said railroad companies or either of them, whereby they or either of them agreed or assumed to discharge any bond or obligation held or owned by the complainants or either of them.

32d. That the rights alleged by the complainants, as shown by their bill, are found' on the pretended statutory contract and agreement hereinbefore mentioned, created under the second and fourth sections of the act of the legislature of Florida, approved January 28, 1870, pretending to provide for the issue of bonds by the State of Florida to be exchanged for the bonds of the Jacksonville, Pensacola & Mobile Railroad Company, at the rate of $16,000 per mile; also authorized by the same statutory agreement, as follows:

Section 2 of the act of Jan. 28, 1870.—" In order to aid the Jacksonville, Pensacola & Mobile Railroad Company to complete, equip, and maintain its road and to aid in perfecting one of the public works embraced in the internal improvements of the State, the governor of the State is hereby directed to deliver to the president of the said company coupon bonds of the State to an amount equal to sixteen thousand dollars per mile for the whole line of railroad owned by or belonging to said Jacksonville, Pensacola & Mobile Railroad Company in exchange for first mortgage bonds of said railroad company, of the denomination of one thousand dollars, when the president thereof shall certify upon his oath that the road or parts of road for which he asks for an exchange is completed and in good running order. The said bonds [of the State] shall be of the denomination of one thousand dollars, signed by the governor, countersigned by the treasurer, sealed with the great seal of the State; shall bear eight per cent. interest, payable to bearer. They shall be dated on the first day of January, A. D. 1870, and shall be due thirty years thereafter, and principal and interest shall be payable at such place in the city of New York as the governor shall designate. The coupons for interest shall be payable to bearer and shall be authenticated by the written or engraved signature of the treasurer."

Section 4 of said act.—"That the governor shall, for the purpose
622 of further aiding said Jacksonville, Pensacola & Mobile Railroad
Company in the speedy construction of its road, deliver to the president of said company coupon bonds of this State of the same character as those described in this act, to the amount of $16,000 per mile, upon receiving for and from the president of said company first-mortgage bonds of like amount on any part or portion of the road between Quincy and Jacksonville. Provided, however, the State bonds under this section shall not be exchanged for first mortgage bonds for a greater length than one hundred miles of any part of said railroad between Quincy and Jacksonville; provided that the said railroad company or companies shall not issue first-mortgage bonds to a greater amount than $16,000 per mile."

That under section two of the act above mentioned, the State of Florida agreed to issue and exchange bonds with the Jacksonville, Pensacola & Mobile Railroad Company, "when the president thereof shall certify upon oath that the road or part of road for which he asks for an exchange of bonds is completed and in good running order."

That by the fourth section of said statutory agreement, bonds of the State of Florida of the same description and upon the same conditions as those described in section two were agreed to be exchanged and delivered "on any part or portion of the road between Quincy and Jacksonville; provided, however, that State bonds under this section shall not be exchanged for first-mortgage bonds, for a greater length than one hundred miles of any part of said railroad between Quincy and Jacksonville."

That defendant is advised and so charges—

a. That said act of the 28th of January, 1870, does not mention and had no reference to the Florida Central Railroad Company, but by its terms applies exclusively to the Jacksonville, Pensacola & Mobile Railroad Company.

b. That the Florida Central Railroad Company never accepted or adopted the said act of the 28th of January, 1870, or any of the provisions thereof, as before stated, and never was bound thereby.

c. That the president of the Jacksonville, Pensacola & Mobile Railroad Company never certified upon his oath in the manner provided and required by said statute and act of the legislature, whereby to justify the State of Florida in the exchange and delivery of said bonds, and that the certificate, if any was delivered by the president of said company, was not in accordance with the requirements of said statute.

d. That the president of the Florida Central Railroad Company
623 never made any certificate upon oath or otherwise asking for the
exchange of any bonds under said statute, and never received any. That the use of the bonds of said company was in the false and fraudulent manner hereinbefore stated.

e. That under the said fourth section of said statute "State bonds for no greater length than one hundred miles of any part of said railroad between Quincy and Jacksonville" shall be issued and this defendant avers that a distance of one hundred miles east of Quincy does not reach the terminus of the Jacksonville, Pensacola & Mobile Railroad, which is at Lake City, and hence there was never any authority conferred by the terms of the statute, to enter upon and cover the Florida Central Railroad, or any part of it, with a bond issue of said last named road.

And this defendant is further advised, and so charges the fact to be, that the said act of the 28th of January, 1870, and especially the said second and fourth sections thereof, were enacted in violation of the constitution of the State of Florida, and have been declared null and void by the supreme court of said State, so far as the said act pretended to make any contract or statutory agreement between the State of Florida and the said railroad company for the issue and exchange of said bonds, and that the bonds so pretended to be issued by the State are null and void.

33d. That the said bonds, being so null and void, constitute no good or lawful consideration for the receipt or delivery of said bonds of said railroad company to the State of Florida, which is in the unlawful possession of the same, and holds the same in trust for the use of this defendant if the said bonds are in any manner a charge on the said railroad company.

34th. That the complainants, as the holders of said State bonds, have by virtue of said statute (even were the same valid and not declared unconstitutional and void) no privity of relation to the said railroad company, and were in no respect by the terms or intent of said act created the creditors of said company; that the relation of debtor and creditor or principal and surety was created wholly between the State and the company, and that as between the State and the future purchaser and holder of its said proposed bonds the State alone was
624 debtor to its bondholders and bound to pay its bonds irrespective
of the bonds of the companies, and that the State alone could deal with the company for its own protection, and not for the benefit of those who might become the purchasers of its proposed bonds, the absolute payment of which to the holders thereof in no manner depended upon what the State might be able to collect from the company's bonds which it received in exchange under said act; and that as against the bonds, property, and estate of the said railroad company, the holders of the State bonds acquired no rights whatever, and certainly no better right than the State itself acquired under said contract and statutory agreement which has been declared unconstitutional and void, and hence incapable in law or in equity of constituting a good or valid consideration for the performance of any agreement or undertaking whatever.

35th. And this defendant denies that the said statute, even was the same good and valid as a law, created or was intended to create the State of Florida a trustee for the holders of its own bonds or as to the bonds it might receive from the said company; that the State simply created itself a debtor to those who should purchase its proposed bonds and created the company a debtor to the State to the extent of its bonds issued, provided the statutory agreement created in the act was not obnoxious to the constitution of the State. That the only relation of trustee created on the part of the State was to occur after the sale provided for in the statute should take place, and that previous to such sale the State was not created a trustee for any purpose and was not authorized to make any other than a judicial sale and not an arbitrary sale without regard to law. And that in such judicial proceeding the position of the State was designed to be that of a plaintiff for the enforcement of its own rights as a creditor of the company, and not as a trustee for its own creditors, to wit, the complainants, who have no claims against the company whatever.

36th. And this defendant is further advised, and so charges, that if the

said statute of the 28th day of January, 1870, created or was intended to create the State of Florida a trustee for the complainants and other holders of its bonds, that then and in that event this suit should be prosecuted in the name of the State as such trustee, and this de-
625 fendant for that purpose reserving the right. will insist upon
this answer as a plea in abatement to the same extent and with like effect as if the same were pleaded in due and technical form according to the rules of practice of this court.

37th. That the said statute authorizing the issue of the bonds held by the complainants being declared null and void by the supreme court of the State of Florida, and which also declared that the so called bonds issued under said act are not the bonds, debt, or obligation of, the State of Florida, this defendant is advised and so charges the fact to be that the complainants are not the holders of any bonds or obligations that are either in fact or in law a charge, lien, or demand upon which they, or any one in their name or behalf, can maintain or prosecute this suit, and this defendant, by leave now prayed, pleads the fact that said complainants are not the holders of any bonds that are a charge upon the property and estate of said company in bar of this suit on the hearing of this cause, and will rely upon the same with the same effect as if the same was pleaded as a plea in bar, in the manner prescribed by the rules of this court.

38th. And this defendant, further anwswering, submits and charges the fact to be that as the owner of the funds that purchased the whole of said Jacksonville, Pensacola & Mobile Railroad and more than nine-tenths of the capital stock of the said Florida Central Railroad Company, its right of property attached and vested in and to the stock of said companies and each of them before the passage of the said act of the 27th of January, 1870, as aforesaid, and long before the bonds claimed by the complainants were created or issued, and being in possesion of the stock of the said companies, as aforesaid, this defendant denies the rights of the complainants or any other holders of the repudiated and annulled bonds of the State of Florida to dispute or interfere with the vested rights of property of this defendant in and to said railroads or either of them.

39th. And this defendant, as hereinbefore stated, alleges and charges that the complainants and all other holders of the so-called bonds of the State of Florida had due and legal notice of the rights of this defend-
ant and of the void, illegal, and fraudulent character of said bonds
626 so issued as aforesaid. That the litigations in New York and
in London and also in Florida, imparted such notice. That the resolutions passed by both the Florida Central and the Jacksonville, Pensacola & Mobile Railroad Companies on the 21st of November, 1870, and 10th of December, 1870, which were communicated to the public and to the persons dealing in said bonds in London, and also to the agents of the complainants. That such notice was given to the State of Florida before the said bonds were issued or sold, and if the State of Florida was created a trustee for the complainants, then such notice to the State was notice to the complainants and binding on them, and that the articles of impeachment by the legislature of Florida against Harrison Reed, governor, preferred on the 7th day of February, 1872, a copy of which is made part hereof, marked Schedule No. 20, were of that solemn character and public notoriety as to be a sufficient notice to all persons of the void, fraudulent, and illegal character of said bonds, and that, in consequence of which facts and notices, said bonds were forced to sale in the market at a reduced price—that is to say, the 8

per cent. gold bonds of the State of Florida were sold at about fifty per cent. of their par value, and were so purchased by the complainants, who dealt with them at their peril, and who have therefore acquired no rights or equities that are paramount to, or which can overcome and divest the prior and vested right of this defendant, either at law or in equity.

And this defendant, having fully answered the complainants' bill, and denying all fraud or combinations whatever, and denying all allegations not herein specifically denied, prays that the complainants' bill be dismissed, and that this defendant go hence with its costs in this behalf expended.

JOS. B. STEWART,
E. M. THOMPSON.
Solicitors for the Western Division of the Western N. C. Railroad.

627 UNITED STATES OF AMERICA,
Western District of North Carolina, ss:

The Western Division of the Western North Carolina Railroad Company, by its corporate seal hereto affixed, and duly attested by its president, certifies to the truth of all and singular the matters above stated, and submits and relies upon the same and each and every part thereof as its answer to the bill of complaint filed in the above entitled cause.

Certified and affixed this 14th day of July, 1877.

[CORPORATE SEAL.] WALLACE W. ROLLINS,
President.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Wallace W. Rollins, upon oath state that I am the president of the Western Division of the Western North Carolina Railroad Company, and as such president have personal knowledge and official custody of the corporate seal of said company, and that the seal affixed to the foregoing answer is the corporate seal of the Western Division of the Western North Carolina Railroad Company, and was by me, by virtue of my office, affixed thereto.

I further state that as such president I have personal knowledge of most of the matters and things alleged in the above answer, and that the matters stated and alleged therein within my knowledge are true, and that the matters stated upon information I believe to be true.

WALLACE W. ROLLINS.

Subscribed and sworn to before me 14th day of July, 1877.

{ SEAL OF U. S. COM'R J. T. K. PLANT. } JOS. T. K. PLANT,
U. S. Commissioner.

628 SCHEDULE 1.

Whereas, at a sale by the trustees of the internal improvement fund of the State of Florida on the 20th day of March, 1869, of the Pensacola & Georgia and the Tallahassee Railroads, F. Dibble, in behalf of himself and his associates, became the purchaser thereof, bidding for the Pensacola & Georgia Railroad $1,220,000, and for the Tallahassee Railroad $195,000; and whereas George W. Swepson is the holder of a arge amount of the first mortgage bonds of the Pensacola & Georgia nd Tallahassee Railroad Companies; and whereas said parties desire to come to an accommodation respecting their interests, the one through said purchase, and the other as the holder of said bonds: Now, therefore, it is hereby agreed between said F. Dibble, in behalf of himself and his associates of the one part, and George W. Swepson of the other part, in manner and form following, that is to say:

First. That said George W. Swepson shall deliver, as he shall come into possession of them, to be surrendered to the trustees of the internal improvement fund aforesaid by said F. Dibble, in behalf of himself and his associates as part of the purchase-money for said roads respectively, the first mortgage bonds of said roads purchased by him, amounting to about nine hundred thousand dollars, for bonds of the Pensacola & Georgia Railroad Company, and about one hundred and fifty thousand dollars of the Tallahassee Railroad Company; the bonds of the Pensacola & Georgia Railroad Co. to be surrendered at par, and those of the Tallahassee Railroad to be surrendered at their pro rata of the amount bid for said road at the said sale, and the balance or remainder of the purchase money to be supplied by said F. Dibble and his associates.

Second. As soon as may be after the title is acquired by F. Dibble, in behalf of himself and his associates, from the trustees of the internal improvement fund, first mortgage bonds are to be issued in such form and to be executed in such manner as may be devised to make them legal and binding as an obligation on said roads, their equipments, workshops, depots, and franchise; said bonds shall bear interest at the rate of six per cent. per annum, payable in New York semi-annually, principal and interest to be paid in gold, and having not more than thirty years to run. To secure said bonds, a proper deed of trust is to be executed by F. Dibble, in behalf of himself and associates, to Calvin B. Dibble and George W. Swepson as trustees, with the ordinaury conditions in such cases, and shall contain a provision that on default in the non-payment of any installment of interest for sixty days the principal shall become due, and that on such default the trustees shall enter upon and take possession of said railroads, their equipments, workshops, depots, and franchise without any legal process whatever, and advertise the same for sale and sell the same at public outcry for cash, the proceeds to be applied to the payment of said bonds, principal and interest, and if a sufficient amount thereof shall not be realized at such sale, then to apply the same pro rata in the payment of said bonds.

Third. The bonds to be issued shall be delivered to Calvin B. Dibble and George W. Swepson, to be sold or negotiated, and the amount thereof for that purpose shall be paid to George W. Swepson to
629 reimburse him for the amount of money he has paid out in purchasing the first mortgage bonds aforesaid, and all amounts paid or to be paid by him for commissions and attorney's fees in connection with his business with said roads, together with interest on said amounts from the time they were paid out by him until the date of his reimbursement, and also to pay him the additional sum of one hundred thousand dollars.

Fourth. The stock is to be divided and owned in the following manner: George W. Swepson is to have and own one third; Calvin B. Dibble is to have and own an amount of stock which, in connection or united with the stock of said Swepson, shall constitute a majority of the whole, and F. Dibble and his associates are to have and own the remainder, to be subdivided among themselves as they shall determine.

Fifth. Said Swepson is to have the right to appoint four directors of said roads, F. Dibble and his associates are to have the right to appoint four, and Calvin B. Dibble shall be appointed by both parties the ninth director. This provision is to expire as soon as said Swepson is reimbursed and paid the amounts hereinbefore mentioned, with interest, as provided, and thereafter the stock shall stand on a common footing, as in all other cases.

Sixth. Until the title is acquired from the trustees of the internal improvement fund, the roads are to remain as they are and to be operated as they are.

Seventh. None of the stock shall be transferable for the space of two years from this date, except as may be necessary to qualify the persons to be appointed as directors to be such directors.

Eighth. The roads are to protect the outstanding transportation notes or tickets of the Tallahassee Railroad Company to an extent not exceeding twenty-eight thousand dollars, and shall receive the same as usual for transportation, freight, or fare.

Ninth. F. Dibble is to be the president until the stock becomes transferable.

In testimony whereof, the said parties have hereunto set their hands and seals this twenty-sixth day of March, A. D. 1869.

F. DIBBLE, [SEAL.]
For himself and associates.
GEORGE W. SWEPSON. [SEAL.]

Witnesses:
M. D. PAPY.
A. R. MEEK.
[Revenue Stamp. F. D., 26 Mar. 1869.]

630 SCHEDULE 2.

Whereas, by an act of the general assembly of the State of Florida, entitled "An act to incorporate the Pensacola and Georgia Railroad Company," approved January the eighth, A. D. 1853, the said railroad company was duly incorporated;

And whereas the said railroad company duly and fully accepted the provisions of an act of said general assembly, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January sixth, A. D. 1855, and in writing, dated January twelfth, A. D. 1855, notified the trustees of the internal improvement fund, created under said last mentioned act, of said acceptance;

And whereas the third section of said act to provide for and encourage a liberal system of internal improvements in this State provides, among other things, "that all bonds issued by any railroad company, under the provisions of this act, shall be a first lien or mortgage on the road-bed, iron, equipments, workshops, depots, and franchise, and upon the failure of any railroad company accepting the provisions of this act to provide the interest, as herein provided, on the bonds issued by said company, and the sum of one per cent. per annum as a sinking fund, as herein provided, it shall be the duties of the trustees, after the expiration of thirty days from said default or refusal, to take possession of said railroad and all its property of every kind and advertise the same for sale at public auction to the highest bidder, either for cash or additional security, as they may think most advantageous for the interest of the internal improvement fund and the bondholders;"

And whereas the said Pensacola & Georgia Railroad Company, on the sixth of February, A. D. 1869, and for a long time previous thereto, to wit, more than thirty days, had failed to provide the interest on the bonds issued by said company, and the sum of one per cent. per annum as a sinking fund, as provided by said act to provide for and encourage a liberal system of internal improvements in this State, and had thereby incurred the liability of being sold by the trustees of said internal improvement fund, under the requirements of said act;

And whereas the trustees of said internal improvement fund, at a meeting of said trustees, held at the capital of said State, at the city of Tallahassee, on the sixth day of February, A. D. 1869, at which meeting were present his excellency Harrison Reed, governor; R. H. Gamble, comptroller; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general; and A. R. Meek, attorney-general of said State, did resolve that: Whereas, the Pensacola & Georgia Railroad Company had failed to provide the interest on the bonds issued by said company, and the sinking fund of one per cent. per annum, as required by said act, to provide for and encourage a liberal system of internal improvements in this State, that the said trustees, by virtue of and in compliance with the provisions of said act, take possession of said road and all its property of every kind, and advertise the same to be sold at public auction to the highest bidder, for cash or additional approved security, at the office of said company, in Tallahassee afore-
631 said, on Saturday, the twentieth day of March, A. D. 1869, and that the notice of said sale be published forthwith until day of sale in the Journal of Commerce and the New York Herald, published in New York; the Savannah Republican, published in Savannah, Georgia; the Florida Union, published in this State, and all the papers in Tallahassee aforesaid;

And whereas, in compliance with said resolution, said trustees did take possession of said road and all its property of every kind, and immediately after the adoption of said resolution, and until said day of sale, advertised the same for sale at public auction to the highest bidder for cash, at the time and place and in the newspapers named, and in compliance with the requirements of said act, and pursuant to said resolution, did proceed and offer said Pensacola & Georgia Railroad, its road-bed, iron, equipments, workshops, depots, and franchise, and all the property of said railroad, subject to said sale under said act, at public auction to the highest bidder therefor, for cash, subject, however, to the condition that the purchaser shall be bound to continue the payment of one-half of one per cent. semi-annually, to the sinking fund, until all the outstanding bonds of said company are discharged, under the penalty of an amendment of the contract of purchase and the forfeiture of the purchase money paid in, and all other conditions of said act to provide for and encourage a liberal system of internal improvements in this State; and whereas, at said sale F. Dibble and associates were the highest and best bidders, having bid the sum of one million, two hundred and twenty thousand dollars for the said Pensacola & Georgia Railroad, its road-bed, iron, equipment, workshops, depots, and franchise, and all the property of said railroad, subject to said sale, under said act, were knocked off to said F. Dibble and his associates;

And whereas, F. Dibble and his associates have requested said trustees to execute to said F. Dibble, on behalf of himself and his associates, a deed of said railroad and other property as aforesaid, agreeing, upon the execution and delivery of said deed, to pay the said purchase money bid:

Now, therefore, this indenture, made and entered into between Har-

rison Reed, governor of the State of Florida; R. H. Gamble, comptroller; S. B. Conover, State treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general of said State, constituting, ex officio, the trustees of the internal improvement fund of the State of Florida, under and by virtue of said act to provide for and encourage a liberal system of internal improvement in this State, and subsequent acts of the general assembly in relation thereto, party of the first part, and F. Dibble, on behalf of himself and his associates, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the premises, as also of the said sum of one million, two hundred and twenty thousand dollars to them in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, and confirmed, and do by these presents grant, bargain, sell, alien, confirm, and deliver unto the said party of the second part, the said Pensacola & Georgia Railroad, its iron, equipments, workshops, depots, and franchise, and all its property of every kind subject
632 to sale under the provisions of said act; to have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, to said party of the second part, their successors or assigns forever, in as full and ample manner as the said trustees of said internal improvement fund can convey the same, and the said party of the first part will, from time to time, and all times hereafter, upon the reasonable request of the said party of the second part, their successors or assigns, make and execute all such further deeds necessary, if any, for the perfect and absolute assurance and confirmation of the said railroad and other property hereby conveyed or intended to be conveyed unto said party of the second part, their successors or assigns.

In testimony whereof, the said trustees of the internal improvement fund of the State of Florida, party of the first part, have hereunto set their hands and seals, this eighth day of April, anno Domini one thousand eight hundred and sixty nine. (The words "to wit, more than thirty days," interlined before signature in the).

HARRISON REED, *Governor*. [SEAL.]
R. H. GAMRLE, *Comptroller*. [SEAL.]
S. B. CONOVER, *Treasurer*. [SEAL.]
J. S. ADAMS, *Com. of Immigration*. [SEAL.]
FRANK W. WEBSTER, *Surv. Gen.* [SEAL.]
A. R. MEEK, *Attorney-General*. [SEAL.]

Signed, sealed and delivered in presence of—

GEO. W. DRIGGS,
W. M. MCINTOSH.

Be it remembered, that on this eighth day of April, A. D. 1869, personally appeared before me, Harrison Reed, governor; R. H. Gamble, comptroller; S. B. Conover, treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general, who each being thereunto examined, acknowledged that they executed the foregoing deed of conveyance as and for their deed and act for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and private seal the day and year last aforesaid.

JAMES D. WESTCOTT, JR.,
Associate Justice Supreme Court of Florida.

STATE OF FLORIDA,
County of Duval, *ss:*

Be it remembered, that on the 22d day of April, A. D. 1871, I, Chas. L. Mather, clerk of the circuit court and for said county, have duly recorded the foregoing deed in the public records of said county.

In witness I have hereunto set my hand and the seal of court this day and year above written.

[SEAL.] CHAS. L. MATHER, *Clerk*.
By F. B. KNAPP, *D. C.*

STATE OF FLORIDA,
Leon County, *ss:*

Be it remembered, that on this 22d day of October, A. D. 1869, 633 the foregoing instrument of writing was presented to the subscriber, clerk of the circuit court in and for said county and State aforesaid, for record; the same being duly authenticated, I have admitted the same to record.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court the day and year last above written.

[SEAL.] C. H. EDWARDS, *Clerk*,
By EDW. M. WEST, *D. C.*

634

SCHEDULE 3.

Whereas, by an act of the legislative council of the Territory of Florida, approved February tenth, A. D. 1834, entitled "An act to incorporate the Tallahassee Railroad Company," the said railroad was duly incorporated;

And whereas, the said railroad company duly and fully accepted the provisions of an act of the general assembly of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, A. D. 1855, and in writing presented December nineteenth, A. D. 1855, notified the trustees of the internal improvement fund, created by said last mentioned act, of said acceptance;

And whereas, the third section of said act to provide for and encourage a liberal system of internal improvements, provides, among other things, "that all bonds issued by any railroad company, under the provisions of this act, shall be a first lien or mortgage on the road-bed, iron, equipments, workshops, depots, and franchise, and upon a failure on the part of any railroad company, accepting the provisions ot this act, to provide the interest, as herein provided, it shall be the duty of the trustees, after the expiration of thirty days from said default or refusal to take possession of said railroad and all its property of every kind and advertise the same sor sale at public auction to the highest bidder, either for cash or additional approved security, as they may deem most advantageous for the interest of the internal improvement fund and the bondholders;"

And whereas, the said Tallahassee Railroad Company, on the sixth day of February, A. D. 1869, and for a long time previous thereto, to wit, more than thirty days, had failed to provide the interest on the bonds issued by said company, and the sum of one per cent. per annum, as a sinking fund, as provided by said act to provide for and encourage a liberal system of internal improvements and had thereby incurred the liability of being sold by the trustees of said internal improvement fund, under the requirements of said act;

And whereas, the trustees of said internal improvement fund, at *at* a meeting of said trustees, held at the capital of said State, at the city of Tallahassee, on the sixth day of February, A. D. 1869, at which meeting were present His Excellency Harrison Reed, governor; R. H. Gamble, comptroller; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general of said State, did resolve that: Whereas, the Tallahassee Railroad Company has failed to provide the interest on the bonds issued by said company and the sum of one per cent. per annum, as a sinking fund, as required by said act, to provide for and encourage a liberal system of internal improvements, that the said trustees, by virtue of and in compliance with the provisions of said act, take possession of said road and all its property of every kind, and advertise the same to be sold at public auction to the highest bidder, for cash or additional approved security, at the office of said company, in Tallahassee, aforesaid,
635 on Saturday, the twentieth day of March, A. D. 1869, and that the notice of said sale be published forthwith until day of sale in the Journal of Commerce and the New York Herald, published in New York; the Savannah Republican, published in Savannah, Georgia; the Florida Union, published in Jacksonville, in this State, and all the papers in Tallahassee, aforesaid;

And whereas, in compliance with said resolution, said trustees did take possession of said road and all its property of every kind, and immediately after the adoption of said resolution, advertise the same for sale at public auction, to the highest bidder, for cash, at the time and place, and in the newspapers named, and in accordance with the requirements of said act, and pursuant to their said resolution, did proceed and offer said Tallahassee Railroad and all its property of every kind, including road-bed, iron, equipments, workshops, depots, and franchise, for sale at public auction, to the highest bidder, for cash, subject, however, to the condition that the purchaser shall be bound to continue the payment of one-half of one per cent., semi-annually, to the sinking fund, until all the outstanding bonds are discharged, under the penalty of an amendment of the contract of purchase and the forfeiture of the purchase money paid in, and all other conditions of said act;

And whereas, at said sale, F. Dibble and his associates were the highest and best bidders, having bid the sum of one hundred and ninety-five thousand dollars for the said Tallahassee Railroad and its property of every kind, including the road-bed, iron, equipments, workshops, depots, and franchise, the said road was knocked off to said F. Dibble and associates, as the highest bidders therefor;

And whereas, said F. Dibble and his associates requested said trustees to execute to said F. Dibble, on behalf of himself and his associates, a deed of said road and all its property as aforesaid, agreeing, upon the execution and delivery of said deed, to pay the purchase price bid:

Now, therefore, this indenture, made and entered into between Harrison Reed, governor of the State of Florida; R. H. Gamble, comptroller; S. B. Conover, State treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general of said State, constituting, ex-officio, the trustees of the internal improvement fund of the State of Florida, under and by virtue of said act to provide for and encourage a liberal system of internal improvement in this State, and subsequent acts of the general assembly of this State, in reference thereto, party of the first part, and F.

Dibble, on behalf of himself and his associates, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the premises, as also of the said sum of one hundred and ninety-five thousand dollars, to them in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, and confirmed, and do by these presents, grant, bargain, sell, alien, confirm and deliver unto the said party of the second part, the said Tallahassee Railroad, its iron, equipments, workshops, depots, and franchise, and all its property of every kind subject to sale under the provisions of this act, to have and to hold the same, with all the rights, 636 privileges, and appurtenances thereto belonging or in anywise appertaining to the said party of the second part, their successors or assigns forever, in as full and ample a manner as the said trustees of said internal improvement fund can convey the same, subject, however, to the conditions and provisions stated and made known at said sale as above set forth; and the said party of the first part will, from time to time, and at all times hereafter, upon the reasonable request of the said party of the second part, their successors and assigns, make and execute all such further deeds, if any, necessary for the perfect and absolute assurance and confirmation of the said railroad and other property hereby conveyed or intended to be conveyed unto said party of the second part, their successors or assigns.

In testimony whereof the said trustees of the internal improvement fund of the State of Florida, party of the first part, have hereunto set their hands and seals this eighth day of April, anno Domini, one thousand eight hundred and sixty-nine.

HARRISON REED, [SEAL.]
Governor.
R. H. GAMBLE, [SEAL.]
Comptroller.
S. B. CONOVER, [SEAL.]
Treasurer.
J. S. ADAMS, [SEAL.]
Com. of Immigration.
FRANK W. WEBSTER, [SEAL.]
Surv'r Gen.
A. R. MEEK, [SEAL.]
Attorney-General.

Signed, sealed, and delivered in presence of—
GEO. W. BRIGGS.
W. M. MCINTOSH.

Be it remembered that on this eighth day of April, A. D. 1869, personally appeared before me, Harrison Reed, governor; R. H. Gamble, comptroller; S. B. Conover, treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general; and A. R. Meek, attorney-general, who each being thereunto examined, acknowledged that they executed the foregoing deed of conveyance as and for their act and deed and for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and private seal the day and year last aforesaid.

[SEAL.] JAMES D. WESTCOTT, JR.,
Associate Justice Supreme Court of Florida.

STATE OF FLORIDA,
Leon County:

Be it remembered that on this 23d day of October, A. D. 1869, the foregoing instrument of writing was presented to the subscriber, clerk of the circuit court in and for the county and State aforesaid, for record, and the same being properly authenticated, I have admitted the same to record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court the day and year last above written.

[SEAL.] C. H. EDWARDS, *Clerk.*
By EDW. M. WEST, *D. C.*

637 STATE OF FLORIDA,
County of Duval, ss:

Be it remembered that on this 22d day of April, A. D. 1871, I, Chas. L. Mather, clerk of the circuit court in and for said county, have duly recorded the foregoing deed in the public records of said county.

In witness whereof I have hereunto set my hand and the seal of said court this day and year above written.

[SEAL.] CHAS. L. MATHER, *Clerk.*
By F. B. KNAPP, *D. C.*

638 SCHEDULE 4.

Whereas George W. Swepson has paid to the trustees of the internal improvement fund of the State of Florida, for and on account of F. Dibble and his associates, in payment for the Pensacola & Georgia and the Tallahassee Railroads, sold to said F. Dibble and his associates by said trustees on the 20th day of March last, bonds of said roads amounting at their face to nine hundred and sixty thousand and three hundred ($960,300) dollars, and has also paid to said trustees for the same parties the sum of four hundred and seventy-two thousand and sixty-five ($472,065) dollars, being the full amount due said trustees for said roads; and whereas, said F. Dibble, for and on behalf of himself and his associates, has obligated himself and them, and does hereby obligate himself and them, to cause bonds upon said roads as now completed, as soon as further legislative authority from said State of Florida shall be obtained therefor, to be issued, the same to be secured and in every respect to be, as stated in an agreement, executed and dated the twenty-sixth day of last March, between said F. Dibble, on behalf of himself and his associates, and said George W. Swepson, which bonds, when executed, are to be and shall be placed, as provided in said agreement, for the purposes therein set forth, and for the further purpose of enabling said Swepson to be reimbursed the said sum of four hundred and seventy-two thousand and sixty-five dollars.

Now, therefore, this indenture, made and entered into between F. Dibble, on behalf of himself and his associates, party of the first part, and George W. Swepson, party of the second part, witnesseth:

That said party of the first part, for and in consideration of the premises, has granted, bargained, conveyed, and confirmed unto said party of the second part all that property of whatever name, nature, and description, conveyed to said party of the first part by said trustees of the internal improvement fund of the State of Florida by two separate deeds of conveyance, each dated April 8th, A. D. 1869, which deeds for full description of property are hereby made part and portion of this instrument. The said property hereby conveyed to be held by said party of the second part in trust for the express purpose of enabling said party of the second part—which he hereby agrees and binds himself to do—to convey the same to that incorporation, consisting, or to consist as incorporators of said F. Dibble and his associates. As soon as said Dibble and his associates shall have granted to them such a similar relief as the legislature of the said State of Florida granted to Wm. E. Jackson and his associates by act for relief of Wm. E. Jackson and his associates, approved July 29th, 1868, and also for the further purpose of securing said party of the second part in all advances made, as specified and agreed upon in the said agreement between these parties, executed and dated March 26th, 1869, and the advancement, as aforesaid, of said sum of four hundred and seventy-two thousand and sixty-five dollars, until such time as said relief shall have been granted and said party of the second part shall have conveyed said property to said incorporation, as hereinbefore prescribed.

To have and to hold said property to said party of the second part for the purposes and trusts herein declared.

639 In testimony whereof said party of the first part has hereunto signed his name and affixed his seal this 22d day of April, A. D. 1869.

F. DIBBLE, [s.]
For Himself and Associates.

Signed, sealed, and delivered in presence of us—
W. J. WOODWARD,
JESSE CARTER.

No stamp being present, Geo. W. Swepson is authorized to stamp.
F. D.

640

SCHEDULE 5.

AN ACT for the relief of Franklin Dibble, A. Huling, E. M. Cheney, and their associates, purchasers of the railroad from Tallahassee to St. Marks, and of the railroad from Quincy to Lake City, and incorporating the Tallahassee Railroad Company.

Whereas at a sale of the Pensacola & Georgia Railroad and the Tallahassee Railroad, on the 20th day of March, 1869, by the trustees of the internal improvement fund, under and by virture of the provisions of the internal improvement law, Franklin Dibble, A. Huling, E. M. Cheney, and their associates, became the purchasers thereof;

And whereas it is essential for the interests of the people of this State, that the parties aforesaid, and their associates, shall be invested with such corporate powers as are needful for the operations of said road, as well as more accurately to define their powers and duties; therefore,

The people of the State of Florida, represented in senate and assembly, do enact as follows:

SECTION 1. That the said Franklin Dibble, A. Huling, E. M. Cheney, and their associates, and their successors and assigns, are hereby made a body politic and corporate, under the name of the Tallahassee Railroad Company, and they, their associates and assigns, as such body politic and corporate, are hereby vested with and shall be entitled to exercise and enjoy the like powers, franchises, and privileges as were granted to the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company by the several acts incorporating said Pensacola and Georgia Railroad Company and said Tallahassee Railroad

Company, and with the right to hold, operate, and enjoy the said railroad, under the name of the Tallahassee Railroad Company, subject to the conditions annexed to the sale of said roads by the trustees of the internal improvement fund, and by and in the name of the Tallahassee Railroad Company, they, their associates, successors, and assigns may purchase, receive, and hold lands and tenements, goods, and chattels of whatsoever character that shall be necessary or useful for the purposes of said railroads, and the same to grant, sell, mortgage, or dispose of, and to sue and be sued, implead and be impleaded, to make a common seal, and at pleasure to break and alter the same, and to establish and put in execution such by-laws and regulations as may be necessary and expedient, not inconsistent with the constitution and laws of the State of Florida.

SEC. 2. Be it further enacted, That the provisions of this act incorporating the Pensacola and Georgia Railroad Company, for the protection of its roads from trespass, injury, or intrusion, and providing for the punishment of persons who shall trespass upon or injure the same, be, and they are hereby, made applicable to all cases of trespass, injury, or intrusion on, to, or upon the aforesaid railroads, and the said Tallahassee Railroad Company shall be entitled to all the benefits and protection thereof and therefrom.

SEC. 3. Be it further enacted, That said Franklin Dibble, A.
641 Huling, E. M. Cheney, and their associates, shall be entitled to
declare the amount of which the stock in the said Tallahassee
Railroad Company shall consist, and to divide the same into shares,
which shares, however, shall not be less than one hundred dollars each.

SEC. 4. Be it further enacted, That said Tallahassee Railroad Company may, when they shall see fit, rent, lease, farm out, or sell any part of the said railroad to any person or persons, corporators or corporations, upon such terms as may be agreed on, provided said sale, renting or leasing shall not be made to any person or persons, or corporation, owning any railroads out of the State of Florida.

SEC. 5. Be it further enacted, That the board of directors of the said Tallahassee Railroad Company shall consist of nine directors, of whom the president of said company shall be one. The first directors shall be elected or appointed within one month after the passage of this act, and annually thereafter, at such time as may be fixed by resolution or law, but the said company shall not be dissolved for failure to elect or appoint its directors, so long as the said railroads shall be kept running and in operation, but the directors may be elected or appointed at the next meeting thereafter.

SEC. 6. Be it further enacted, That said company shall have the right to issue coupon bonds in such denominations and at such rate of interest, annual or semi-annual, and payable at such time and place as they may determine, and may secure the same by mortgage on said railroads, their equipments, depots, workshops, property, and franchise, executed in such form and manner as may be determined. Provided, That any deed of trust, mortgage, conveyance, bond or bonds, or security which may have been executed, made, created, or contracted for, as a lien on said railroads or otherwise, by said Franklin Dibble, in behalf of himself and his associates, prior to the passage of this act, shall be valid and effectual to all intents, either at law or in equity, as a lien or mortgage, or security on said railroad, as if the same had been made by virtue of this act, and shall in no wise be affected by any provisions thereof.

Approved June 24th, 1869.

642 **SCHEDULE 6.**

1000] UNITED STATES OF AMERICA, [1000

STATE OF (cut of railroad train, depot, &c.) FLORIDA.

No. .] THE TALLAHASSEE RAILROAD COMPANY, [No. .

For value received, promises to pay, on the first day of July, 1869, to or bearer, in the city of New York, one thousand dollars in gold coin of the United States, with interest thereon at the rate of six prr cent. per annum, payable semi annually in like gold coin in said city on the first days of January and July each year hereafter upon the surrender of the proper annexed coupon. The holder of this bond is secured by a first mortgage duly executed and delivered to Stewart L. Woodford, Darius R. Mangam and B. G. Worth, of New York, conveying to them the railroad from Lake City to Quincy and from Tallahassee to St. Mark's in Florida, being about one hundred and fifty-eight miles of road, with the road-bed, iron, work-shops, equipments, machinery, cars, engines, franchises and corporate rights of said company, in trust for the full and final payment of this bond and such others as may be issued by said company, not to exceed one million five hundred thousand dollars, under the authority of an act of the legislature of the State of Florida, approved June 24th, 1869, and accepted by the stockholders of said company on the 24th of June, 1869. This bond shall not be valid until it shall be authenticated by the certificate of the trustees or their successors endorsed hereon.

In witness whereof the said company has caused this bond to be signed by its president and secretary and sealed with its corporate seal, this day of 1869.

F. DIBBLE, *President.*

Secretary.

40 coupons attached hereto.

643 **SCHEDULE 7.**

STATE OF FLORIDA,
Duval County:

Whereas at a sale of the Pensacola & Georgia Railroad and of the Tallahassee Railroad on the twentieth day of March, eighteen hundred and sixty-nine, by the trustees of the internal improvement fund, under and by virtue of the provisions of the internal improvement law, the said Penscola & Georgia Railroad and the Tallahassee Railroad were purchased by F. Dibble and associates, consisting of Franklin Dibble, Alonzo Huling, John L. ReQua, Edward M. Cheney, Wilkinson Call, James M. Baker and Silas L. Niblack;

And whereas by an act of the general assembly of the State of Florida, approved on the twenty-fourth day of June, eighteen hundred sixty-nine, the said Franklin Dibble, Alonzo Huling, Edward M. Cheney and their associates and their successors and assigns were made and constituted a body politic and corporate under the name of the Tallahassee Railroad Company, by which said act of the general assembly it was intended that the title to the said Pensacola & Georgia Railroad and to the said Tallahassee Railroad, as well as the road-beds, iron, equipments, workshops, depots and franchise unto the said Pensacola

& Georgia Railroad and Tallahassee Railroad belonging or appertaining, should vest in the said Tallahassee Railroad Company, which by said act was created;

And whereas doubts exists as to the completeness of the title the said Tallahassee Railroad Company acquired to the said property under the said act of incorporation:

Now, therefore, for the purposes of removing all doubts, and of perfecting to the said Tallahassee Railroad Company a title to the said late Pensacola & Georgia Railroad and to the said late Tallahassee Railroad; and in consideration of the sum of one dollar to them in hand paid by the said Tallahassee Railroad Company, the receipt whereof is hereby acknowledged, the said Franklin Dibble, Alonzo Huling, John L. ReQua, Helen ReQua, wife of John L. ReQua, Edward M. Cheney, Maria J. Cheney, wife of Edward M. Cheney, Wilkinson Call, James M. Baker, Fanny G. Baker, wife of James M. Baker, Silas L. Niblack, and Atalie N. Niblack, wife of Silas L. Niblack, have granted, bargained, sold, released, relinquished and quit-claimed, and by these presents do grant, bargain, sell, release, relinquish and quit-claim unto the said Tallahassee Railroad Company, which was organized and framed by the act of the general assembly of the State of Florida, approved June twenty-fourth, eighteen hundred and sixty-nine, and to their successors and assigns, all their and each of their right, title, interest, estate, claim and demand, both at law and in equity, which they the said Franklin Dibble, Alonzo Huling, Lucy E. Huling, John L. ReQua, Helen ReQua, Edward M. Cheney, Maria J. Cheney, Wilkinson Call, James M. Baker, Fanny G. Baker, Silas L. Niblack, and Atalie N. Niblack, or either of them, have in and to the said late Pensacola & Georgia Railroad and the said late Tallahassee Railroad, and in and to the road-bed, iron, 644 equipments, workshop, depots and franchise unto the said late Pensacola & Georgia Railroad and the said late Tallahassee Railroad belonging or appertaining, the said Lucy E. Huling, Helen ReQua, Maria J. Cheney, Fanny G. Baker, and Atalie N. Niblack, joining their said husbands in this conveyance for the purpose of relinquishing their dower in and to the property hereinbefore described and conveyed.

In testimony whereof the said Franklin Dibble, Alonzo Huling, Lucy E. Huling, John L. ReQua, Helen ReQua, Edward M. Cheney, Maria J. Cheney, Wilkinson Call, James M. Baker, Fanny G. Baker, Silas L. Niblack and Atalie N. Niblack have hereunto set their hands and seals this day of A. D. 1870.

F. DIBBLE. [SEAL.]
ALONZO HULING. [SEAL.]
J. L. REQUA. [SEAL.]
ED. M. CHENEY. [SEAL.]
WILKINSON CALL. [SEAL.]
JAMES M. BAKER. [SEAL.]
SILAS L. NIBLACK. [SEAL.]

Signed, sealed and delivered in presence of—
J. P. SANDERSON.
A. B. HAWKINS.
J. H. H. BOURS.

STATE OF FLORIDA,
Duval County:

Before me , came in person Lucy E. Huling, wife of Alonzo Huling; Helen ReQua, wife of John L. ReQua; Maria J. Cheney, wife of Edward M. Cheney; and Fanny G. Baker, wife of James M. Baker, whose names appear to the foregoing deed of conveyance, who being by me personally examined separate and *and* apart from their said husbands, severally acknowledged that they executed the same freely and voluntarily, without any fear, compulsion or restraint of, from, or by their said husbands. In testimony whereof they have hereunto set their hands and seals this day of A. D. 1870.

Witness my hand and seal this day of , A. D. 1870.

645 SCHEDULE 8.

A BILL to be entitled an act for the relief of William E. Jackson, Edward Thomas, William Spear, John Craig, James B. Walker, and their associates, now owning and operating the railroad from Jacksonville to Lake City.

Whereas at a sale of the Florida, Atlantic & Gulf Central Railroad and all its property and franchise on the fourth day of March, 1868, by the trustees of the internal improvement fund under and by virtue of the provisions of the internal improvement law, William E. Jackson and his associates became the purchasers thereof; and whereas it is essential for the interests of the people of the State that these parties should be invested with such corporate powers as are necessary for the operation of the road, as well as more accurately to define the duties of the said road: Therefore,

SECTION 1. The people of the State of Florida, represented in senate and assembly, do enact as follows: That the said William E. Jackson and his associates be, and they are hereby, vested with the powers and franchise granted to the Florida, Atlantic & Gulf Central Railroad in and by an act entitled "An act to amend an act to incorporate the Florida, Atlantic & Gulf Central Railroad Company," approved January 7th, 1853, and they and their successors and assigns are hereby authorized and empowered to exercise the said powers and franchise so far as they appertain to the railroad constructed from the city of Jacksonville, in Duval County, to Lake City, in Columbia County, in this State, and that the said William E. Jackson and his associates are hereby made a body politic and corporate under the name of the Florida Central Railroad Company, and by that name they and their successors shall be capable to enjoy and hold the said railroad from Jacksonville to Lake City and all the benefits thereof, subject only to the condition annexed to the sale thereof by the trustees of the internal improvement fund, and as such body politic and corporate shall be entitled as aforesaid to exercise all the powers and franchise granted in said above referred to act to the Florida, Atlantic & Gulf Central Railroad Company, and by and in the name of the Florida Central Railroad Company, they, their successors and assigns, may purchase, receive, and hold lands and tenements, goods and chattels, of whatsoever character the same may be, that shall be necessary or useful for the purposes of said railroad, and the same to grant, sell, mortgage, or dispose of, to sue and be sued, to plead and be impleaded, to make a common seal, and at pleasure to break or alter the same, and to establish and put in execution such by-laws and regulations as may be deemed necessary and expedient.

SECTION II. Be it further enacted, That the provisions of said act to amend an act to incorporate the Florida, Atlantic & Gulf Central Railroad Company for the protection of said railroad from trespass, injury, or intrusion, and providing for the punishment of persons who
646 shall trespass upon or injure the same be, and they are hereby,

extended to said Florida Central Railroad Company, which company shall be entitled to all the benefits thereof.

SECTION III. Be it further enacted, That the said William E. Jackson and his associates shall be entitled to declare the amount of which the stock in said Central Railroad Company shall consist, and to divide the same into shares, which shares, however, shall not be less than one hundred dollars each.

SECTION IV. Be it further enacted, That the said Florida Central Railroad Company may, when they shall see fit, rent, lease, or farm out all or any part of the privileges with which they are invested or the railroad itself to any person or persons, corporation or corporations for such terms as may be agreed upon.

SECTION V. Be it further enacted, That the said Florida Central Railroad Company shall not be dissolved for failure to elect officers so long as the said railroad shall be kept running and in operation.

SECTION VI. Be it further enacted, That nothing in this act shall be so construed nor shall it be so operative as to divest the State of the right to make the Florida Central Railroad and all its property of every sort, character, and description the subject matter of taxation on the part of the State.

SECTION VII Be it further enacted, That nothing in this act shall be so construed nor shall it so operate as to give any additional validity to the bonds issued under the provisions of an "act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, 1855, or as a recognition to any extent that they are contracts which it is within the power of the State to make.

Passed the senate July 24, 1868.
Passed the assembly July 27, 1868.
Approved July 29, 1868.

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SCHEDULE 9.

This memorandum of contract and agreement, made and entered into this day between Edward Houstoun, party of the first part, and Milton S. Littlefield, party of the second part, witnesseth: That Edward Houstoun has this day sold to Milton S. Littlefield, four drafts drawn by Geo. W. Swepson on Milton S. Littlefield, dated August 2d, 1869, and accepted by said Littlefield, one for twenty-six thousand five hundred and twenty dollars, ($26,520,) due at six months; one for twenty seven thousand and thirty dollars, ($27,030,) due at nine months; one for twenty-seven thousand, five hundred and forty dollars, ($27,540,) due at fifteen months, and that said Houstoun has this day sold to said Littlefield, one thousand three hundred shares of stock in the Florida Central Railroad Company. In payment for said drafts and said stocks, said Littlefield has paid said Houstoun ten thousand dollars in cash and the drafts of said Littlefield, of this date, on S. W. Hopkins & Co., of 71 Broadway, N. Y., for one hundred and sixty-three thousand and seventy and twenty-hundredths dollars, due sixty days from date. To secure the payment of said draft of $163,070 20-100, it is agreed that said Houstoun shall retain possession of said four drafts by George W. Swepson on said Littlefield, and also the one hundred and ten bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, now in his possession as collateral, and in addition thereto, said Littlefield hereby obligates himself immediately to deposit with F. H. Porter, of the banking house of Soutter & Co., 53 William street, New York, certificate of stock for 3.110 shares of the stock of the Florida Central Railroad Company, with directions to said Porter to hold said certificate till said draft of $163,070 20-100 shall fall due, and then if said draft is not promptly paid within ten days after it falls due, to deliver said certificate to said Houstoun, or his order, and in the event said certificate shall be so delivered to said Houstoun, he is hereby authorized to sell the said three thousand one hundred and ten shares of the stock of the Florida Central Railroad Company at public auction to the highest bidder, on mailing to the address of M. S. Littlefield, Tallahassee, Florida, and to the address of George W. Swepson, Haw River, North Carolina, and to the address of S. W. Hopkins & Co., No. 71 Broadway, New York, notice of the time and place of such sale in the city of New York, ten days previously to day of sale, and said Houstoun may become a purchaser at said sale.

On the payment of said drafts, said Houstoun hereby obligates himself to transfer the said shares of stock hereby sold, to deliver to said Littlefield the said 1,300 shares of stock sold, and also the one hundred and ten bonds of the Tallahassee Railroad Company, which Houstoun now holds as collateral security for the payment of said four drafts, together with all the coupons on said bonds falling due from and after the 20th of March, 1869.

This is understood and intended to be a full, complete and final settlement of all matters between either George W. Swepson or M. S. Littlefield and Edward Houston.

648 In testimony of all which, the parties aforesaid have hereunto set their hands and seals, at Tallahassee, Florida, the thirteenth day of May, A. D. 1870.

(Signed) E. HOUSTOUN, [SEAL.]
M. S. LITTLEFIELD. [SEAL.]

Signed, sealed, and delivered in presence of—
(Signed) ROLLIN STEWARD.
D. J. WALKER.

649 SCHEDULE 10.

STATE OF FLORIDA,
Leon County:

This agreement, made and entered into at the city of Tallahassee, in the county and State aforesaid, between Milton S. Littlefield, party of the first part, and Edward Houstoun, party of the second part, witnesseth: That whereas the said Edward Houstoun owns and holds a certain draft, which is in the words and figures following, to wit:

$163,026 70-100. TALLAHASSEE, *May* 13, 1870.

Sixty days after date, pay to the order of Edward Houstoun one hundred and sixty-three thousand and twenty-six 70-100 dollars, value received, and charge the same to account of

M. S. LITTLEFIELD,
President J., P. & M. R. R. Co.

Acceptance waived.

For the payment of which said the said Edward Houstoun has and holds as security the following securities: 104 first mortgage bonds of the Pensacola and Georgia Railroad Company and of the Tallahassee Railroad Company, amounting to one hundred and three thousand dollars of said bonds; one thousand three hundred shares of the capital

stock of the Florida Central Railroad; four (4) drafts of George W. Swepson on M. S. Littlefield—accepted by said Littlefield—one draft for $26,520, due at six months; one draft for $27,030, due at nine months; one draft for $27,540, due at twelve months; one draft for $28,050, due at fifteen months; all of said drafts being dated August 2, 1869, and amounting, in the aggregate, to the sum of one hundred and nine thousand one hundred and forty dollars, exclusive of interest thereon; and whereas the said draft of $163,026 70-100 was given to the said Houstoun for value received in the various transactions between the parties, relative to the Jacksonville, Pensacola & Mobile Railroad Company and the Florida Central Railroad Company, growing out of the late Pensacola and Georgia Railroad Company and said Florida Central Railroad Company and the Tallahassee Railroad Company; and whereas it is to the great interest of said parties of the first and second parts that moneys should be raised to promote the interests of said Florida Central Railroad Company, to extend and provide for the business of said company and to pay said draft when due; and whereas the said parties of the first and second parts are owners and proprietors of more than a majority of the capital stock of said Florida Central Railroad: Therefore, know all men by these presents, that the said parties of the first and second parts do hereby covenant and mutually agree, each with the other, that they do cause to be issued one million dollars of the first mortgage bonds of the Florida Central Railroad Company of like denomination and effect and condition as the first mortgage bonds of the Jacksonville, Pensacola & Mobile Railroad Company, which said one million of dollars of said bonds are to be placed in the hands of the said Edward Houstoun, as additional security for the payment of said draft for one hundred and sixty-three thousand and twenty-six dollars
650 and seventy cents, to be held by the said Houstoun, in addition to the security aforesaid, for the faithful payment of said draft at maturity. And it is further agreed, that if the said draft is not paid at maturity, then and in that event the said Edward Houstoun is hereby authorized and fully empowered to cause said one million of dollars of the bonds of said Florida Central Railroad Company placed in his hands as security for said draft, as aforesaid, to be sold at public outcry in the city of New York, after default of payment of said draft, upon giving ten days' notice of said sale of said bonds and of the time and place of said sale to Milton S. Littlefield, by mail, to his residence, at Tallahassee, Florida, and by giving like notice to Messrs. S. W. Hopkins & Co., No. 71 Broadway, New York City, by delivering said notice at their office, and by giving ten days' notice of said sale in the New York Herald, by advertisement, at which sale of said bonds the said Edward Houstoun may become the purchaser. And in the event of the sale being made as aforesaid, the said Edward Houstoun, after first paying said draft and the expenses of said sale of bonds, shall pay over all the other moneys arising from said sale and all the securities now in the hands and heretofore set forth and enumerated to the said Milton S. Littlefield, and the said Houstoun shall only retain of or from said sale of bonds and securities aforesaid sufficient to pay said draft and expenses of selling said bonds.

In witness whereof the said parties have hereunto interchangeably set their hands and seals this 30th day of May, A. D. 1870.

(Signed) MILTON S. LITTLEFIELD,
(Signed) EDWARD HOUSTOUN.

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SCHEDULE 11.

The agreement made between Milton S. Littlefield and Edward Houstoun, dated 30th May, 1870, is hereby modified, changed, and altered as follows, to wit:

First. In lieu of one million dollars of first mortgage bonds of the Florida Central Railroad Company, which by said agreement were to be placed in the hands of said Houstoun as security for the payment of the draft in said agreement mentioned, there shall be placed in the hands of said Houstoun, as security for the payment of the draft in said agreement mentioned, the same amount of bonds of the State of Florida, to be exchanged for the said bonds of the Florida Central Railroad Company.

Second. If said draft be not paid at maturity the said Houstoun is authorized and empowered to sell said bonds of the State of Florida at public outcry, giving the notice of sale as provided for in said agreement, and said Houstoun may become a purchaser at said sale.

Third. After first paying said draft and expenses of sale, said Houstoun shall out of the balance of the proceeds arising from the sale of said bonds, if sufficient for this purpose, pay to John P. Sanderson the sum of fifty-seven thousand five hundred and sixty dollars; to M. D. Papy, sixteen thousand dollars; to T. M. Brevard, attorney of certain holders of bonds of the Pensacola & Georgia Railroad Company—if certain negotiations now pending for their purchase be consummated—the sum of fifty thousand dollars; to John P. Sanderson, president of the Florida Central Railroad Company, three hundred and forty thousand dollars; after these payments the balance, if any, to be paid to said Littlefield.

Fourth. When said draft shall mature said Houstoun, instead of selling said bonds of the State, shall have the option and choice of returning the same to the State, and receiving in lieu thereof the one million dollars of first mortgage bonds of the Florida Central Railroad exchanged for the State bonds aforesaid.

Fifth. If, under the option and choice given the said Houstoun, he returns the bonds of the State of Florida aforesaid to said State and receives in lieu thereof the bonds of the Florida Central Railroad Company as aforesaid, provided said Houstoun, upon delivering said bonds of the Florida Central Railroad Company, received from the State as aforesaid, to the president of said company, shall receive and have executed and delivered to him in lieu thereof other first-mortgage bonds of said company, which said bonds shall be made payable to bearer, and shall be good, effectual, and first lien on said road.

Sixth. Upon receiving said first-mortgage bonds of the Florida Central Railroad Company from the president thereof, as above provided for, the said Houstoun shall hold the same as security for the payment of said draft, and is authorized and has the power at any time after giving thirty days' previous notice to the president of said company to sell the said bonds so received from the president of said company at public outcry in the city of New York, at which said Houstoun may become a purchaser; and said Houstoun, after paying said draft and the ex-
penses of said sale, dispose of and pay over the rest and residue of
652 the proceeds of the sale of said bonds, if any, to the persons
named and for the amounts named as provided in the third clause hereof.

Seventh. If said Littlefield shall pay said draft at or before its maturity, said Houstoun shall deposit said bonds of the State of Florida placed in his hands under the first clause hereof with S. W. Hopkins & Company, No. 71 Broadway, New York, with the stipulation and agreement that they, the said Hopkins & Company, shall, in disposing of said bonds, hold the proceeds of said sale subject to the claims and for the amounts mentioned in the third clause hereof, to wit: John P. Sanderson the sum of fifty-seven thousand five hundred and sixty dollars; M. D. Papy, sixteen thousand dollars; T. M. Brevard, attorney for certain holders of Pensacola and Georgia railroad bonds, if negotiations now pending for their purchase shall be consummated, the sum of forty thousand dollars; John P. Sanderson, president of the Florida Central Railroad Company, the sum of three hundred and forty thousand dollars; said Hopkins & Company, after first paying the amounts above named to the parties above named out of the proceeds of the sale of said bonds, shall pay the rest and residue, if any, of the proceeds of the sale of said bonds to said Littlefield.

Witness our hand and seal this the seventh day of June, A. D. 1870, at Tallahassee, Florida.

(Signed) M. S. LITTLEFIELD. [L. S.]
(Signed) E. HOUSTOUN. [L. S.]

Signed, sealed, and executed in our presence.
(Signed) CHAS. H. COLLINS.
(Signed) J. P. SANDERSON.

653 SCHEDULE 12.

APPENDIX.

At a meeting of the directors of the Florida Central Railroad Company, held November 21, 1870, upon motion of Mr. Papy, a committee was appointed to take in consideration the past issue of bonds, and also to report upon the policy of issuing bonds of the company, and the amount. The president appointed Messrs. Papy, Baker, and Huling said committee.

The board then adjourned to 4 p. m.

4 p. m.—The directors convened pursuant to adjournment, Colonel Sanderson, president, in the chair.

Mr. Papy presented the following report:

The committee, finding that the bonds signed by G. W. Swepson, president, and countersigned by H. H. Thompson, treasurer, are in such form as that they cannot be used to carry out the intention of their issue when they were adopted, report the following resolution in respect thereto:

Resolved, That the resolution adopting the bonds to be issued by this company, signed by George W. Swepson, president, and H. H. Thompson, treasurer, at a meeting of the board of directors held on the 2d day of June, A. D. 1870, be and the same is hereby rescinded, and that said bonds be destroyed.

M. D. PAPY,
Chairman.

On motion, the report was received and adopted.

On motion of Mr. Foster, the resolution was unanimously adopted.

Mr. Papy made the following report:

The committee report the following resolutions in reference to the issues of bonds of the company and the securing the same:

Resolved, That the president cause bonds payable to bearer to be prepared, signed, and executed in due form, which shall be issued for purposes of the company, not exceeding seven hundred thousand dollars in amount, with interest at 7 per centum per annum, not having more than thirty years to run, with coupons for interest attached, payable in New York semi-annually.

Resolved, That said bonds and the interest thereon shall be a first lien or mortgage on the Florida Central Railroad, its equipments, workshops, depots, franchises, and property of every kind, and that the president cause to be prepared and executed such deed of trust or other necessary instrument of writing under the seal of this company as may be needful to make the first lien or mortgage in favor of said bonds and the interest thereon effectual to all intents.

M. D. PAPY,
Chairman.

On motion, the report was received and adopted.

On motion of Mr. Huling, the resolution was unanimously adopted.

654 Adjournment to four o'clock next day, at which time the following resolution was adopted:

Resolved, That this board approve of the form of the trust deed read to the directors, to secure the first lien or mortgage of the bonds and interest thereon authorized to be issued, and that the president of the company is authorized to select the trustees to whom the said deed is to be made, not to exceed three in number.

Adopted.

I hereby certify that the foregoing is a true and correct copy from the records of the board of directors.

{ FLORIDA CENTRAL RAIL-
ROAD CO., 1868. }

F. H. FLAGG,
Secretary.

STATE OF FLORIDA,
County of Duval:

I, Thos. E. Buckman, clerk for the circuit court for this fourth judicial circuit for Duval County, State of Florida, do hereby certify that the foregoing is a true copy of an original paper as offered in evidence and proved in certain judicial proceedings lately pending in this court and as filed in my office.

Witness my hand and seal of office this 8th day of February, 1877.

[SEAL.]

T. E. BUCKMAN, *Clerk.*

655 SCHEDULE 13.

TALLAHASSEE, FLA., *January* 11, 1871.

Received from Edward Houstoun, esq., in trust and for his account, one thousand Florida Central Railroad Company first-mortgage bonds, payable to the State of Florida, for one thousand dollars each, with which I hereby undertake to arrange with General M. S. Littlefield and other parties interested, and collect from him or them the amount which it is admitted is now due to said Houstoun, viz: One hundred and sixty-three thousand and twenty-six $\frac{70}{100}$ dollars, with interest thereon at seven per cent. from the time M. S. Littlefield's draft on S. W. Hopkins & Co for said amount fell due, and in addition thereto the sum of five thou sand dollars for costs and expenses incurred by said Houstoun in suits brought by parties against said Houstoun in relation to those bonds or other bonds and the stock of the Florida Central Railroad Company; it being understood that all proceedings at law or otherwise are to be discontinued, or if that be impossible, he is to be indemnified by responsible parties against all damages or costs arising out of said proceedings; it being further understood that said Houstoun shall, when paid, transfer and assign to said Littlefield all the stock of the Florida Central Railroad Company, or other securities which he holds or which were given him as collateral security to secure the above amounts due to said Houstoun.

And it is further understood and agreed that said Coddington is to collect the further sums of money and pay to said Houstoun for account of the parties named below, which it is understood are a lien subsequent and inferior to said Houstoun's lien on these bonds, viz:

M. D. Papy, esq., the sum of sixteen thousand dollars.

Col. R. H. Gamble, the sum of fifteen thousand dollars; who is to surrender to said Littlefield three hundred shares of stock in the Florida Central Railroad Company, and seventeen hundred dollars in the bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, at par.

J. P. Sanderson, esq., the sum of fifty-seven thousand five hundred and sixty dollars, and said J. P. Sanderson is to surrender to said Littlefield seventy shares of stock in the Florida Central Railroad Company, and comply with his agreements with said Littlefield, for which a part of said sum is in consideration.

F. H. Flagg, esq., the sum of four thousand dollars; for which he is to surrender the Central Railroad Company stock and the Pensacola and Georgia Railroad bonds which he holds to said Littlefield.

And also to pay for seventy shares of stock now or lately held by J. D. Westcott, jr., esq., the sum of thirty-eight hundred and forty-five $\frac{33}{100}$ dollars, when said stock is to be delivered to said Littlefield.

This arrangement is based on the assumption that the money will be paid from the proceeds of bonds negotiated by S. W. Hopkins & Co., of New York; the remainder of said proceeds is to be disposed of as directed by the parties interested.

(Signed) T. B. CODDINGTON.

I approve and assent to the same.

(Signed) M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

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SCHEDULE 14.

TALLAHASSEE, *December* 10, 1870.

At a meeting of the directors, convened this day at the call of the vice-president, were present: Col. J. P. Sanderson, vice-president; Messrs. Hawkins, Cheney, Stearns, and Purman, directors.

After a conversation as to the objects of the meeting, the following preamble and resolutions were offered and adopted:

"Whereas bonds of the Jacksonville, Pensacola and Mobile Railroad Company have been issued, according to the provisions of the act incorporating this company and the amendments thereto, which bonds have been exchanged for bonds of the State of Florida, according to the provisions of said act; and whereas said bonds of the State of Florida were delivered by the governor to the president of the company; and whereas, though previous to the consolidation of the Tallahassee Railroad Company with this company, authority was granted by the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company to its president to issue, negotiate, dispose of, and apply the bonds for the purpose authorized by the act of incorporation, no action was had thereon, after such consolidation, either by the stockholders or directors then newly elected, authorizing the issue or disposing of bonds; and whereas, though no such action was formally taken, yet the stockholders and directors were advised that bonds had been issued and exchanged for an equal amount of State bonds, and were in the hands of the president, to be disposed of and applied, as they supposed, according to the law authorizing their issue, and they were satisfied therewith, if a proper application was to be made thereof; and whereas the directors are now advised that a contract was made by the president and George W. Swepson, as president of the Florida Central Railroad Company, and certain persons as commissioners, appointed by an act of the legislature of North Carolina, which contract was executed in April last, by which the bonds of the State of Florida, taken in exchange for the bonds of this company, were to be disposed of and the proceeds to be divided according to the terms of said contract between the above-named Florida railroads and the commissioners aforesaid, dollar for dollar, until an amount of over one million of dollars, with interest, should be paid to the said commissioners; and whereas said contract was unknown to the directors, and is in violation of the law of this State authorizing the issue of said bonds, and is a misapplication of said bonds or their proceeds: Therefore

"Be it resolved, That all authority in the president of this company to dispose of or negotiate said bonds is hereby withdrawn.

"Resolved, further, That a demand be made upon the president, or whomsoever else may have possession, control, or custody of said bonds, to return the same to the treasurer of this company forthwith.

657 "Resolved, further, That a copy of the foregoing preamble and these resolutions be communicated by the secretary to S. W. Hopkins & Co., 71 Broadway, New York, and 58 Broad street, London, and to the president of this company, and whomsoever else may have said bonds, or any part thereof, in their hands or control."

Adjourned, subject to the call of the vice-president.

F. H. FLAGG,
Secretary.

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SCHEDULE 15.

Memorandum Plan.

(Bijlage A.)

For the reorganization of the Jacksonville, Pensacola & Mobile Rail road Company, and the Florida Central Railroad Company of Florida to be agreed upon by and between Frank R. Sherwin, agent of the owners and holders of the bonds of the State of Florida, issued in aid of said railroad companies of the first part; and the owners and holders of the first mortgage bonds of the Pensacola & Georgia and Tallahassee Railroad Companies of said State, issued under the provisions of the act of January 6th, 1855, generally known as the "internal improvement act," respresented by Henry R. Jackson, of Savannah, in the State of Georgia, and Charles H. Simonton, of Charleston, in the State of South Carolina, of the second part.

The object to be sought in said reorganization shall be the formation, under the general incorporation laws of said State, of a new company, under the name and style of "the Jacksonville and Mobile Railroad Company," for the purpose of purchasing the present lines of constructed railroads between Jacksonville and Chattahoochee, and Tallahassee and St. Marks, with branch at Monticello Junction, together with all their rolling stock, depots, machine shops, and all their other property, and of completing the said line of road to Mobile, in the State of Alabama.

To this end it is agreed between the said parties that the line of completed railway, to wit: The roads extending from Lake City to Chattahoochee, and from Tallahassee to St. Marks, known as the Jacksonville, Pensacola and Mobile Railroad, and the road extending from Jacksonville to Lake City, known as the Florida Central Railroad, together with all their depots, rolling stock, machine shops, and all their other saleable property, shall be sold at public outcry, in accordance with law, so soon as the following antecedent arrangements, numbered "first" and "second" shall have been completed:

First. The said the parties to this agreement, shall, within 30 days, select three persons, who shall act as trustees in discharge of the trusts hereinafter set out; any vacancy in their number occurring by death or otherwise to be filled by the surviving trustees.

Second. The said bonds and coupons of the Pensacola and Georgia and Tallahassee Railroad Companies, held by the said parties of the second part, and the said bonds and coupons of the State of Florida, issued in aid of the said the Jacksonville, Pensacola and Mobile Railroad Company, and the said, the Florida Central Railroad Company, shall be placed in the hands or under the control of the said trustees so selected, for the purposes of the said trust, within thirty days from the date of the acceptance of their appointment.

The said the governor shall offer at public sale, according to law, said line of railroads, together with all their depots, rolling stock, machine shops, and all their other property, or such portions of it as may be legally saleable; and at the said sale the said trustees shall bid for the said property so to be exposed for sale, to the extent, if necessary, of the par value of the said bonds and past due coupons of the
659 State of Florida so placed under their control, the aggregate amount in dollars and cents, of which said bonds and past due coupons shall be treated and received as cash at said sale by the said governor, and if such bid be the highest made at such sale or sales the said line of railroad, together with all of its property as hereinbefore detailed, shall be struck off to the said trustees so bidding, and, upon the delivery to the said the governor of the said bonds and past due coupons last mentioned, he shall immediately cause the said trustees so bidding to be placed in the actual possession of all said railroad property, and full title shall be made to said trustees by the governor, the same to be held by them subject to the following conditions, namely: In trust to be conveyed by them to the said "Jacksonville and Mobile Railroad Company," after the following arrangements and conditions shall have been perfected and complied with:

First. Such title to the line of railroad now known as the Florida Central, extending from Jacksonville to Lake City; and such title to the Jacksonville, Pensacola & Mobile Railroad, which extends from Lake City to the Chattahoochee River and from Tallahassee to St. Marks; and such right of franchise to continue the construction of said line of railway westward to the city of Mobile, as may not be perfected in the said selected trustees, by the said sale as hereinbefore provided, shall be perfected in the said the Jacksonville & Mobile Railroad Company, through the action and agency of the said party of the first part, and shall be so perfected as not to leave any lien or incumbrance upon said last mentioned title or property, which shall be superior to the special mortgage lien so be created, as hereinafter provided. The provisions of this clause, numbered first, to be practically carried out by the said party of the first part within six (6) months from the date of its agreement.

Second. Title having been so perfected in the said the Jacksonville, & Mobile Railroad Company, that company shall execute an obligation in writing to the said the selected trustees, stipulating that immediately after conveyance made to it, the said railroad property, so to be purchased, as aforesaid, by them (the said selected trustees), the said the Jacksonville & Mobile Railroad Company shall cause the entire line of constructed railroads heretofore named to be bonded at the rate of not more than twelve thousand dollars ($12,000) per mile, which bonds shall be due forty years from date, bearing interest at the rate of five (5) per cent. per annum, payable semi-annually either in New York city or Amsterdam, Holland, at the option of the holders, principal and interest payable in gold, which bonds shall be a first-mortgage lien upon said line of railroad, its depots, machine shops, rolling stock, and all of its other property.

That distinct provision shall be made in said mortgage for the issue, in the first place, of a series of said bonds equal in amount only to the par value of said surrendered bonds and Georgia and Tallahassee Railroad Companies, in the event that the said lines of road formerly known as the Pensacola and Georgia and Tallahassee Railroads should be bid off by the said selected trustees at a sum below or not exceeding the aggregate amount of said last mentioned bonds and past due coupons; but should the said last mentioned roads be so bid off at a sum equal to
660 or exceeding the aggregate amount of principal of said bonds and
past due coupons and interest on said coupons, then the first series of bonds to cover the full amount of said last mentioned aggregate and this first and distinct series of bonds so issued shall constitute a prior lien upon the said line of railroad and its said property, to secure the payment of the interest and principal of the same when due; and the first said series of bonds, when so issued, shall be delivered to the owners of the said surrendered bonds and coupons of the said Pensacola and Georgia and Tallahassee Railroad Companies, whereupon the said last mentioned bonds and coupons shall be held by said trustees in trust, to be delivered to the trustees of the internal improvement fund of Florida for cancellation, so soon as all of the same class of bonds now outstanding shall have been surrendered to the said selected trustees, whether in exchange for the said new first mortgage bonds or otherwise.

That provision shall also be made in said mortgage that in case of default for one year by said new company in payment of interest on any of the bonds, foreclosure of said mortgage may be made for the entire amount of indebtedness secured by it, both principal and interest, and the said road and all of its said property may be sold, and the proceeds derived from such sale shall be first applied to the payment of the said first series of bonds, principal and interest, and the surplus, if any, shall be applied toward the payment of the remaining or second series of said bonds.

That provision shall also be made in said mortgage for the creation, at the expiration of three years from the organization of said company, of a sinking fund of one per cent. per annum in gold, payable semi-annually, upon its said bonded debt, which said sinking fund shall be semi-annually applied, as paid, to the redemption at par of the said bonds of said company, the numbers of which shall be selected by lot, and the said first series of said bonds of said company, issued as aforesaid, shall have priority of payment out of said sinking fund.

A draft of said contemplated bonds and mortgage, to be approved by the selected trustees, shall be appended as an exhibit to the said written obligation, and also a copy of the proposed charter of the said Jacksonville and Mobile Railroad Company, showing powers in the said new corporation to issue such bonds and to execute such mortgage.

It shall be further stipulated in said written obligation that a sufficient number of the second series of said bonds shall be set apart and used for the purpose of placing said line of constructed railroad in first-class order and repair as to road-bed, rolling stock, and otherwise; and that said new railroad company shall be managed by a board of directors, consisting of not more than seven nor less than five members, who shall be named by the owners or holders of said State bonds, but who shall be acceptable to said selected trustees; and that in case of vacancy in said board of directors or officers of said company, by death, resignation, or otherwise, notice of any intended new appointment shall be given to the said selected trustees; and a protest in writing, signed by the owners representing a majority of the said first series of bonds of said company shall operate to prevent the appointment to fill said vacancy; this provision to continue in operation for the period of six years from the organization of the said new company.

661 It is also further stipulated and agreed that all funds necessary to meet the costs and expenditures incurred in such sale or sales, and in perfecting said titles thereafter, shall be supplied by the said party of the first part.

In witness whereof we, the said parties to this agreement, have hereunto set our hands and affixed our seals interchangeably this 12th day of January, A. D. 1877, at Savannah, Georgia.

FRANK R. SHERWIN.
HENRY R. JACKSON.
CHARLES H. SIMONTON.

Signed, sealed, and delivered in the presence of—
(Geteekend) VINCENT L. STARR, *N. P.*

44l2422 Ontvangen voor zegelregt Vijftig Cent.
Amsterdam, den vijftienden Februarij 1800 Zeven en Zeventig.
De ontvanger B. A. No. 1.
KNIPSHEER.

Geregistreerd te Amsterdam den Vijftienden Februari 1800 Zeven en Zeventig, deel 108, blad 145 No. vak 1, twee bladen geen renvooi, ontvangen voor regt *f* 0.80 voor 38 opcenten *f* 0.305, te zamen een Gulden tien en een halve Cent. De ontvanger B. A. No. 1.
(Geteekend) KNIPSCHEER.

Uitgegeven voor Afschrift van vorenstaand stuk gededeponeerd onder the minuten van den ondergeteekende Jean Charles Gerard Pollones, notaris, residerende te Amsterdam, blijkens acte den veertienden Februari 1800 zeven en zeventig, ten zijnen overstaan verleden.
(Geteekend) J. C. G. POLLONES, *Notaris.*

Bijlage B.

I, the undersigned bona fide holder of bonds 8 per cent. Florida, issued 1870, each bond of Ds. 1,000, numbered as follows: declare by these presents to accept and to join for my part to the provisions of the memorandum plan for the reorganization of the Jacksonville, Pensacola & Mobile Railroad Company, and the Florida Central Railroad Company of Florida, signed on the 12th day of January, 1877, at Savannah, Georgia, between Frank R. Sherwin, agent of the owners and holders of the bonds of the said State of Florida, issued in aid of said railroad companies on the first part, and the owners and holders of the first mortgage bonds of the Pensacola and Georgia and Tallahassee Railroad Company of said State, issued under the provisions of the act of January 6th, 1855, generally known as the "internal improvement act," represented by Henry R. Jackson, of Savannah, in the State of Georgia, and Charles H. Simonton, of Charleston, in the State of South Carolina, of the second part: that I do hereby appoint my lawful trustee, Adolph Engler, partner of the firm of Kremelburg & Co., at New York, handing to him herewith as trustee my said as above numbered bonds, with the power to deliver and to exchange the so in trust given bonds as aforesaid, with all the coupons attached, to a company to be formed under the general incorporation laws of the
662 State, under style of the name of the Jacksonville and Mobile
Railroad Company, for the purpose of purchasing the present lines of constructed and completed railways extending from Lake City to Chattahoochee, and from Tallahassee to St. Marks, known as the Jacksonville, Pensacola & Mobile Railroad, and the road extending from Jacksonville to Lake City, known as the Florida Central Railroad, together with all their depots, rolling stock, machine shops, and all their other saleable property, and such in the proportion of 33⅓ per cent. in bonds and 16⅔ per cent. in shares, lawfully and legally issued by the said new company to be formed as aforesaid, i. e. for each old bond of $1,000, with coupons attached, $333⅓ in bonds and $166⅔ shares, all, however, under the following terms and conditions:

First. That the said bonds shall be part of a first mortgage bond of a maximum not exceeding $12,000 per mile, redeemable in forty years by lot, bearing 5 per cent. interest per annum in gold; bonds and interest at maturity payable in Amsterdam and New York at the rate of *f* 2.50 Dutch currency per dollar; first coupon for interest to be paid on the 1*th* of July, 1878.

Second. That no expenses whatsoever already incurred or to be made for the reorganization, as per the memorandum plan aforesaid, shall be at the charge of the bonds or of the bondholders.

Third. That the exchange and delivery of the old bonds against the bonds and shares of the new company must be completed before or on the 1*th* of December, 1877.

That on or before the 1*th* of June, 1877, the directors of the new company to be formed, Messrs. Robert Walker, Hubbart L. Hart, John Clark, C. H. Allen, and Robert P. Dodge, shall depose with my said trustee an authentic act containing that they accept to execute the said memorandum plan, and that the necessary funds for the purpose of placing the said lines of the new railroad company in first-class order and to repair as to road bed, rolling stock, and otherwise is secured.

In witness whereof I have signed this day of , A. D. 1877, at Amsterdam.

Witness:

For legalization of the above signature of , Amsterdam, 1877.

U. S Consul.

663 SCHEDULE 16.

Memorandum of agreement and settlement between the Florida Central Railroad Company, George W. Swepson, president, and the Jacksonville, Pensacola & Mobile Railroad Company, Milton S. Littlefield, president, and Milton S. Littlefield, majority owner of the stock of said companies and also of the stock of the Tallahassee Railroad Company, of the first part, and the Western Division of the Western North Carolina Railroad Company, reoresented by N. W. Woodfin, W. G. Candler, W. Pink Welsh, and W. W. Rollins, commissioners appointed by an act of the legislature of North Carolina, approved by the stockholders of said corporation, of the second part, witnesseth:

That whereas George W. Swepson, late president of the Western Division of the Western North Carolina Railroad Company, made certain investments of the funds of said company in securities of and interests in the said Florida Central Railroad, Jacksonville, Pensacola & Mobile Railroad, and the Tallahassee Railroad, of the said State of Florida, as per report made by the said George W. Swepson to the said commissioners, amounting in the aggregate to the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, to bear interest from the first day of November, 1869, at the rate of eight per cent. per annum; and whereas the said George W. Swepson heretofore conveyed to the said Milton S. Littlefield, subject to the payment of the above recited claim, his interest in the above recited railroads; and whereas the said Littlefield has received authority from the legislature of the State of Florida and the several railroad companies to receive bonds to be issued by and for account of the several railroad companies, which bonds are to be exchanged for the bonds of the State of Florida to be issued for the purpose of aiding the finances of the said several railroad companies, all of which bonds are now in a state of preparation; and whereas the said Milton S. Littlefield has made a contract with S. W. Hopkins & Co., No. 71 Broadway, for the disposition of said bonds as the same may be issued, the proceeds of the issue of the bonds of the Florida Central Railroad Company of the said State of Florida, amounting to nine hundred and sixty thousand dollars, are to be applied to the payment of the existing liabilities of the said several railroad companies, including the sum of one hundred and fifty thousand dollars to be paid to the commissioners aforesaid for the purpose of paying existing liabilities of the said Western Division of the Western North Carolina Railroad Company.

It is understood and agreed by the parties of the first and second part that the proceeds of the sale of the said bonds so to be issued by the said Florida railroad companies and the said State of Florida are to be equally divided, dollar for dollar, between the Western Division of the Western North Carolina Railroad Company and the said Florida Railroads, and as the commissioners aforesaid receive by this first sale of bonds only the sum of one hundred and fifty thousand dollars,
664 it is further understood and agreed that out of the proceeds of

the sale of the issue of the bonds of the Jacksonville, Pensacola & Mobile Railroad there is first to be received by the commissioners aforesaid a sum sufficient to be equal to the amount received by and on account of the said Florida railroads, and then an equal amount is to be received by the said commissioners and the said Florida railroads, dollar for dollar, until the entire amount of one million two hundred and eighty-seven thousand and thirty-six dollars and three cents, with interest at eight per cent., as aforesaid, being the sum reported by the parties of the first part as due to the Western Division of the Western North Carolina Railroad, is fully paid.

It is further understood and agreed by the parties of the first and second parts that all the interest owned or claimed by the said parties of the first part George W. Swepson and Milton S. Littlefield, or which they as individuals have a right to control, in the said Florida railroads, are hereby pledged for the faithful fulfilment of this contract without the right on the part of any party to interfere with our management or control of the affairs of the road.

(Signed) GEORGE W. SWEPSON,
Pres't Fla. Cent. R. R. Co.
M. S. LITTLEFIELD.
M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.
N. W. WOODFIN,
W. W. ROLLINS,
W. G. CANDLER,
W. P. WELCH,
Commissioners.

Witnesses:
M. W. Ransom.
R. R. Swepson.

State of Maryland,
City of Baltimore, sct:

Be it remembered that on this fifteenth day of August, the year one thousand eight hundred and seventy, before me, the undersigned, William W. Latimer, a commissioner resident in the city of Baltimore, in the State of Maryland, duly commissioned by the executive authority and under the laws of the State of Florida to take the acknowledgment and proof of deeds to be used or recorded therein, personally appeared R. R. Swepson, whose name appears as subscribing witness to the foregoing instrument, and who, being duly sworn, on his oath says that George W. Swepson, president Florida Central Railroad Company; M. S. Littlefield, president of the Jacksonville, Pensacola & Mobile Railroad Company; N. W. Woodfin, W. W. Rollins, W. G. Candler, and W. P. Welch, commissioners, duly signed, sealed, and delivered the foregoing instrument in the presence of him, the said R. R. Swepson, and of one M. W. Ransom, who then and there duly signed and attested the same in the presence of him, the said R. R. Swepson, and that they each subscribed their names as witnesses thereto.

In witness whereof I have hereunto set my hand and affixed my official seal, at Baltimore, the day and year aforesaid.

[SEAL.] W. W. LATIMER,
A Commissioner for Florida.

665 **SCHEDULE 17.**

WASHINGTON CITY,
District of Columbia:

This agreement, executed on this the 16th day of April, 1870, between N. W. Woodfin, W. G. Candler, W. W. Rollins, commissioners appointed by an act of the legislature of North Carolina, entitled "An act to provide for the completion of the Western Division of the Western North Carolina Railroad," and "ratified March 24, 1870," which said act has been "approved" by the stockholders of the said corporation, and the said commissioners now representing the Western Division of the Western North Carolina Railroad Company of the first part, and George W. Swepson (formerly president of the said Western Division of the Western North Carolina Railroad Company), of the second part, witnesseth:

That whereas a deed of agreement of this date has been made between George W. Swepson, as president of the Florida Central Railroad, and Milton S. Littlefield, in his own right as president of the Jacksonville, Pensacola & Mobile Railroad, and as majority stockholder in all of these three railroad companies, of the first part, and the aforesaid commissioners of the second part, which agreement has been signed in triplicate; and whereas by said agreement an interest in said railroads amounting to the sum of one million two hundred and eighty seven thousand four hundred and sixty six dollars and three cents has been transferred and conveyed to the said Western Division of the Western North Carolina Railroad Company;

And whereas the said George W. Swepson, through his brother Robert R. Swepson, has this day paid to the said commissioners the sum of fifty thousand dollars in cash;

And whereas the said George W. Swepson has this day executed and delivered to the said commissioners his obligation in the form of a draft accepted by M. S. Littlefield, as president of the J., P. & M. Railroad Co., and endorsed by M. S. Littlefield and George W. Swepson, as president of the Florida Central Railroad Company, for the sum of one hundred thousand dollars payable four months after date;

And whereas the said George W. Swepson has this day executed and delivered to the said commissioners his other obligations, in the form of a draft accepted by M. S. Littlefield, as president of the J., P. & M. Railroad Co., and endorsed by M. S. Littlefield, and George W. Swepson as president of the Florida Central Railroad Company, for the sum of one hundred and sixty-four thousand dollars, payable twelve months after date, with interest on both of said premises at the rate of six per cent.;

And whereas as a security for the payment of the last aforesaid obligations of one hundred and sixty-four thousand dollars, the said George W. Swepson has agreed to execute a mortgage deed, or deed in trust, with full relinquishment of all rights of dower upon the following lands, viz: the marble and lime lands in Catawba County, North Carolina, owned in copartnership with Dr. A. M. Powell, his interest being one-half; an undivided half of the Eagle Hotel, in Asheville, North Carolina; the Dr. Woodfin place, in Macon County, about three
666 hundred acres; the Jarret place, on Nantahala River, about four
hundred acres in Cherokee; the Gid Morris plantation, about sixteen hundred acres; the Charles Moore place, about six hundred acres; the David Hennessee place, about   acres; the Sharp place, about three hundred acres; one-half interest in fifteen trails' length Horshaw, of Burke County, all on Valley River; one-half interest in about twenty

thousand acres in copartnership with M. Fair, also in Cherokee County; all of his interest in about sixty-two thousand acres in Macon County, (this land has been paid for but the grants are not yet received); about ninety thousand acres of land in Macon, Cherokee, and Clay, known as the Olmsteads lands; a lot of about fifty thousand acres held by Joseph Keener in trust for George W. Swepson;

And whereas the said George W. Swepson has agreed that the said mortgage or deed in trust, with relinquishment as aforesaid, shall be executed within the next thirty days;

And whereas R. R. Swepson and R. Y. McAden have agreed that they will guarantee that the said lands so to be mortgaged shall be relieved and discharged of all liens by reason of any judgments against George W. Swepson;

And whereas it is expressly understood that the said notes of one hundred thousand dollars and one hundred and sixty-four thousand dollars may be paid in railroad iron delivered at Portsmouth, Virginia, and if so paid before their maturity the unaccrued interest shall not be charged;

And whereas the said Robert R. Swepson has this day advanced the sum of fifty thousand dollars to aid in this settlement; and whereas it is understood that the directory of the Western Division of the Western North Carolina Railroad Company will resolve that all stock on which 5 per cent. has not been paid shall be forfeited to the company and the stockholders released therefrom, the said commissioners hereby, so far as they have any authority or interest therein, express their consent thereto;

And whereas it is further understood that upon the payment upon the said note of $164,000 of the sum of five thousand dollars the Eagle Hotel may be discharged of the trust; upon the payment of twelve thousand dollars the Gid Morris place may be discharged; upon the payment of seven thousand five hundred dollars the Hennessee lands may be discharged; upon the payment of six thousand five hundred dollars the Charles Moore place may be discharged; upon the payment of three thousand dollars the Sharp place may be discharged; upon the payment of two thousand dollars the Woodfin place may be discharged; upon the payment of five thousand dollars the Jarrett place on Nantahala River, upon the payment of five thousand five hundred dollars the Horshaw lands, and upon the payment of five thousand dollars the Fair lands may be discharged;

Now, therefore, considering the premises and in consideration of the said interest and security, amounting to the sum of $1,287,436.03, transferred by said agreement of George W. Swepson and M. S. Littlefield as aforesaid, special reference being here made to said agreement; and in consideration of the further sum of fifty thousand dollars, this day paid in cash as aforesaid; further, in consideration of the two obligations of $100,000 and $164,000, each respectively, in consideration
667 of the disbursements heretofore made by the said George W. Swepson for and on account of the said railroad company, the said commissioners, in their capacity as commissioners by authority of the said act of the legislature of North Carolina and its approval by the stockholders, agree and promise to execute and deliver to the said George W. Swepson a full and final release and discharge and receipt of all claims, demands, and accounts of the said Western Division of the Western North Carolina Railroad Company against the said George W. Swepson of any character whatever, when the said Swepson shall have executed the said mortgage or deed in trust, with relinquishment

of dower as aforesaid, and the said Robert R. Swepson and the said R. Y. McAden shall have given a satisfactory guarantee that the said lands shall be discharged of any and all judgments as aforesaid, and when the sum of $880,000 of the amount of $1,287,436.03 transferred in Florida railroads shall have been paid or made fully secure; provided, nevertheless, that it shall be determined by N. W. Woodfin and M. W. Ransom, and in case they cannot agree they are to call in an umpire, that George W. Swepson was not authorized to make such investments in Florida by his board of directors of the Western Division of the Western North Carolina Railroad Company. But if it shall be determined by the said referees, or the said referees and umpire, that G. W. Swepson was authorized to make such investments or that the said directors recognized and approved the investment, then there shall be no obligation on Mr. G. W. Swepson to guarantee the payment of the said sum of $880,000, but the compliance with the other obligations shall be his receipt and discharge.

It is further understood that the said mortgage or deed in trust will be executed and delivered within ninety days from the date of these presents, unless there should be cause sufficient and satisfactory to the said commissioners to postpone the same at their discretion.

But it is expressly understood that the said commissioners do not approve of the payment by Soutter & Co. of the expenses to attorneys, etc., in the university case, but that they protest against the same, and that nothing in this agreement shall be construed to prevent the said Western Division of the Western North Carolina Railroad Company from recovering the same or any part thereof from those receiving the same.

In witness whereof, the parties of the first and second parts have hereunto set their hands.

N. W. WOODFIN.
W. G. CANDLER.
W. W. ROLLINS.
GEO. W. SWEPSON.

Witnesses:
R. W. PULLMAN.
R. R. SWEPSON.

668

SCHEDULE 18.

Summons for relief.

New York supreme court, city and county of New York.

THE WESTERN NORTH CAROLINA RAILROAD Company for the western division of said road, plaintiff,
against
E. HOUSTOUN AND MILTON S. LITTLEFIELD, defendants.

To the defendants above named:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county of New York, and to serve a copy of your answer to the said complaint on the subscriber at his office, No. 29 Wall street, New York

City, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated New York, October 3d, 1870.

ALGERNON S. SULLIVAN,
Plaintiff's Attorney, 29 *Wall Street, New York City.*

State and county of New York, supreme court.

THE WESTERN NORTH CAROLINA RAILROAD Company, for the western division,
against
E. HOUSTOUN AND MILTON S. LITTLEFIELD.

CITY AND COUNTY OF NEW YORK, *ss:*

George W. Swepson, of Alamance County, in the State of North Carolina, being duly sworn, makes oath and says: From October, 1868, to October, 1869, I was president of the Western North Carolina Railroad Company, for the western division. As president and for said company I received possession of over six millions of the bonds of said State. I hypothecated said bonds in the city of New York, and out of the proceeds I purchased and paid for about three thousand shares of the stock of the Florida Central Railroad Company. I did this through my agent, Mr. Edward Houstoun, who is defendant in this action. He knew, from my telling him, that I obtained the funds for said purchase, as above stated, and that in fact and in equity said western division of said Western North Carolina Railroad Company were the owners of said stock. About October, 1869, I ceased to be president of said company, and Milton S. Littlefield became the president as my successor.

669 In negotiating and making settlements as retiring president, with said Littlfield as incoming president for said railroad company, I passed over as assets for said company said three thousand shares of the Florida Central Railroad Company stock; said Littlefield said he would receive it and account to said company, he being the president thereof. At his request I transferred said stock to him in his individual name, but it was for Western Division North Carolina Railroad Company, and it was so received by said Littlefield, president of said company.

This settlement was in November, 1869. About May, 1870, said Houstoun had negotiations with said Littlefield, individually, to sell to said Littlefield his (Houstoun's) stock in the Florida Central Railroad, and also some bonds of the Tallahassee Railroad Company, and the Pensacola and Georgia Railroad Company.

On that transaction there remained due to Houstoun about $160,000, and an agreement was made that Houstoun should take as collateral security a pledge from Littlefield of said three thousand shares of the Florida Central Railroad stock. Subsequently said Florida Central Railroad Company issued one million dollars of their bonds and agreed with Harrison Reed, then governor of the State of Florida, to make, as the loan allowed, an exchange of said railroad bonds for an equal amount of the bonds of the State of Florida.

But said Governor Reed refused to deliver said State bonds unless, as an additional security, they should, with said three thousand shares of stock, be placed in the hands of said Houstoun to secure payment of said debt due by said Littlefield to said Houston, as well as some other private debts of said Littlefield. That, in accordance with said requirement of said governor and the agreement to that effect between said governor and said Houston, said one million dollars of State bonds were so placed in the hands of said Houstoun. Affiant says he is informed by said Littlefield, and verily believes, that said arrangement to that effect between said Houstoun and said Governor Reed.

Affiant further says that he was informed by said Governor Reed that he, the said governor, was personally and pecuniarily interested with said Houstoun in a portion of the profits which Houstoun might make on the purchase and sale of a portion of the stock of the Florida Central Railroad Company, which Houstoun had bought at twenty cents on the dollar, and that under the agreement and sale to Littlefield of the said stock Littlefield was, as I learned, to pay par.

Affiant further says that previous to this delivery of stock and State bonds to said Houstoun by said Littlefield, he, said Littlefield, both in his individual capacity and as president of the Jacksonville, Pensacola & Mobile Railroad Company, pledged the whole interest and portions held by him, said Littlefield, of every kind and nature in said railroad in Florida, or in any or all of them, to secure to said Western North Carolina Railroad Company all moneys due to said company from this affiant as aforesaid, and that pledge covered the very securities pledged subsequently, as above stated by said Littiefield to said Houstoun.

Affiant further says, that throughout all said transactions said Houstoun knew and was fully notified that all of said interest purchased by affiant in said Florida Railroad were purchased with funds
670 raised in the city of New York by the hypothecation of the bonds which belonged to the Western North Carolina Railroad Company.

Affiant further says he is informed and believes that said Houstoun intends to sell said three thousand shares of stock in New York City on the 4th of October, instant, at No. 111 Broadway, at 10½ o'clock a. m., and affiant has received from said Houstoun a written notice to that effect, of which a copy is hereto annexed, marked Exhibit No. 1.

Affiant further says he is informed and believes that the intention of the said Houstoun is to sell said stock separately, subject to said mortgage bonds, and afterwards to sell said State bonds. And he is by law, as owner of said State bonds, entitled to exchange them for said railroad mortgage bonds, so he can become by said sale owner of the majority of the stock of said company, and also owner of its mortgage debt.

Affiant further says that a knowledge of said facts above stated has become public to a great extent, and that has produced doubts and clouds upon the title and value of said stock and securities, and if allowed to be sold as proposed, they will yield scarcely anything, and said Western North Carolina Railroad Company will be defrauded and lose their entire claim, or nearly so; that it will be irreparably injurious to said Western North Carolina Railroad Company and to their just rights, and affiant knows that all of said securities represent the money and funds of said Western North Carolina Railroad Company.

Affiant further says neither said Littlefield nor said Houstoun resided in the State of New York, but they reside in Florida, as affiant is informed and believes; but affiant is informed that said Houstoun is now in New York City.

Affiant says he is informed and believes that said Houstoun had said State bonds and said certificates of stock in the city of New York a few weeks ago; but affiant does not know where they are.

GEORGE W. SWEPSON.

Subscribed and sworn to before me this 3d day of October, A. D. 1870.

W. E. CARPENTER,
Notary Public, New York City.

EXHIBIT 1.

NEW YORK, N. Y., *September* 23, 1870.

To GEORGE W. SWEPSON,
Hawes River, North Carolina:

SIR: On the 4th day of October next, at 10½ (ten and a half) a. m., I will cause to be sold at the Exchange sales-room, Trinity Buildings, No. 111 Broadway, in this city, at public auction, to the highest bidder, (3,110) three thousand one hundred and ten shares of the capital stock of Florida Central Railroad Company held by me, and agreement 671 heretofore entered into between Milton S. Littlefield and myself. This notice is given in compliance with aforesaid referred to agreements.

Respectfully,

E. HOUSTON.

New York supreme court, county of New York.

THE WESTERN NORTH CAROLINA RAILROAD Company (for the western division of said road)
against
E. HOUSTON AND MILTON S. LITTLEFIELD.

OCTOBER 4th, A. D. 1870.

At chambers, held at the court-house in the city of New York.

Present, Hon. George G. Barnard, justice.

On motion of Algernon S. Sullivan, attorney for said plaintiffs, and on reading and filing the affidavit of George W. Swepson, and it appearing to me that sufficient grounds thereof exist, I do hereby order that the said defendants, and each of them above named, and their agents, employees, and representatives, do all and each of them, until the further order of this court, refrain from selling or offering to sell, assigning, transferring, concealing, removing from this State, or in any way transacting business about certain certificates of stock (about three thousand shares) in the Florida Central Railroad Company, and one million dollars in bonds of the State of Florida, all of which stock and bonds were placed in the hands of said Houstoun by or through the agency of said defendant, Littlefield, as collateral security.

GEORGE G. BARNARD, *J. S. C.*

SCHEDULE 19.

672 Memorandum of an agreement and final settlement made this tenth day of November, A. D. 1870, at London, England, between General Milton S. Littlefield, of the State of Florida, in the United States of America, and the Jacksonville, Pensacola and Mobile Railroad Company, by Milton S. Littlefield, the president thereof, the parties of the first part, and the Western Division of the Western North Carolina Railroad Company, acting through and represented by Colonel Nicholas W. Woodfin, chairman of the commission appointed by the general assembly of the State of North Carolina, by an "act" ratified twenty-fourth day of March, A. D. 1870, to settle with George W. Swepson, and for other purposes, which "act" was approved by the stockholders of the said Western Division of the Western North Carolina Railroad Company, of the second part:

Whereas on the sixteenth day of April, A. D. 1870, at the city of

Washington, in the District of Columbia, in the United States of America, a contract in writing was made and entered into by and between the Florida Railroad Company, George W. Swepson, president; General Milton S. Littlefield; the Jacksonville, Pensacola, and Mobile Railroad Company, by Milton S. Littlefield, the president thereof, as parties of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by Nicholas W. Woodfin, W. G. Candler, W. W. Rollins, and W. P. Welsh, commissioners appointed by the legislature of the State of North Carolina, by an "act" ratified on the twenty-fourth day of March, A. D. 1870, which "act" was duly ratified, approved, adopted, and made a part of the charter of the said party of the second part, the said corporation, a copy of which contract is attached hereto, and made a part of this contract; and

Whereas the said Jacksonville, Pensacola, and Mobile Railroad Company have received certain bonds of the State of Florida under sundry acts of the legislature of the said State, which bonds, by the term of the laws authorizing the issue of the same, are made payable, both principal and interest, in the gold coin of the United States, and bearing interest at the rate of eight (8) per cent. per annum; and

Whereas by reason of the present war in Europe, all financial operations are more or less restricted, which has up to this time prevented the negotiation for the sale of the said bonds; and

Whereas the said Western Division of the Western North Carolina Railroad Company, through and by its representative, Nicholas W. Woodfin, chairman aforesaid, is pressing the immediate payment, by the said party of the first part, of the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, with interest at the rate of eight (8) per cent. per annum since the first day of November, A. D. 1869, to pay or settle the said claim now will cause a great sacrifice to the said party of the first part; and

Whereas the said Nicholas W. Woodfin, as chairman of the said commission for the Western Division of the Western North Carolina 673 Railroad Company, for the purpose of removing embarrassments out of the way, which in his judgment prevented the sale of the said bonds, and to avoid litigation, did, on the 17th day of October, 1870, contract with Henry Clews & Co., bankers in the cities of New York and London, to purchase a certain claim held by them against George W. Swepson, amounting to about twenty thousand dollars, lawful money of the United States of America, which contract was made with the knowledge and approval of the said party of the first part, for the reason it was understood by all parties to the said agreement that this would secure the full co-operation of the said Henry Clews & Co. to aid in the sale and negotiations of the said Florida bonds:

Now, therefore, be it remembered, that for and in consideration of the premises herein stated, and for various other good and sufficient considerations, and for the further purpose of aiding the said Western Division of the Western North Carolina Railroad Company to complete their road from the junction with the main line at Ashville to Paint Rock, at the State line between the States of North Carolina and Tennessee, and to complete their road without delay on the one hand, and to avoid a hasty sale and sacrifice of the said bonds on the other hand, it is agreed, by and between the parties of the first and second part, that in full compromise, payment, satisfaction, and accord of the obligation of the party of the first part to pay to the party of the second part the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, lawful money of the United States of America, with interest thereon at the rate of eight (8) per cent. from and after the first day of November, A. D. 1869, as per terms of the said contract made and executed at the city of Washington aforesaid, and that the said party of the first part may be fully and finally discharged from all and every liability on account of the terms and conditions of the said contract, hereunto appended; the said party of the first part agree to furnish iron to the said party of the second part sufficient to lay a single track of railroad from the junction at Ashville, along the French Broad River, to Paint Rock, at the Tennessee State line, and into the State of Tennessee to the present terminus of the Cincinnati, Cumberland Gap, and Charleston Railroad, with turn-outs and side-tracks, provided that the whole of the railroad shall not exceed, including turn-outs and side-tracks, fifty-three miles in length. The iron shall be of good quality of English iron, weighing not less than fifty pounds per lineal yard, with the necessary chairs and spikes to lay the same, the iron to be shipped in the quantities and at the terms and places as follows, to wit:

To Norfolk, Virginia, on or before the tenth day of December, A. D. 1870, three hundred tons; to the same place on or before the tenth day of January, A. D. 1871, five hundred tons; to the same place on or before the first day of April, 1871, one thousand tons; and the rest to be shipped to New York, in the State of New York, on or before the first day of September, A. D. 1871; but the said party of the first part may ship the iron as fast as he may wish, all duties and freights on the above-described iron to be paid by the party of the first part.

And it is further agreed by the party of the first part that he will
ship in addition to the above-mentioned quantity of iron, one
674 thousand tons of the same weight and quality as the above-de-
scribed iron, with the necessary chairs and spikes to lay the
same, to New York, duties and frieghts paid, on or before the first day
of September, A. D. 1871, the shipping of which iron Messrs. S. W.
Hopkins & Co., are to guarantee.

In addition to the shipment of the iron, the said party of the first part does hereby sell and deliver unto the said party of the second part, by placing, to the order of the party of the second part, with Messrs. S. W. Hopkins & Co., eight hundred bonds of the State of Florida of the denomination of one thousand dollars each, numbers of said bonds to be designated by the said party of the first part, but upon the express stipulation and conditions that the said bonds are to be left with Messrs. S. W. Hopkins & Co. for sale at such price as the said party of the second part may direct.

And it is further agreed by the party of the first part that he will pay to the party of the second part two hundred pounds sterling, the receipt whereof is hereby acknowledged.

And it is further agreed by the party of the first part to assume and discharge the obligation of the party of the second part to Henry Clews & Co., of about twenty thousand dollars, lawful money of the United States of America.

Now, when the foregoing undertakings and agreements of the party of the first part are fully accomplished and performed, it is to be taken as a full compliance with and final discharge of the parties of the first part to this contract, as well as all parties of the first part, to the said contract executed at the city of Washington aforesaid, a copy of which is hereto attached, and this shall operate as a receipt and final discharge thereof from all obligations growing out of the same.

MILTON S. LITTLEFIELD.
MILTON S. LITTLEFIELD,
Pres. Jack. Pen. & Mobile R. R. Co.
N. W. WOODFIN,
Chairman of the Board of Commissioners.

Memorandum of agreement and settlement between the Florida Central Railroad, George W. Swepson, president; and the Jacksonville, Pensacola, and Mobile Railroad Company, Milton S. Littlefield, president; and Milton S. Littlefield, majority owner of the stock of said companies, and also of the stock of the Tallahassee Railroad Company, of the first part, and the Western Division of the Western North Carolina Railroad;

Copy of the original.

M. S. L,
N. W. W.

Company represented by N. W. Woodfin, W. G. Candler, W. Pink Welsh, and W. W. Rollins, commissioners appointed by an act of 675 the legislature of North Carolina, approved by the stockholders of said corporation of the second part.

Witnesseth: That whereas George W. Swepson, late president of the Western Division of the Western North Carolina Railroad Company, made certain investments of the funds of said company in securities of and interests in the said Florida Central Railroad, Jacksonville, Pensacola, and Mobile Railroad, and the Tallahassee Railroad, of the State of Florida, as per report made by the said George W. Swepson to the said commissioners, amounting in the aggregate to the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, to bear interest from the first day of November, 1869, at the rate of eight per cent. per annum; and

Whereas the said George W. Swepson heretofore conveyed to the said Milton S. Littlefield, subject to the payment of the above recited claim, his interest in the above recited railroads; and, whereas, the said Littlefield has received authority from the legislature of the State of Florida and the said several railroad companies to receive bonds to be issued by and for account of the several railroad companies, which bonds are to be exchanged for the bonds of the State of Florida, to be issued for the purpose of aiding the finances of the several railroad companies, all of which bonds are now in a state of preparation; and

Whereas Milton S. Littlefield has made a contract with S. W. Hopkins & Co., 71 Broadway, for the disposition of the said bonds as the same may be issued, the proceeds of the issue of the bonds of the Central Railroad Company of the said State of Florida, amounting to nine hundred and sixty   dollars, are to be applied to the payment of existing liabilities of the said several railroad companies, including the sum of one hundred and fifty thousand dollars, to be paid to the commissioners, as aforesaid, for the purpose of paying existing liabilities of the said Western Division of the Western North Carolina Railroad Company:

It is understood and agreed by the parties of the said first and second parts that the proceeds of the sale of the said bonds so to be issued by the said Florida railroad companies and the said State of Florida, is to be equally divided, dollar for dollar, between the Western Division of the Western North Carolina Railroad Company and the said Florida railroads, and as the commissioners aforesaid receive by this first sale of bonds only the sum of one hundred and fifty thousand dollars, it is further understood and agreed that out of the proceeds of the sale of the issue of the bonds of the Jacksonville, Pensacola, and Mobile Railroad there is first to be received by the commissioners aforesaid a sum sufficient to be equal to the amount received by and on account of the said Florida railroads, and then an equal amount is to be received by the said commissioners and the said Florida railroads, dollar for dollar, until the entire amount of one million two hundred and eighty-seven thousand and thirty-six dollars and three cents, with interest at eight per cent., as aforesaid, being the sum reported by the parties of the first part as due to the Western Division of the Western North Carolina Railroad is fully paid.

676 It is further understood and agreed by the parties of the first and second parts that all the interests owned or claimed by the said parties of the first part, both George W. Swepson and Milton S. Littlefield, or which they as individuals have a right to control in the said Florida railroads, are hereby pledged for the faithful fulfilment of this contract, without the right on part of any party to interfere with our management or control of the affairs of the roads.

GEO. W. SWEPSON,
Pres. Fla. Central R. R. Co.
M. S. LITTLEFIELD.
M. S. LITTLEFIED,
Pres. J. P. & M. R. R. Co.
N. W. WOODFIN,
W. W. ROLLINS,
W. G. CANDLER,
W. L. WELSH,
Commissioners.

Witnesses:
W. W. RANSOM.
R. R. SWEPSON.

Correct copy of the original.

M. S. LITTLEFIELD,
N. W. WOODFIN.

LONDON, *November* 16, 1870.

We hereby agree to perform all the stipulation relating to the shipping of iron required of us by the terms of the within contract.

S. W. HOPKINS & CO.

We approve and ratify the within contract.

W. G. CANDLER,
W. W. ROLLINS.

677 SCHEDULE 20.

Articles of impeachment exhibited by the assembly of the State of Florida, in the name of themselves and of all the people of Florida, against Harrison Reed, governor of Florida, in maintenance and support of their impeachment against him for high crimes and misdemeanors in office, for incompetency and malfeasance, and conduct detrimental to good morals.

* * * * * * *

ARTICLE II. That in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, said Harrison Reed, governor of the State of Florida, unmindful of the high duties of his office, of his oath of office, and in violation of the constitution of the State of Florida, and contrary to the provisions of an act entitled an act to alter and amend an act entitled an act to perfect the public works of the State, approved June 24th, A. D. 1869, approved January 28th, 1870, did then and there, with intent to violate the constitution of the State, and the act aforesaid, and without authority of law, fraudulently conspire to issue State bonds to the amount of one million of dollars ($1,000,000) for the purpose of purchasing the stock of the Florida, Atlantic and Gulf Central Railroad Company, for the use and benefit of persons and parties, and with full knowledge of and consent to said purpose, and in collusion with such persons and parties for his and their pecuniary benefit, whereby said Harrison Reed, governor of Florida, did then and there commit and was guilty of a high crime in office, and of incompetency and malfeasance.

* * * * * * *

ARTICLE IV. That said Harrison Reed, governor of Florida, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, unmindful of the high duties of his office, and of his oath of office, and in violation of the constitution and laws of the State, and especially of an act entitled An act to alter and amend, &c., did cause to be issued, and did himself sign his official signature as governor, to four million dollars of State bonds for the use and benefit of the Jacksonville, Pensacola & Mobile Railroad Company, in the State of Florida, having full notice of the fraudulent title of said company to the property of the Pensacola and Georgia and Tallahassee Railroads, and with intent to violate the constitution and laws of the State of Florida, and especially of the act of the legislature of the State of Florida entitled An act to alter and amend an act entitled An act to perfect the public works of the State, approved June 24, A. D. 1869, approved January 28, A. D. 1870, whereby the said Harrison Reed, governor, &c.,

* * * * * * *

678 Received and filed April 20th, 1878.

P. WALTER, *Clerk.*

Filed September 14th, 1877.

CHAS. H. FOSTER, *Clerk.*

679 *Joint and several answer of J. M. Baker, W. J. Lawton, N. K. Sawyer, and other directors of the Florida Central Railroad Company.*

United States circuit court, northern district of Florida.

J. FRED. SCHUTTE, JAN PRINS, ET AL.,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Jacksonville, Pensacola & Mobile Railroad Company, et al.

James M. Baker, solicitor for the defendants, directors.
Received and filed April 20th, 1878.

P. WALTER, *Clerk.*

Filed July 31st, 1877.

CHAS. H. FOSTER, *Clerk,*
By F. T. MYERS, *D. C.*

680 In the circuit court of the United States, northern district of Florida.

J. FRED. SCHUTTE, JAN PRINS, HEINRICH Ulrici, Elias Fuld, et al., complainants,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, et al., defendants.

The joint and several answer of the defendants, James M. Baker, George R. Foster, N. K. Sawyer, J. C. L'Engle, Charles B. Fenwick, Milton S. Littlefield, W. J. Lawton, and Joseph B. Stewart, directors of the Florida Central Railroad Company.

The defendants, James M. Baker, George R. Foster, N. K. Sawyer, J. C. L'Engle, Charles B. Fenwick, Milton S. Littlefield, W. J. Lawton, and Joseph B. Stewart, not admitting all or any of the allegations of complainants' bill to be true in manner and form as therein alleged, for answer thereto or such parts thereof as they are advised are material for them as a board of directors to answer unto, answering, say—

I. That it is true that these respondents are directors of the Florida Central Railroad Company. That they were first elected such directors on or about the 15th day of March, A. D. 1877, at a stockholders' meeting held in obedience to a writ of mandamus issued from the honorable circuit court for Duval County, Florida, pursuant to a judgment in that behalf rendered by said court upon proceedings therein previously instituted, and which said judgment then was and still is in full force and effect, and unreversed, and to which respondents crave leave to refer when necessary for the purposes of this suit.

681 II. These respondents, each for himself, denies that said judgment was obtained by fraud, or deception, or collusion of any kind practiced on said court. That the said suit and proceedings for mandamus was instituted by the Western Division of the Western North Carolina Railroad Company, by its petition filed, supported by proofs, on the 15th day of February, 1877, whereupon, and after due consideration thereof, the alternate writ was issued by order of the judge of said court, returnable on the 27th day of February, 1877, unless cause was shown to the contrary on the 26th, at 10 o'clock a. m., which said proceeding, and as due notice thereof to all the parties interested, was ordered to be, and in fact was, duly published in the Florida Sun, a daily paper published in the city of Jacksonville, for the period of ten days previous to the return day of said writ.

III. That on the day named to show cause, to wit, on the said 26th day of February, 1877, there appeared on the part of the complainants, and all other holders of the Florida State bonds, as alleged in their said bill, Frank R. Sherwin, G. M. Bossevain, A. J. Mildeus, and also appeared Robert Walker, Edward Lewis, and Patrick Houstoun, claiming to be stockholders as well as directors of the Florida Central Railroad Company, each of which said parties, by H. R. Jackson and H. Bisbee, esq'r's, their joint counsel, appeared as defendants, and interposed their joint and several demurrer to said petition and alternate writ, whereupon an issue of law was tendered, and tried, and argued before said court, when after due consideration of the premises the said court gave judgment, overruling said demurrer, as will better appear by a copy of said demurrer, and judgment rendered thereupon, made part hereof, marked Exhibit A.

IV. That an appeal was prayed on behalf of said defendants 682 and granted, and time given to make a further reply or return to said alternate writ, but no further reply being made, and the said appeal being abandoned by complainants' counsel, final judgment was given, and a peremptory mandamus was adjudged and granted to the petitioner on the 15th day of March, 1877, returnable on the 17th, commanding the holding of said election, whereupon said election was held, and these respondents were elected directors, as alleged in said complainants' bill.

V. These respondents aver that said election was held in strict accordance with law, and for lawful purposes, and was not designed to affect or impair any lawful right the complainants might have in and to the franchises or property of the said Florida Central Railroad Company, as falsely alleged in their said bill.

Further answering, these respondents say that on entering upon their duties as directors of said company, they could not fail to see the eminent necessity there was for such an election. That the archives of said company were scattered in every direction and could not be found; that its property was much neglected and exposed to destruction, to protect and preserve which from further injury these respondents have done and are doing all in their power as directors, as their proceedings in that behalf will show.

That before such election these respondents, and each of them, were invested with the possession and lawful ownership of stock of said Florida Central Railroad Company sufficient to qualify them for the position of directors, and that the allegations of the complainants' bill to the contrary are not true and are contrary to the facts.

VI. Further answering, these respondents say it is not true that they, after being so elected directors, proceeded to issue and distribute stock or bonds in the manner and for the purposes alleged in the complainants' bill. On the contrary, these respondents passed orders for the issue of stock and bonds in such manner and for such purposes as in 683 their judgment seemed lawful and proper and for the best interests of said company, taking great pains to make a correct record of their proceedings, carefully guarding the rights and interests of all parties. But these respondents deny that their actions as such directors in any manner affected the rights of the complainants, as set forth in their bill of complaint, who do not show or allege any facts showing that they have any lawful rights that have been, or could be, impaired or imperiled by the election of these respondents, directors of the Florida Central Railroad Company.

VII. Further answering, these respondents admit that it is true that they were re-elected directors by the stockholders of said Florida Central Railroad Company on the 28th day of May, 1877, as alleged in the complainants' bill. That the annual meeting of the stockholders of said company for the election of directors is fixed for the second Wednesday in April of each year, and in the present year occurred on the 11th day of April, 1877, which was duly announced by publication in the usual way, and on which day the meeting of stockholders convened, but adjourned from day to day, awaiting the appointing of a trustee by this honorable court upon a motion then pending, in the place of M. D. Papy, deceased, which motion was set for hearing on the 26th day of April, 1877, at which time counsel representing the interests of the complainants and also the executors of Edward Houstoun, deceased, H. R. Jackson, esq., appeared and opposed the appointing of said trustee, one of the declared objects of which appointment was to qualify a party as

680 In the circuit court of the United States, northern district of Florida.

J. FRED. SCHUTTE, JAN PRINS, HEINRICH
Ulrici, Elias Fuld, et al., complainants,
vs.
THE WESTERN DIVISION OF THE WESTERN
North Carolina Railroad Company, et al.,
defendants.

The joint and several answer of the defendants, James M. Baker, George R. Foster, N. K. Sawyer, J. C. L'Engle, Charles B. Fenwick, Milton S. Littlefield, W. J. Lawton, and Joseph B. Stewart, directors of the Florida Central Railroad Company.

The defendants, James M. Baker, George R. Foster, N. K. Sawyer, J. C. L'Engle, Charles B. Fenwick, Milton S. Littlefield, W. J. Lawton, and Joseph B. Stewart, not admitting all or any of the allegations of complainants' bill to be true in manner and form as therein alleged, for answer thereto or such parts thereof as they are advised are material for them as a board of directors to answer unto, answering, say—

I. That it is true that these respondents are directors of the Florida Central Railroad Company. That they were first elected such directors on or about the 15th day of March, A. D. 1877, at a stockholders' meeting held in obedience to a writ of mandamus issued from the honorable circuit court for Duval County, Florida, pursuant to a judgment in that behalf rendered by said court upon proceedings therein previously instituted, and which said judgment then was and still is in full force and effect, and unreversed, and to which respondents crave leave to refer when necessary for the purposes of this suit.

681 II. These respondents, each for himself, denies that said judgment was obtained by fraud, or deception, or collusion of any kind practiced on said court. That the said suit and proceedings for mandamus was instituted by the Western Division of the Western North Carolina Railroad Company, by its petition filed, supported by proofs, on the 15th day of February, 1877, whereupon, and after due consideration thereof, the alternate writ was issued by order of the judge of said court, returnable on the 27th day of February, 1877, unless cause was shown to the contrary on the 26th, at 10 o'clock a. m., which said proceeding, and as due notice thereof to all the parties interested, was ordered to be, and in fact was, duly published in the Florida Sun, a daily paper published in the city of Jacksonville, for the period of ten days previous to the return day of said writ.

III. That on the day named to show cause, to wit, on the said 26th day of February, 1877, there appeared on the part of the complainants, and all other holders of the Florida State bonds, as alleged in their said bill, Frank R. Sherwin, G. M. Bossevain, A. J. Mildeus, and also appeared Robert Walker, Edward Lewis, and Patrick Houstoun, claiming to be stockholders as well as directors of the Florida Central Railroad Company, each of which said parties, by H. R. Jackson and H. Bisbee, esq'r's, their joint counsel, appeared as defendants, and interposed their joint and several demurrer to said petition and alternate writ, whereupon an issue of law was tendered, and tried, and argued before said court, when after due consideration of the premises the said court gave judgment, overruling said demurrer, as will better appear by a copy of said demurrer, and judgment rendered thereupon, made part hereof, marked Exhibit A.

IV. That an appeal was prayed on behalf of said defendants
682 and granted, and time given to make a further reply or return
to said alternate writ, but no further reply being made, and the said appeal being abandoned by complainants' counsel, final judgment was given, and a peremptory mandamus was adjudged and granted to the petitioner on the 15th day of March, 1877, returnable on the 17th, commanding the holding of said election, whereupon said election was held, and these respondents were elected directors, as alleged in said complainants' bill.

V. These respondents aver that said election was held in strict accordance with law, and for lawful purposes, and was not designed to affect or impair any lawful right the complainants might have in and to the franchises or property of the said Florida Central Railroad Company, as falsely alleged in their said bill.

Further answering, these respondents say that on entering upon their duties as directors of said company, they could not fail to see the eminent necessity there was for such an election. That the archives of said company were scattered in every direction and could not be found; that its property was much neglected and exposed to destruction, to protect and preserve which from further injury these respondents have done and are doing all in their power as directors, as their proceedings in that behalf will show.

That before such election these respondents, and each of them, were invested with the possession and lawful ownership of stock of said Florida Central Railroad Company sufficient to qualify them for the position of directors, and that the allegations of the complainants' bill to the contrary are not true and are contrary to the facts.

VI. Further answering, these respondents say it is not true that they, after being so elected directors, proceeded to issue and distribute stock or bonds in the manner and for the purposes alleged in the complainants' bill. On the contrary, these respondents passed orders for the issue
of stock and bonds in such manner and for such purposes as in
683 their judgment seemed lawful and proper and for the best inter-
ests of said company, taking great pains to make a correct record of their proceedings, carefully guarding the rights and interests of all parties. But these respondents deny that their actions as such directors in any manner affected the rights of the complainants, as set forth in their bill of complaint, who do not show or allege any facts showing that they have any lawful rights that have been, or could be, impaired or imperiled by the election of these respondents, directors of the Florida Central Railroad Company.

VII. Further answering, these respondents admit that it is true that they were re-elected directors by the stockholders of said Florida Central Railroad Company on the 28th day of May, 1877, as alleged in the complainants' bill. That the annual meeting of the stockholders of said company for the election of directors is fixed for the second Wednesday in April of each year, and in the present year occurred on the 11th day of April, 1877, which was duly announced by publication in the usual way, and on which day the meeting of stockholders convened, but adjourned from day to day, awaiting the appointing of a trustee by this honorable court upon a motion then pending, in the place of M. D. Papy, deceased, which motion was set for hearing on the 26th day of April, 1877, at which time counsel representing the interests of the complainants and also the executors of Edward Houstoun, deceased, H. R. Jackson, esq., appeared and opposed the appointing of said trustee, one of the declared objects of which appointment was to qualify a party as such trustee to vote said stock. That after a protracted argument and due consideration of the said motion, this court did appoint Aristides Doggett, esq., such trustee, on or about the 7th day of May, 1877, as will better appear by said order, made part hereof, marked Schedule B.

That after said appointment, and on the said 28th day of May, 1877, the said trustee did attend the stockholders' meeting adjourned to that day, and united with the other stockholders in the election of a board of directors, when these respondents were re-elected, as stated, for the year expiring on the second Wednesday of April, 1878, each 684 one receiving a vote of about 5,046 shares out of a total capital stock of about 5,550 shares, and are now in the discharge of their lawful duties as such directors.

And these respondents, and each for himself, denies and repels the allegation in the complainants' bill that they combined or colluded with said Doggett, as trustee, or otherwise, in any manner or for any purpose, or that they, by such election, have in any manner sought to interfere with the lawful rights of the complainants, or to defeat or impair their equities, as falsely alleged in their said bill of complaint.

That these respondents, in their said last election, as in their previous election, were each qualified and eligible according to law to be elected directors of said company, and that all statements to the contrary are false and unwarranted.

And these respondents having answered so far as they are advised it is material for them to answer as directors, and denying all fraud and combination, pray that complainants' bill may be dismissed, and these respondents go hence with their costs in this behalf expended.

JAMES M. BAKER.
Solicitor for Respondents.

UNITED STATES OF AMERICA,
Northern District of Florida:

James M. Baker, George R. Foster, W. J. Lawton, N. K. Sawyer, J. C. L'Engle, Charles B. Fenwick, Milton S. Littlefield, and Joseph B. Stewart, who being duly sworn, upon their joint and several oaths state that they have read the foregoing answer and know the contents thereof; that the matters therein stated upon their own knowledge are true, and those stated upon information they believe to be true.

M. S. LITTLEFIELD.
CHAS. B. FENWICK.
JAMES M. BAKER.
JNO. C. L'ENGLE.
W. J. LAWTON.
GEORGE R. FOSTER.

Sworn to before me this 17th day July, A. D. 1877.
[SEAL OF THE U. S. CIRCUIT COURT.] PHILIP WATSON, *Clerk*,
By SIMON BAER, *D. C.*

685 SCHEDULE A.

In the circuit court, Duval County.

WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company
vs.
MILTON S. LITTLEFIELD ET AL.

And now came Joseph H. Durkee, the master duly appointed and now in possession of the railroad property involved in the said suit; Frank R. Sherwin, in his own right as a holder of bonds secured by a lien upon railroad property and agent for other holders of said bonds, to wit, Gideon M. Boissevain, Adrian Stoop, and Adrian J. Mildeus, citizens of Amsterdam; and Robert Walker, Edward Lewis, Patrick Houstoun, stockholders and directors of said Florida Central Railroad Company; and with leave of court first had and obtained, demur to it alternate writ issued in said cause, and to the petitions upon which said writ was issued, and for causes of demurrer say that said writ and petition do not state facts sufficient to enable petitioners to a mandamus.

Second. The petition of relator does not set forth a legal title free from reasonable doubts.

Third. The petition of relator expressly avers that its title, if any, is an equitable title.

Fourth. Because the relator's petition shows he has a complete and adequate remedy by a suit at law for damages.

Fifth. Because petitioner avers in his petition for mandamus that it is prosecuting a bill in equity for the redress of its wrongs complained of.

Sixth. Because by laches and negligence petitioner has lost its right to a mandamus, if ever it had any.

Seventh. Because a writ of mandamus does not lie to compel a stockholder of a corporation to vote his stock.

Eighth. On other good and sufficient grounds, apparent upon the face of said writ and petition.

H. R. JACKSON,
H. BISBEE, JR.,
Attorneys for Demurrants.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

H. BISBEE, JR.,
Attorney-at-Law.

686 Personally appeared before me, H. Bisbee, jr., attorney for demurrants, who being sworn says that the demurrer is not interposed for delay.

H. BISBEE, JR.

Subscribed and sworn to before me this 27th day of February, 1877.

R. B. ARCHIBALD, *Judge.*

Upon consideration, it is ordered that the foregoing demurrer be, and the same is hereby, overruled. Exception taken by defendants' attorney, and notice of appeal given. Ten days granted to perfect appeal, with leave to file return to the writ by Wednesday noon next.

March 9, 1877. R. B. ARCHIBALD, *Judge.*

I hereby certify that the foregoing is a true and correct copy of the original on file in my office.

Witness my hand and the seal of the court this 28th day of May, A. D. 1877.

T. E. BUCKMAN, *Clerk.*

687

SCHEDULE B.

In the circuit court, fifth circuit of the United States, northern district of Florida. In equity.

ROBERT J. WASHINGTON
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY, the Western Division of the Western North Carolina Railroad Company, Lawrence P. Bayne, Henry J. Rogers, Thomas L. Clingman, Fanny S. Papy, executrix of the last will and testament of Mariano D. Papy, deceased; Raymond M. Demere, James H. Johnson, and James P. S. Houstoun, as executors of the last will and testament of Edward Houstoun, deceased, and T. Mayhew Cunningham.

Now comes the complainant, by E. M. L'Engle, his counsel, and moves the court for the appointment of a trustee or trustees in the place of Mariano D. Papy, deceased, to hold the shares of capital stock in the Florida Central Railroad Company mentioned in the bill. And came also the defendants the Western Division of the Western North Carolina Railroad Company; Thomas L. Clingham, Lawrence P. Bayne, and Henry Rogers, by Joseph B. Stewart, their attorney, and consented to the granting of the said motion. And came also the defendants Fanny S. Papy, as executrix of the last will and testament of Mariano D. Papy, deceased, and the Florida Central Railroad Company, and made no objection to the granting of the said motion. And came also the defendants Raymond M. Demere, James H. Johnson, and James P. S. Houstoun, as executors of the last will and testament of Edward Houstoun, deceased, and James P. S. Houstoun, in his own right, and T. Mayhew Cunningham, who had made defaults, and after argument of counsel and consideration by the court, it is decreed and adjudged that Mariano D. Papy was, in his lifetime, the trustee of the four thousand three hundred and seventy shares of capital stock in the Florida Central Railroad Company, described as follows, that is to say:

100 shares of said stock, embraced in certificate No. 40, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 41, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 42, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 43, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 44, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 45, standing in the name of Edward Houstoun.
688 100 shares of said stock, embraced in certificate No. 47, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 48, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 49, standing in the name of Edward Houstoun.

100 shares of said stock, embraced in certificate No. 50, standing in the name of Edward Houstoun.
70 shares of said stock, embraced in certificate No. 51, standing in the name of Edward Houstoun.
70 shares of said stock, embraced in certificate No. 57, standing in the name of Edward Houstoun, guardian of Eliza Houstoun.
70 shares of said stock, embraced in certificate numbered 58, standing in the name of Edward Houstoun, guardian of Claudia Houstoun.
20 shares of said stock, embraced in certificate numbered 59, standing in the name of Jas. P. S. Houstoun.
30 shares of said stock, embraced in certificate numbered 79, standing in the name of Edward Houstoun.
3,110 shares of said stock, embraced in certificate numbered 89, standing in the name of Edward Houstoun.

Four thousand three hundred and seventy shares of said stock.

It is further decreed that said trust still subsists for the purposes set forth in the indenture creating it, and for the further purpose of this suit, and that the office of trustee has been made vacant by the death of said Mariano D. Papy.

It is, therefore, further ordered and decreed that A. Doggett, esquire, of the city of Jacksonville, in Duval County, State of Florida, be and he is hereby appointed trustee of the said four thousand three hundred and seventy shares of the capital stock of the Florida Central Railroad Company in the place and stead of the said Mariano D. Papy, to hold the same upon the trusts declared in the indenture mentioned in the bill of complaint in this cause, whereby the said trust was created and the said Mariano D. Papy appointed trustee; and, further, to hold the same for the purposes of this suit and until the further order of this court, and subject to the decrees of Judge Woods in this behalf.

It is further ordered that the decrees pro confesso heretofore taken against the defendants, James P. S. Houstoun, Raymond M. Demere, and James H. Johnson, as executors of the last will and testament of Edward Houstoun, deceased, and against James P. S. Houstoun, in his own right, and against T. Mayhew Cunningham be opened, and that the said defendant be allowed to answer the said bill by the rule day of June, 1877, on the following terms and not otherwise, that is to say, that the said defendants file in this cause with the clerk of this court the above mentioned certificates of shares of said capital stock which were taken from the possession of the trustee, Mariano D. Papy, at the suit of Edward Houstoun, deceased, as set forth in the bill filed in this cause.

(Signed) THOMAS SETTLE, *Judge.*

689 Plea of the Jacksonville, Pensacola & Mobile Railroad Company to the bill of complaint filed in the name of J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, and others, complainants, against the Western Division of the Western North Carolina Railroad Company, the Jacksonville, Pensacola & Mobile Railroad Company, and others, defendants, in the circuit court of the United States for the northern district of Florida.

The defendant, the Jacksonville, Pensacola and Mobile Railroad Company, by protestation not confessing all or any of the matters and things in said bill of complaint mentioned and as therein contained to be true in point of fact or good and sufficient in law, to be more fully answered, pleads thereto, or to so much of said bill as pretends to allege that the complainants are the lawful holders of any papers or obligations of this defendant called bonds or promises to pay money, or bonds or obligations of the State of Florida which are a lawful charge upon this defendant or its franchise and estate, as in said bill alleged; and for plea says that the said bonds, if any such are in fact held by the complainants, were pretended to be created under and by virtue of a statute passed and approved by the legislature of Florida on or about the twenty-eighth day of January, A. D. 1870, entering into a certain statutory contract and agreement between the said State of Florida and this defendant for the exchange of the bonds of the said State of Florida with and for the bonds of this defendant, each to be created and issued under said statute at the rate of sixteen bonds to the mile, of one thousand dollars each, the said State bonds to be issued and exchanged for the said bonds of this defendant, upon certain conditions in said statute contained, the material and contracting portion of which said statute is in the second section thereof, and is in the following words, that is to say:

"In order to aid the Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvements of the State, the governor of the State is hereby directed to deliver to the president of the said company coupon bonds of the State to an amount equal to sixteen thousand dollars per mile for the whole line of railroad owned by or belonging to said Jacksonville, Pensacola and Mobile Railroad Company in exchange for first mortgage bonds of said railroad company of the denomination of one thousand dollars, when the president thereof shall certify upon his oath that the road or parts of road for which he asks for an exchange is completed and in good running order. The said bonds (of the State) shall be of the denomination of one thousand dollars, signed by the governor, countersigned by the treasurer, sealed with the great seal of the State, shall bear eight per cent. interest, payable to bearer. They shall be dated on the first day of January, A. D. 1870, and shall be due thirty years thereafter, and principal and interest shall be payable at such place in the city of New York as the governor shall designate. The coupons for interest shall be payable to bearer, and shall be authenticated by the written or engraved signature of the treasurer."

690 That pursuant to the said statute and the section or portion thereof herein-above quoted, the State of Florida pretended to make and cause to be signed bonds in the name of said State to the amount of four millions of dollars; and pursuant to the same statute, and not otherwise, the bonds of this defendant, or papers called bonds, representing the par value of one thousand dollars each, and the total amount of three million dollars, were pretended to be issued and signed, each bond of this defendant being made payable to the State of Florida and not assignable, and an exchange of bonds was made to the amount of three millions of dollars, the said State delivering three millions of dollars of its said bonds as a consideration and equivalent for three millions of dollars of this defendant's so-called bonds, and for such consideration and no other the State of Florida still holds the said three millions of dollars of said bonds so issued in the name of the defendant, under and by virtue of said statute and statutory agreement aforesaid, and not otherwise.

That since the said exchange of bonds and the receiving of the bonds of this defendant by the State of Florida, under and by virtue of said statute of the 28th day of January, A. D. 1870, the said State of Florida, by its supreme court, hath caused said statute to be declared and pronounced unconstitutional and null and void, and that the same as a matter of fact is not and never was a law or a statute having the force and effect of law in said State of Florida or elsewhere, and that the said papers called bonds of the State of Florida, in complainants' bill mentioned, were created, issued, and exchanged in violation of the constitution of said State, and were not and never were possessed of any legal valdity, and were not and never were the bonds or obligations of the State of Florida, and are not and never were possessed of any value in the hands of the complainants or any other holders of said bonds.

That by reason of said statute being so unconstitutional, null, and void, and by reason of said so-called bonds of the State being so unconstitutional, null, and void, no bonds of the State of Florida, as proposed and agreed by said statute, in fact or in lawful effect, ever were made, executed, and delivered to the defendant, and that no consideration ever was paid or passed to the defendant by the State of Florida in exchange for the so-called bonds of the defendant, so created, issued, and delivered to the State of Florida under and by virtue of said statute, and that the State of Florida holds the said so called bonds of this defendant for no consideration and without authority of law, because of the fact of said statute and the said statutory agreement being in violation of the constitution of the State of Florida, is therefore to be treated as if it had never been enacted, or never had existed for any purpose, and creates no liability whatever against this defendant as a body corporate, and confers no right whatever upon the complainants to have and maintain this suit.

Wherefore this defendant sets up and pleads the fact that said statute is and ever was unconstitutional and void, and the fact that the so-called bonds issued thereunder are and ever were null and void and have been declared to be unconstitutional and void by the supreme court of the State of Florida, and being so void could constitute no lawful agreement or transaction whatever or consideration therefor between the State of Florida and this defendant or any one else whomsoever, in bar of the complainants' bill, or to so much thereof as pretends to allege that the holders of any bonds or obligations of the State of Florida or of this defendant, issued under said statute, or as
691 part of said statutory agreement, are or ever were a lawful demand or charge upon the franchise, property, and estate of this defendant, or for or on account of which the complainants can maintain this suit; and prays the judgment of this honorable court whether this defendant shall be compelled to make any further answer to the said bill, and prays to be hence dismissed, with its reasonable costs and charges, in this behalf most wrongfully sustained.

S. B. STEPHENS,
Solicitor for Defendant.

JAMES M. BAKER, *Of Counsel.*

I hereby certify that, in my opinion, the foregoing plea is well founded in point of law.

JAMES M. BAKER,
Of Counsel.

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

The Jacksonville, Pensacola & Mobile Railroad Company hereby certifies that the foregoing plea is true in point of fact, and that it is not interposed for delay.

In verification whereof it hereto affixes its corporate seal.

Attest:

CHARLES B. FENWICK,
Secretary.

[SEAL JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY.]

Charles B. Fenwick, being duly sworn upon oath, states that he is secretary of the Jacksonville, Pensacola and Mobile Railroad Company, and is familiar with its affairs and transactions; that the matters stated in the foregoing plea are true in point of fact, and that the said plea is not interposed for delay.

CHAS. B. FENWICK, *Sect'y.*

Subscribed and sworn to before me this 23rd day of July, 1877.
[SEAL UNITED STATES COURT, NORTHERN DISTRICT OF FLORIDA.]

PHILIP WALTER, *Clerk,*
By SIMON BAER,
Dep'ty Clerk.

692 (Indorsed:) United States circuit court, northern district of Florida. J. Fred. Schutte, Jan Prins, et al., vs. The Western Division of the Western North Carolina Railroad Company, The Jacksonville, Pensacola & Mobile Railroad Company, et al. Plea of the Jacksonville, Pensacola & Mobile Railroad Company. J. M. Baker, of counsel, S. B. Stephens, solicitor for J., P. & M. R. R. Co.

Received and filed April 20th, 1878.

P. WALTER, *Clerk.*

Filed August 2nd, 1877.

CHAS. H. FOSTER, *Clerk,*
By F. T. MYERS, *D. C.*

693 *Separate answer of the Jacksonville, Pensacola & Mobile Railroad Co., in support of plea in bar.*

United States circuit court, northern district of Florida.

J. FRED. SCHUTTE, JAN PRINS, ET AL.,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Jacksonville, Pensacola & Mobile Railroad Company, et al.

Rec'd and filed April 20th, 1878.

P. WALTER, *Clerk.*

S. B. Stephens, solicitor for the J., P. & M. Railroad Co.

Filed August 2nd, 1877.

CHAS. H. FOSTER, *Clerk.*
By F. T. MYERS, *D. C.*

694 In the circuit court of the United States, northern district of Florida.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS Prins, Heinrich Ulrici, et al.,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Jacksonville, Pensacola & Mobile Railroad Company, et al.

Separate answer of the Jacksonville, Pensacola & Mobile Railroad Company.

The defendant the Jacksonville, Pensacola & Mobile Railroad Company, by protestation, not admitting all or any of the matters of the complainant's bill to be true, as therein alleged, for answer thereto, or to such parts thereof as this defendant is advised it is material for it to answer unto, but at all times saving and omitting the parts and portions of said bill to which this defendant hath filed its plea in bar, and now and hereby answering in support of said plea, and especially excepting from this answer all and every part of the complainant's bill that alleges the complainants to be the holders and owners of any bonds of the State of Florida, or bonds of this defendant, issued under the act of the legislature of the State of Florida, approved January 28th, A. D. 1870, which are a charge upon the property and estate of this defendant, as by it pleaded in bar set forth, answering, says:

I. This defendant admits that the 1st, 2d, 3d and 4th paragraphs of the complainants' bill states what is substantially correct, as mere matters of fact, but does not describe correctly the manner, or with certainty how the matters and things therein alleged occurred, and which defendant is advised are not material to any issue affecting the rights of this defendant in this suit; but defendant reserves the right to state and prove the actual facts in relation thereto, should such hereafter be deemed material to the rights of the defendant.

695 II. It is not true that F. Dibble and associates ever executed any conveyances as are mentioned in the 5th paragraph of complainants' bill; and defendant denies that the complainants have any interest in the conveyances there referred to.

III. It is not true that the defendant obtained from the State of Florida or its governor, Harrison Reed, 4,000 bonds of the State of Florida; but it is true that 3,000 of said bonds were delivered to this defendant, and no more.

IV. It is not true that this defendant ever delivered to the State of Florida 4,000 bonds, of which 3,000 were the bonds of this defendant and 1,000 were bonds issued to the Florida Central Railroad, as alleged in paragraph 7 of complainants' bill. That this defendant never was at any time in possession of, or had any right to be possessed of said 1,000 so-called bonds of the Florida Central Railroad Company, or was ever possessed of any right, title, or interest in or to the same. That this defendant has no knowledge whatever of the bond or paper in the complainants' bill mentioned, marked B, no such paper or bond ever having been in the possession of this defendant.

V. And this defendant, further answering, says it is not true that the Florida Central Railroad, extending from Jacksonville to Lake City, was ever at any time consolidated with the railroad of this defendant, as alleged in paragraph 8 of complainants' bill; and that it is not true that this defendant ever was, at any time, the owner of a continuous line of railroad from Jacksonville to Quincy, and that any and all statements and assumptions to that effect in complainants' bill are wholly devoid of truth.

And this defendant most positively denies the further statement
696 in said 8th paragraph of complainants' bill that the said
1,000 papers, called bonds, were issued "by the joint action of said Houstoun and said other stockholders in order to enable the said Jacksonville, Pensacola & Mobile Railroad Company (this defendant) to obtain from the governor the said Florida State bonds (so called), and with the understanding and agreement that said bonds should be sold, and said Littlefield should make payment for the stock purchased from said Houstoun and said other stockholders out of the proceeds," because no such transaction ever occurred to which this defendant was a party or had any knowledge whatever, and that the statement of the same in complainants' bill is a mere pretense for the purposes of this suit.

That, as before stated, this defendant never, at any time, received or delivered, touched or handled a bond, or promise to pay in the shape of a bond, issued by or in the name of the Florida Central Railroad Company, and that any and all attempts to impose upon this defendant any such transactions or dealings with the Florida Central Railroad Company, or any responsibility therefor, is false and fraudulent.

And, further answering, this defendant says that the pretended deed of trust mentioned in the same paragraph of complainants' bill in the name of this defendant, pretending to cover the Florida Central Railroad, was a desperate adventure without authority of law or the least regard to facts, and was necessarily abandoned by those who conceived the scheme, because no lawful right to execute or create such a trust ever existed, and the said trust deed was a mere nullity.

VI. That it is true the bonds, or papers called bonds, of the State of Florida, to the number of 3,000, which were delivered to persons acting in the name of this defendant, were sent to England, where they were by some means disposed of for a trifling consideration to persons unknown to this defendant, and may have been to the complainants and their associates, as set forth in the 9th paragraph of complainants' bill, but this defendant denies that said bonds sold for "eighty-one per cent. gold, in United States coin," as alleged in said bill. But this defendant avers that whatever the said bonds brought, either in gold or in currency, their proceeds were of no use or benefit to this defendant.

697 VII. That the statement in the 10th paragraph of complainants' bill, that "the said Jacksonville, Pensacola & Mobile Railroad Company (this defendant) represented to the public in England, Holland, Germany, and France that said bonds were the veritable and lawful bonds of the State of Florida; that the interest thereon would be punctually paid by said State; that there was provided by law of said State, as security for the payment of said bonds, a lien on the whole line of railroad from Jacksonville, west, which line was represented to be owned by the Jacksonville, Pensacola & Mobile Railroad Company (this defendant) alone," is wholly and absolutely destitute of truth. That no such representations were made by any corporate act or authorized by publication on the part of this defendant, as known to its records or corporate proceedings.

And this defendant, further answering, states that the matters of fact as to the ownership of the road "from Jacksonville west," or the owner-

ship of the Florida Central Railroad by this defendant, would involve matters and acts of notoriety so easy of access to the complainants or to any one else choosing to make inquiry with a view to the purchase of bonds issued by or secured upon such a line of railway, that the statement or publication of a falsehood so palpable could and would deceive no one, or secure any advantage or good results to this defendant by making or causing to be made any such misrepresentations. That the representations made or caused to be made, if such be true, by persons in England, Holland, France, or Germany, who were speculating in the so-called bonds of the State of Florida, at reduced and varying prices, to affect the market one way or the other, were matters
and acts over which this defendant could exercise no restraint,
698 even had it been advised thereof. But be the representations referred to what they may, or by whomsoever made, they were not the acts or representations of this defendant.

And, further answering, this defendant says, as to the bonds referred to as issued by the State of Florida, that it is advised they were engraved and printed documents, signed by the governor of Florida, countersigned by the treasurer of Florida, and were issued under the great seal of said State, and that those who bought them were governed by what the said sealed documents themselves proclaimed upon their face, and not upon the faith of the representations of this defendant, had it made any, or its agents, whomsoever they were; and that if its agents made false representations, pretending that it owned a line of road which it did not own, it was their wrongful act, for which this defendant, as a body corporate, is not responsible.

VIII. This defendant has no knowledge as to what bonds of the State of Florida the complainants and their associates may own, or from whom they obtained them, or for what consideration, but this defendant does know, and so avers and charges, that the complainants never purchased and are not in possession of any of the bonds of this defendant, and never gave any credit on account of any bonds issued by this defendant. And this defendant utterly denies the right of the complainants to have the railroad of this defendant seized and sold to pay said bonds of the State of Florida, or for any other purpose.

That as between the complainants and this defendant, as a body corporate, there is not and never was any privity of relation whatever, by contract or otherwise, and that the complainants are total strangers to the affairs of this defendant. That the complainants are creditors of the State of Florida, if of any one, and not the creditors of this defendant, and that their demands upon this defendant, as alleged in their bill, are without the authority of law.

IX. This defendant has no knowledge of the matters alleged in the
12th paragraph of the complainants' bill, as to the parties and
699 persons who dealt, or the manner of their dealing, in the said Pensacola & Georgia and Tallahassee Railroad bonds therein referred to. But this defendant denies that there was any trust created between this defendant and the State of Florida, or between the complainants and the State of Florida, or a contract or agreement of any sort between the complainants and this defendant by the said statute of the 28th day of January, A. D. 1870, as pretended, and alleged in the complainants' bill.

X. This defendant has no knowledge of the matters and things stated in the 13th paragraph of the complainants' bill, and therefore neither admits or denies the same.

And as to the matters alleged in the 14th paragraph of the complainants' bill, this defendant denies the same, and charges that the said allegation perverts and misrepresents the real facts in relation thereto; and this defendant especially denies the right of the governor of Florida to seize and sell the railroad of this defendant for any purpose, and further and again denies that the said Florida Central Railroad ever formed part of or was consolidated with the railroad of this defendant, as is repeatedly and falsely asserted and pretended in said bill.

XI. This defendant is advised, and admits the fact to be true, as alleged in the 16th paragraph of complainants' bill, that a scheme called "the memorandum plan," was concocted, signed, and executed at Savannah, Georgia, on or about the 12th day of January, A. D. 1877, whereby Frank R. Sherwin and Charles D. Willard, assuming to represent the complainants in this suit, and all other alleged holders of the Florida State bonds on the one part, and Henry R. Jackson and Charles H. Simonton, acting on the part of certain parties, who allege themselves to be the holders of a class of bonds known as Pensacola & Georgia and Tallahassee Railroad bonds, on the other part, united together for the declared purpose of "reorganizing" the railroad of this defendant and the said Florida Central Railroad, upon the principle and
700 division of allowing one-third to the complainants and their associates and keeping two-thirds for the reorganizers, upon a forced sale to be made by the governor of Florida of both of said railroads under an agreement, made in advance, to receive in payment therefor the unconstitutional, null, and void bonds issued by the State of Florida under said unconstitutional and void statute of the 28th day of January, A. D. 1870, in full both of principal and accrued interest, as cash at said sale, to be paid by certain particular persons agreed upon in said scheme, as will better appear by said "memorandum plan" marked D, filed with and made part of the complainants' bill.

But this defendant charges the fact to be that said "memorandum plan" was the result of a scheme and conspiracy entered into by the said Sherwin, Willard and others, for the purpose of appropriating the franchise and property of this defendant under color of representing the alleged rights of the complainants, from whom they had in truth no authority whatever to act, but assumed such authority in order to induce the governor of Florida to co-operate with them and their associates in the said proposed "memorandum plan," and to continue the seizure of the railroad of this defendant and the Florida Central Railroad, which they succeeded in doing, and then used the evidence of seizure in official form to induce the complainants and others to grant to them, the said Sherwin and Willard, the power and authority which they pretended to have in the months of December, 1876, and January, 1877, and, by such false pretences and fraudulent scheming, to usurp and appropriate the franchise and property of this defendant as aforesaid.

XII. This defendant is advised it has no interest in the matters alleged in the 17th paragraph of the complainants' bill, and therefore neither admits or denies the same except to further deny the assumption therein contained that the said Florida Central Railroad ever was consolidated with or formed a part of the railroad of this defendant.

XIII. This defendant, further answering, denies the matters
701 and things pretended and alleged in the 18th, 19th, and 20th paragraphs of complainants' bill, as therein alleged, and charges the same to be false or perverted in every respect.

That the statement in the 18th paragraph of said bill tending to show that the suit therein mentioned against the Florida Central Railroad

Company was intended to subject the franchise and property of that company to the payment of State bonds chargeable to it which were issued by the State of Florida to this defendant or for its use and benefit, are wholly false and fraudulent, because no such bonds were ever issued to or received by any one for, or applied to its use, and that no one ever had the right or authority to receive or receipt for any bonds issued or pretended to be issued to or for the Florida Central Railroad Company, to be used by this defendant in any respect.

That the suits referred to were fraudulent and collusive, there being no real defense made for the Florida Central Railroad in point of fact. That those whose duty it was to defend the said suits and set up the real facts in the premises, failed and neglected to do so, but on the contrary were in secret collusion with those prosecuting said suits, and that those who attempted to make real defense thereto in good earnest and to set up the material facts in the premises, to wit, E. M. L'Engle, esq., and others, were denied the right to do so. That the complainants were not parties to said suits or either of them, or lawfully bound thereby, and hence can claim no benefit from said pretended adjudications in any respect, as in their said bill alleged, because they were not parties thereto.

XIV. This defendant is not advised of any surveys being procured by the complainants as to the condition of the railroad of this defendant, as alleged in the 21st paragraph of their bill, and denies the right of the complainants, or those assuming to represent them, to interfere or intermeddle in the matter of repairing the railroad of this defendant, and denies the right of the complainants to ask that the governor of Florida be created a receiver for that purpose, either general or special.

That the railroad of this defendant has been in the usurped
702 possession of the governor of Florida or some other adverse control for about six years, without the least regard to the lawful rights of this defendant. That the railroad of this defendant was in good condition and earning money when so seized and taken possession of by the governor of Florida and the other successive custodians referred to, its net earnings amounting to about $140,000 per annum, all of which has been squandered and lost, without even keeping the railroad of this defendant in repair, while the governor of Florida still holds possession thereof, and the complainants now ask that he may be permitted, not only to appropriate the earnings of the railroad of this defendant, but also contract debts to an indefinite amount, by the appointment of the governor as a special receiver, clothed with special authority for that purpose, which this defendant is advised, and so charges, is contrary to law.

XV. This defendant has no knowledge of the matters alleged in the 22d, 23d, 24th, 25th and 26th paragraphs of complainants' bill, except as therein contained, but denies that it ever had any dealings, as a body corporate, with the Western Division of the Western North Carolina Railroad Company, and denies that S. W. Hopkins & Co., Governor Harrison Reed, George W. Swepson, M. S. Littlefield, or anybody else, as alleged and pretended in complainants' bill, ever had any lawful right to use, appropriate, or pledge any assets belonging to this defendant, or the proceeds thereof, to the payment of any debt to the said Western Division of the Western North Carolina Railroad Company, as pretended in complainants' bill, and this defendant avers that any and all such uses of its assets and property, if any such ever occurred (and of which it has no knowledge, as aforesaid), were fraudulent and illegal, and in no manner bound or affected the rights of this defendant.

That this defendant, as before stated, never had any dealings with the said Western Division of the Western North Carolina Railroad Company, and never at any time received, handled or used any bonds or promises to pay of the said Florida Central Railroad Company, and that any and all allegations to that effect, whenever and however made, are false and wholly untrue.

703 XVI. This defendant has no knowledge of the matters and things set up and alleged in the supplemental bill filed by the complainants, and therefore neither admits or denies the same.

And this defendant having fully answered so far as it is advised is material as to matters not covered by its said plea in bar to the complainants' title to or lawful interest in the bonds described in their said bill, and as to such matters of title, still relying on its said plea and denying all fraud and combination, and denying all rights, titles and equities on the part of the complainants, prays that their said bill may be dismissed and that this defendant may go hence with its costs in this behalf wrongfully sustained.

S. B. STEPHENS,
Solicitor for the J., P. & M. R. R. Co.

UNITED STATES OF AMERICA,
Northern District of Florida:

The Jacksonville, Pensacola & Mobile Railroad Company certifies that the foregoing answer is true to the best of its knowledge and belief, and in verification thereof hath caused its corporate seal to be hereto affixed and duly attested by its secretary this 14 day of July, 1877.

[SEAL.]

Attest:

[J., P. & M. R. R. SEAL.] (Signed) CHAS. B. FENWICK,
Secretary.

704 *Answer of Edward M. L'Engle.*

In the United States circuit court, fifth circuit, northern district of Florida. In equity.

J. FRED SCHUTTE, JAN PRINS, HEINRICH Ulrici, and others, complainants,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Florida Central Railroad Company, and others, defendants.

705 In the United States circuit court, fifth circuit, northern district of Florida. In equity.

J. FRED SCHUTTE, JAN PRINS, ADRIANUS Prins, Heinrich Ulrici, Elias Fuld, and others,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Florida Central Railroad Company, Edward M. L'Engle, and others.

The answer of Edward M. L'Engle, one of the defendants, to the bill of complaint filed in the above stated cause.

This defendant, saving to himself all manner of benefit or advantage of exception that can be had to the many errors and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says as follows:

That under and by virtue of an act of the legislature of the State of Florida, entitled "An act to incorporate the Atlantic and Gulf Central Railroad Company, and for other purposes," approved January 24th, 1851, and of the provisions of another act of the legislature of the State of Florida, entitled "An act to amend an act to incorporate 706 the Florida, Atlantic and Gulf Central Railroad Company," approved January 7th, 1853, the Florida, Atlantic and Gulf Central Railroad Company was incorporated, and by that name the stockholders and members of said company, their successors and assigns, were authorized "to construct and operate a railroad from some tributary of the Atlantic Ocean, within the limits of the State of Florida, having a sufficient outlet to the ocean to admit of the passage of sea steamers; thence running through the State, in the most eligible direction, to some point, bay, arm, or tributary of the Gulf of Mexico, west of the Apalachicola River, in West Florida, having a sufficient outlet for sea steamers."

That, in accordance with the rights conferred by these acts, said company constructed a railroad from the town of Jacksonville, in Florida, to the town of Lake City, in said State, and operated the same for a number of years, and surrendered their right to build any portion of the line west of Lake City.

That, in accordance with the authority granted by an act of the legislature of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, 1855, the said Florida, Atlantic and Gulf Central Railroad Company, for the purpose of constructing the railroad authorized by its charter, issued a large amount of bonds.

That, under the provisions of the said act, and the contract therein expressed, these bonds constituted a first lien or mortgage on the said road-bed, iron, equipments, workshops, depots, and franchise of the company.

That, by said act and contract, it was provided that on the failure of the company to pay the sinking fund of one per cent., the trustees named in the act should take possession of and sell the said road and all the property of said company.

That said company failed to comply with all the requirements of the statute aforesaid, and the trustees took possession of the road and sold it, in conformity with the statute and contract aforesaid, at public auction, on the 4th of March, 1868.

That, at said sale, William E. Jackson and his associates became the purchasers of said road and other property of said company.

That the said purchasers, by an act of the legislature of the State of Florida, approved July 29th, 1868, were vested with the powers and franchises granted to the Florida, Atlantic and Gulf Central Railroad Company, by the act aforesaid, entitled "An act to amend 707 an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company," approved January 7th, 1853, and they and their successors and assigns were authorized and empowered to exercise the said powers and franchises so far, and only so far, as they appertained to the railroad constructed, as aforesaid, by the Florida, Atlantic and Gulf Central Railroad Company, from Jacksonville to Lake

City, in Florida, and were made a body politic and corporate under the name of the "Florida Central Railroad Company."

That the said road, if a public work at all, is and has long been a completed public work.

That the Florida Central Railroad Company, under its charter (which charter is a contract between the individual stockholders upon the one side, and the State and the corporation on the other side), is invested with no functions, rights, or powers, except such as pertain to a completed road; and that, in point of fact, the sole purpose for which the corporation exists, and for which the charter was granted, is the operation, control, management and maintenance of a completed line of railroad extending from Jacksonville to Lake City, aforesaid.

That the defendant is a stockholder in said Florida Central Railroad Company and a member of said corporation, and is also a stockholder in the Jacksonville, Pensacola and Mobile Railroad Company in said bill mentioned, and a member of that corporation.

That on the 20th of March, 1869, the Pensacola and Georgia Railroad Company was a corporation organized and existing under the laws of the State of Florida, with a line of railroad completed from Lake City, Florida, to Quincy, Florida, and engaged in the business of common carriers.

That on the day aforesaid, the Tallahassee Railroad Company was a corporation, existing under the laws of the State of Florida, with a line of railway completed from Tallahassee, Florida, to St. Mark's, Florida, and engaged in the business of common carriers.

That said corporations had constructed their roads between the terminal points above mentioned under the provisions of their charters and of the act of the legislature of Florida known as the internal improvement act, and had surrendered all rights to build any greater length of railroad under the provisions of said last-mentioned act than they had already built; and said railroads, if public works at all, were and had long been completed public works.

708 That both of said railroad companies accepted and issued bonds, under the provisions of the act of the legislature of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, 1855, and became subject to all the provisions of said act.

That on the 20th of March, 1869, the trustees of the internal improvement fund of the State of Florida, under the authority vested in them by the third section of the said act of the legislature of the State of Florida, upon and because of a failure on the part of the two last-mentioned railroad companies to provide and pay the sinking fund as required in said act, on the bonds issued by the said companies, duly sold at public sale the aforesaid two companies' railroads and all the property of each of said companies of every kind for the sum of $1,415,000; and at that sum one Franklin Dibble and his associates became the purchasers of the said railroads and of all the property of each of said two companies.

And that, on the 8th day of April, 1869, the said trustees of the internal improvement fund of the State of Florida made and delivered to said purchasers deeds of conveyance of said two railroads and property, which deeds were duly recorded in the office of the clerk of the circuit court of Leon County, Florida, on the 22d and 23d days of October, A. D. 1869.

That the purchasers aforesaid paid the said trustees $960,000 on account of the purchase money of said two roads in first mortgage bonds of said companies (issued under the said act of January 6th, 1855), at the par value thereof, and the said purchasers received credit therefor.

That the remainder of said purchase money never has been paid, nor the payment thereof in any manner secured, as this defendant is informed and believes.

That on the 24th of June, 1869, the legislature of Florida passed an act entitled "An act for the relief of Franklin Dibble, E. M. Cheney and their associates, purchasers of the railroad from Tallahassee to St. Mark's, and of the railroad from Quincy to Lake City," and incorporating the Tallahassee Railroad Company, by which the said purchasers and their associates were created a body corporate under the name of the Tallahassee Railroad Company, and were vested with like powers, franchises and privileges as were granted to the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company by the acts incorporating said companies.

709 That on the 24th of June, 1869, by an act of the legislature of Florida, approved on that day, entitled "An act to perfect the public works of this State," and by an act amendatory thereof, approved January 28th, 1870, a corporation called the Jacksonville, Pensacola and Mobile Railroad Company was created, empowered to build and operate a railroad from Quincy to Pensacola in said State, and to consolidate its road or line of intended road with those of the beforementioned Tallahassee Railroad Company, and of the said Florida Central Railroad Company, and to exercise other powers and privileges.

That the Tallahassee Railroad Company, already mentioned, and the said Jacksonville, Pensacola and Mobile Railroad Company, as this defendant is informed and believes, did, in the manner provided for by said last-mentioned act, consolidate their said roads under the name of the latter company, and redistributed the stock.

But the Florida Central Railroad Company never accepted any of the provisions of the said last-mentioned acts, and neither that company nor its railroad has ever been consolidated with the Jacksonville, Pensacola and Mobile Railroad Company or its road, or with the Pensacola and Georgia Railroad Company or its railroad, or with the Tallahassee Company or its railroad, or with any other railroad or company by whatever name called.

This defendant denies that Milton S. Littlefield or other persons concerned in the management of the Jacksonville, Pennsacola and Mobile Railroad Company ever had any authority to treat the line of railroad between Lake City and Jacksonville, Florida, known as the Florida Central Railroad, as the property of the Jacksonville, Pensacola and Mobile Railroad Company, and as constituting a portion of that company's line of railroad, though it is true that said Littlefield, during a portion of the twelve months that he was president of the Florida Central Railroad Company, wrongfully permitted its earnings to be misappropriated and diverted from the use of that corporation.

This defendant denies that the Jacksonville, Pensacola and Mobile Railroad Company has, since the pretended consolidation or at any other time, received the earnings of the Florida Central Railroad Company as its own.

This defendant denies that the Florida Central Railroad Company has at any time been without a complete, substantial, and perfect organization, in fact, separate and apart and distinct from any other organization by whatever name called.

710 He denies that said company has, during the time alleged, been under the control or management of the Jacksonville, Pensacola

and Mobile Railroad Company. He alleges, on the contrary, that during a portion of said time (to wit, from and after the 12th day of December, 1870, until about the 13th day of May, 1871) the Florida Central Railroad Company managed and controlled the Jacksonville, Pensacola and Mobile Railroad; that is to say, the railroad from Lake City to Quincy and St. Mark's, as lessee thereof, and that during other portions of said time the Florida Central Railroad was managed by its own officers, separate and distinct from any other organization, and that if it was during any portion of time managed by the officers of the Jacksonville, Pensacola and Mobile Railroad Company, as a portion of that company's road, or otherwise than as a distinct corporation, it was by the wrongful connivance of Milton S. Littlefield during the time from April, 1871, to April, 1872, that he was president of said Florida Central Railroad Company.

This defendant denies that at the time said securities were exchanged, or immediately thereafter, the Jacksonville, Pensacola and Mobile Railroad Company was using, occupying, or enjoying as part of its own road any portion of the line of railroad between Jacksonville and Lake City, and he denies that it was then or ever has been officered by the Jacksonville, Pensacola and Mobile Railroad Company, but he admits that for a short time it was managed by the latter company.

And he alleges that if any contracts or business affecting the railroad from Lake City to Jacksonville were made or done by said Milton S. Littlefield, or any other person, in the name of the Jacksonville, Pensacola and Mobile Railroad Company as one corporation with the other, it was a fraud upon the rights and interests of the Florida Central Railroad Company and of the stockholders therein. While the two roads were operated by the Jacksonville, Pensacola and Mobile Railroad Company the interest of each company was kept separate and apportioned by the Jacksonville, Pensacola and Mobile Railroad Company. The operation of the entire line was by understanding of both companies, and the separate existence of each was well understood. It was never contended or understood that the Jacksonville, Pensacola and Mobile Railroad Company operated the entire line as its own road, or as one corporation, by consolidation or otherwise.

This defendant denies that in the year 1871, or at any other time, the Jacksonville, Pensacola and Mobile Railroad Company conveyed
711 the line of railroad from Lake City to Jacksonville to trustees as alleged, but avers that on or about the 2d of October, 1871, Milton S. Littlefield, without authority of the stockholders first had and obtained, as this defendant is informed and believes, executed, as president of the Jacksonville, Pensacola and Mobile Railroad Company, a lease of said company's road for the term of two years to Converse L. Chase and F. H. Flagg, for the purposes specified in said lease; among which were that they should receive the income and profits of said road and apply the same to the payment of certain specified indebtedness thereof, and to the extension of said road westward.

That under said lease one J. H. Gardiner was appointed superintendent of said road, and that under color of said lease the said C. L. Chase, F. H. Flagg and J. H. Gardiner assumed, with the wrongful consent of said Littlefield, its president, the management and control of the Florida Central Railroad, and received its income, and applied it, or a portion of it, as this defendant is informed and believes, to other purposes than those of the Florida Central Railroad Company.

This defendant denies that the said acts of said Littlefield, Chase, Flagg and Gardiner, and their confederates, and their possession of the

Florida Central Railroad was without any interference on the part of any *bona fide* stockholders of the said company. He denies that no holder of shares of stock in the Florida Central Railroad Company took any steps to prevent the consummation of the acts and designs mentioned in paragraph VIII of the bill in this cause. And he denies that the stockholders of the Florida Central Railroad Company remained inactive and acquiesced as stated.

On the contrary, this defendant alleges the facts to be that he and other stockholders did dissent therefrom, and expressed their dissent by vigorous suits in court, viz, this defendant, by his suit in the circuit court of the State of Florida for Duval County, a copy of the complaint in which is hereto attached as a part of this answer, and marked Exhibit A, (in which action he obtained an injuction which still stands in force), and by a similar suit brought by this defendant in Columbia County, Florida, wherein he caused the said railroad to be placed in the hands of a receiver, where it remained several months; and by a suit brought by this defendant in Leon County, Florida.

Francis P. Porcher, another stockholder, expressed his dissent by a suit brought in the United States circuit court, northern district of
Florida, by his attorney, this defendant (who was also at the
712 same time the attorney-at-law for other non resident and dis-
senting stockholders), wherein a writ of injunction was awarded.
All of these suits were for the purpose of maintaining the integrity and rights of said Florida Central Railroad Company as a separate and distinct corporation, and none of them have been dismissed, but all are still pending.

This defendant, as counsel for the said corporation, also expressed his dissent, and the dissent of the corporation, on the 8th February, 1871, by a letter written for the corporation to a banking house in Amsterdam, Holland, exposing and protesting against the frauds which had been practiced upon the corporation, a copy of which letter is hereto attached, marked Exhibit B.

The corporation itself expressed its dissent to the uses which had been made of its bonds and its right to control them by resolutions passed by its directory on the 21st of November, A. D. 1870, a copy of which is hereto attached, marked Exhibit C. The bonds mentioned in said exhibit as bonds signed by G. W. Swepson, president, and H. H. Thompson, treasurer, are the same bonds which, in the bill in this cause, are alleged to have been delivered to the State of Florida. And even the Jacksonville, Pensacola and Mobile Railroad Company expressed by resolutions, passed by its directory December 10th, 1870, its dissent to the uses which had been made of its bonds and credit by its President, Milton S. Littlefield. A copy of said resolutions is hereto attached, marked Exhibit D.

Defendant says that Milton S. Littlefield, himself, who owned, as is alleged, the majority of the stock of said Florida Central Railroad Company, did not acquiesce in any pretended consolidation of said Company, or pretend that any consolidation had been made or attempted, but on the contrary asserted the separate and independent existence of said corporation. In corroboration of this allegation this defendant refers to an agreement in writing, under seal, made by said Littlefield with J. P. Sanderson on the 17th day of May, 1870, wherein said Littlefield covenanted in these words: "That he will secure the said J. P. Sanderson the position of vice-president in the Jacksonville, Pensacola and Mobile Railroad Company for the term and period of five years, or as president thereof, as the said Littlefield may desire, and to pay to

said Sanderson the sum of $10,000 per annum for his services in that position; and the said Littlefield further covenants and agrees to secure to said Sanderson the position of president of the Central Railroad Company during the same period, unless said Company
713 shall sooner be consolidated with the aforementioned company,
in which case the said Sanderson shall have the position aforesaid, of the whole line of road from Jacksonville to Mobile."

For the same purpose this defendant refers to an affidavit made by said Littlefield on the 12th day of September, 1873, before J. E. Townsend, clerk of the United States circuit court for the northern district of Florida, and filed in said court, the cause wherein James E. Searls, for himself and others, is the complainant, and the Jacksonville, Pensacola and Mobile Railroad Company, J. C. McGehee, trustee, Milton S. Littlefield and others are the defendants; in which affidavit the said Littlefield uses the following language: "That in the month of June, 1869, the legislature of the State of Florida, by its enactments, authorized the consolidation of the Tallahassee Railroad Company and the Pensacola and Georgia Railroad Company in one road and corporation known as the Tallahassee Railroad Company. That the due and proper organization was made and had by the purchase of said roads under the said act, and the Tallahassee Railroad Company, in virtue of its said organization, operated said road as a new corporation until the spring of 1870, when in accordance with a power and authority contained in the charter of the said The Jacksonville, Pensacola and Mobile Railroad Company, granted in the month of June, 1869, the said The Tallahassee Railroad Company and the Jacksonville, Pensacola and Mobile Railroad Company were consolidated as the Jacksonville, Pensacola and Mobile Railroad Company, and has since been operated as such corporation. That this affiant had no knowledge or participation in any of the frauds alleged to have been perpetrated; never owned any stock in the old Tallahassee Railroad Company, nor in the Pensacola and Georgia Railroad Company, but did in good faith and for a valuable consideration, in the fall of 1869, purchase stock in said The Tallahassee Railroad Company after its organization, as aforesaid, and held the same at the time of its organization with the said Jacksonville, Pensacola and Mobile Railroad Company, and still owns the same. That the said Jacksonville, Pensacola and Mobile Railroad Company commences at Lake City, in the county of Columbia, in said Florida, and is completed to the Chattahoochee River, in the county of Gadsden, in said State."

And for the same purpose this defendant refers to a letter written by said Littlefield to this defendant, under date of October 28th, 1873, a copy of which is hereto attached, marked Exhibit E.

714 This defendant further says, that the State of Florida, in a bill of complaint filed by it in the Supreme Court of the United States in December, 1873, against Edward C. Anderson and others, admitted and asserted the separate and independent existence of the Florida Central Railroad Company and its railroad, as will appear on reference thereto.

Defendant says, that in the year 1874 the circuit court of Florida for Duval County, in an action brought by the State of Florida against the Florida Central Railroad Company and others, made a decree adjudging that the Florida Central Railroad had been and was consolidated with the Jacksonville, Pensacola and Mobile Railroad Company, which decree being appealed from by the Florida Central Railroad Company in that respect was reversed by the supreme court of Florida, in the year 1875, since which no person or court has asserted or attempted to maintain that the Florida Central Railroad Company or its railroad is, or has ever been, consolidated with or merged into any other corporation or railroad, nor has the State of Florida asserted any such position.

Further answering, this defendant says that he is, and for more than six years has been, a bona fide holder of stock in the Florida Central Railroad Company.

That on the 9th day of April, 1873, which was the regular day for the annual meeting of stockholders of the Florida Central Railroad Company, a meeting of stockholders convened at Tallahassee, Florida, the duly appointed place of meeting, and adjourned from day to day. At this meeting there were represented more than a majority of the shares of the capital stock of said company, the whole number of its shares being 5,550.

That Edward Houstoun, of Savannah, Georgia, was the legal holder of about 4,410 shares, which stood in his name on the books of the company, and which he acquired and held in the manner hereinafter stated.

That this defendant was present in said meeting as a stockholder, and that one Charles E. Dyke, of Tallahassee, appeared there and presented the duly executed and regular power of attorney of said Edward Houstoun, to vote the said about 4,410 shares of stock, which power of attorney was recognized and admitted to be obligatory upon the meeting and the company.

That said meeting adjourned on the 13th of May, 1873, subject to the call of the managing director, who was this defendant.

715 That on the 27th day of October, 1873, the stockholders of said company again convened in Tallahassee, at the call of the managing director, and adjourned from day to day till the 30th day of October, 1873, when a large majority of the stock being represented, and Edward Houstoun being there by Charles E. Dyke, his proxy, an election was held for nine directors to serve during the current year, which resulted in the choice of Charles E. Dyke, P. Houstoun, R. H. Gamble, E. Lewis, Edward Houstoun, F. F. L'Engle, B. Williams, T. Hartridge, and this defendant.

That at a meeting of said nine directors, held on the same day, this defendant was elected president of said company, and George R. Foster was elected its secretary and treasurer.

That said railroad and all the property of said company remained in the possession of this defendant as president until about the 14th of April, 1874, when they were seized by J. C. Greeley, a receiver, appointed by the circuit court of Florida, for Duval County, from whom the same were taken by Robert Walker, a receiver appointed by the Supreme Court of the United States. They remained in said Walker's possession until June, 1876.

Defendant further says that no legal and valid election of directors of said company was held after the 30th of October, 1873, until the time next stated, but the directors and other officers then elected remained in office under the charter until their successors were qualified.

That on the 15th day of March, 1877, at an election of directors for the then current year, held by stockholders under a peremptory writ of mandamus, awarded by the circuit court of Florida for Duval County, a copy whereof is hereto attached, marked Exhibit F, the following persons were elected directors, viz, M. S. Littlefield, E. M. L'Engle, J. C. L'Engle, W. J. Lawton, N. K. Sawyer, G. R. Foster, J. M. Baker, J. B. Stewart, and C. B. Fenwick.

By these directors this defendant was elected president and Charles

B. Fenwick secretary and treasurer of the Florida Central Railroad Company, and the said directors, president, and secretary and treasurer, continued to hold and exercise their said offices by virtue of said election until the 28th day of May, 1877, when, as has been already stated, another election was had of directors for said company.

This defendant denies that the judgment in mandamus of the circuit
court of Florida, aforesaid, was procured by fraud, and denies
716 that no bona fide stockholders were parties to said proceeding,
but alleges the contrary of both assertions to be true. But whether the said allegations be true or untrue can be of no interest to the complainants, none of whom are, or claim to be, stockholders in said Florida Central Railroad Company, or even citizens of the State of Florida. This defendant fails to perceive any right that holders of even bona fide undisputed bonds would have to impeach the regularity of the company's organization. He claims that only stockholders can have such standing in court as may entitle them to be heard on that point, there being no allegation of waste by such organization, and of insufficiency of the property in consequence thereof to pay bonds.

Further answering, this defendant says as to the allegations of paragraph of said bill numbered XVII, that during the year 1875 one Robert Walker, at that time receiver of the United States Supreme Court, in charge of the Florida Central Railroad, and a few other persons claiming to be stockholders in the said corporation, and to represent a majority of its whole stock, met as stated, and pretended to elect the persons named in said paragraph as directors of said company. But defendant denies that he ever accepted such election, and he believes that some others of those named refused to accept the office or meet as directors under said election. And this defendant denies that said election was legal or valid, and he denies that said directory ever had any existence in fact, or that the said persons ever exercised any corporate functions. On the contrary, this defendant asserts the facts to be, that at the time the said meeting was held, Edward Houstoun, who was a trustee in fact of more than four-fifths of the capital stock of the Florida Central Railroad Company, and in whose name the said large majority of the stock stood on the books of this company, had departed this life, and no person was authorized to vote said stock. But the executors of said Houstoun, who lived in Savannah, Georgia, assumed the right to authorize one James L. Taylor, of Tallahassee, to vote the stock which stood in the name of their testator, and this they did, although they had not taken up said stock as assets of their testator, and claimed no right, title, or interest herein. The said Taylor thereupon undertook to represent, and was allowed by those participating in the meeting to represent and vote, without right to do so, 4,410 or 4,370 shares of stock standing in the name of Edward Houstoun.

This defendant further states, on information and belief, that the
books and other records of said corporation had gone into said
717 Robert Walker's possession as receiver aforesaid, and he re-
tained possession of them after June, 1876, and still retains and withholds them on the false pretense that he is the legally authorized representative of the corporation, as this defendant is informed and believes.

This defendant further says the said Edward Houstoun acquired and held the said 4,410 shares of capital stock, and they were situated and affected in this manner, viz: Milton S. Littlefield purchased from Edward Houstoun about 1,300 shares of capital stock in the Florida Central Railroad Company, and about $103,000 of railroad bonds, and gave his obligation in writing, amounting to about $163,000, therefor. To secure payment of this obligation, Houstoun retained possession of the bonds and of the 1,300 shares of stock, and Littlefield, for further security, deposited with him the certificates for about 3,110 other shares of stock in the Florida Central Railroad Company, owned by said Littlefield, which stock and bonds said Houstoun was to hold till he should be paid. Houstoun caused the registry of all the shares of Littlefield's stock to be changed to himself, and new certificates to be issued to him therefor. This contract is evidenced by a writing dated May 13th, 1870, of which a copy is hereto attached, marked Exhibit G.

About the 13th of April, 1871, said Littlefield caused the said obligation to be paid, and instructed said Houstoun to transfer said stock and deliver said certificates to S. W. Hopkins & Co., said Littlefield's agents. But said Houstoun delivered the certificates to one Mariano D. Papy instead, and constituted him, by indenture, a trustee to hold said stock for the purposes declared in the trust. A copy of said indenture is hereto attached, marked Exhibit H.

Said Houstoun, however, although he delivered the certificates of the stock to said Papy, retained the registry thereof in his own name, and assumed to control and vote the shares of stock embraced in the certificates until his death, in the month of , A. D. 1875.

Said certificates of stock being in one of the banks of Savannah, from which said Papy had never removed them, and said Papy being in said city of Savannah in July, 1872, he was arrested under a writ of ne exeat, issued at the suit of Edward Houstoun by the superior court of Chatham County, in Georgia, the ostensible purpose of said suit being to prevent the removal of said certificates and bonds from said State by said trustee, M. D. Papy, which is the same suit mentioned in paragraph XXVI of the bill in this cause. Said Papy declining to give the required 718 bond, the said court ordered that the certificates be delivered to one T. Mayhew Cunningham, of Savannah, Georgia, cashier of the bank in which they had been deposited, where, as this defendant is informed and believes, they still are.

But in January, 1876, one Robert J. Washington, a defendant to this bill, who claimed to have an interest in the 4,410 shares of stock embraced in said certificates, as purchaser at a sale of Milton S. Littlefield's interest therein, made under a decree of this court, filed his bill to have a trustee of said stock appointed in the place of said Papy, who had died, claiming that said court in Georgia could not acquire any jurisdiction over stock in a railroad in Florida, and claiming that no person was, after the death of said Houstoun, authorized to vote said stock, as said Papy declined to have it transferred to his name and to vote it.

On the 7th of May, 1877, this honorable court made its decree in said cause (a copy of which is hereto attached, marked Exhibit I), whereby the said shares of stock were set forth and particularly described, and the legal title thereof was vested in Aristides Doggett, esq., who was appointed trustee thereof in the place of M. D. Papy, which appointment the said Aristides Doggett accepted.

This defendant, further answering, says that on the 11th day of April, 1877, which was the regular day appointed for the annual meeting of the stockholders of the Florida Central Railroad Company, the stockholders convened in the company's office, at Jacksonville, Florida, to which city the place for meeting of the stockholders had been regularly and duly changed since the last preceding meeting of stockholders; that said meeting was adjourned from day to day and from time to time till the

28th day of May, 1877, when they proceeded to transact the business for which they had convened, and took such action, as is shown by the record of the meeting, a certified copy whereof is hereto attached, marked Exhibit J, showing that Milton S. Littlefield. James M. Baker, Charles B. Fenwick, George R. Foster, John C. L'Engle, Nathan K. Sawyer, Joseph B. Stewart, W. J. Lawton, and this defendant, were elected directors of said Florida Central Railroad Company for the current year.

Afterwards the said directors convened and elected this defendant president of said company, and Charles B. Fenwick secretary and treasurer thereof, as is shown by the records of said meeting, a certified copy whereof is hereto attached, and marked Exhibit K.

719 And this is the title whereby this defendant and his co-directors of said corporation claim to hold their offices, and not through the action of any illegal meeting.

Further answering, this defendant denies that he or any of his codirectors have issued any certificates of stock in the Florida Central Railroad Company, or any certificates purporting to be certificates of such stock, to themselves or any other person whomsoever.

This defendant admits that it is the purpose of the directors of the Florida Central Railroad Company to make a mortgage and issue bonds as soon as it can be done to the advantage of the company, but he denies that they intend to do so in any other manner or for any other purpose than as related in the resolution authorizing the making of said mortgage and issuing of said bonds, a certified copy of which resolutions is hereto attached, marked Exhibit L.

Further answering, this defendant denies that he has illegally possessed himself of any shares of stock whatsoever. He admits that he brought several suits for himself and other stockholders in the Florida Central Railroad Company and in the Jacksonville, Pensacola and Mobile Railroad Company; the objects of said suits being to rescue the property and management of said corporations from the control of dishonest and incompetent persons, and to resist the assaults upon said corporations of immoral speculators and "wreckers," like those who have organized and are making the attack in this suit under the cover of nominal bondholders as plaintiffs.

As to the pretence of said bill, that this defendant pursues his litigation, or intends to pursue it, in order "to compel the complainants to pay him a large sum of money to buy their peace," this defendant says that the allegation is false and slanderous. He repels it with indignation, and is constrained by this unjustifiable and indecent assault to express his belief that such charge was not made under any instructions given to complainant's solicitor, but is the invention of his malice to give this feeble expression to his personal enmity against this defendant.

As to the allegations of paragraph numbered XXIV of said bill, this defendant says that they are absolutely false and without any foundation, except as to the allegation that R. J. Washington has, by his attorney, this defendant, brought a suit in this court for the protection and advantage of certain shares of stock in the Florida Central Railroad Company, which he claims to be interested in as the purchaser of Milton S. Littlefield's interest therein at a sale made under decree of this court, as has been already stated.

720 This defendant, further answering, says that if the allegations in the paragraphs of said bill, numbered XIII, XVII, XXIII, XXIV, XXVI, were true (which they are not), the facts stated would

be no legal or equitable causes of complaint by the complainants, and cannot be inquired into in this action.

That the complainants have no interest in the matters averred in said paragraphs and no right to investigate them. Especially is this true as to the allegations that this defendant and others unlawfully assume to exercise corporate existence and functions, which is a matter that can be inquired into only by the State of Florida, or under its authority, and within its own courts, by a direct proceeding instituted for that purpose.

Wherefore this defendant submits that all the allegations contained in the respective paragraphs of the bill numbered XIII, XVII, XXIII, XXIV, and XXVI are matters with respect to which the complainants are not entitled to any relief from a court of equity, and this defendant prays that he may have the benefit of this defense as to each of said paragraphs as fully as if he had interposed it by demurrer to each of them.

Answering further, defendant denies that any bonds delivered to the governor of the State of Florida by the Jacksonville, Pensacola and Mobile Railroad Company are a lien upon the Florida Central Railroad from Lake City to Jacksonville, or are obligations of the Florida Central Railroad Company.

He denies that any bonds of the State of Florida were ever legally issued or delivered to the Jacksonville, Pensacola and Mobile Railroad Company, and that any interest is due thereon as is charged.

He denies that any representations made by the Jacksonville, Pensacola and Mobile Railroad Company, as mentioned in paragraph numbered X of the bill, are of any force or validity against this defendant or other stockholders of the Florida Central Railroad Company, or against that corporation. All such representations are res inter alios actæ.

But this defendant denies that the purchasers of the bonds mentioned in the said paragraph were without notice of the illegal and fraudulent character of said bonds. On the contrary, this defendant says that they had notice by a letter from this defendant, written and sent in February, 1871, to a banking house in Amsterdam, in Holland, which is hereto attached and marked Exhibit B, which letter was duly received
721 by the person to whom it was addressed, and the contents thereof
were communicated by him to other persons interested in the sale of said bonds, among others, to John Collinson, of London, who admitted to this defendant about the month of May, 1871, that he had read the said letter.

The said persons had such notice also from T. W. Brevard, of Tallahassee, Florida, a copy of which is hereto attached, marked Exhibit M. The said notice was enclosed in an envelope, addressed as is shown therein, and sent by mail prepaid, as this defendant is informed and believes.

Said persons had such notice also from the publicity and notoriety of the impeachment by the assembly of the State of Florida, early in February, 1872, of the governor of Florida for high crimes and misdemeanors in office, the 1st, 2d, 3d, and 4th articles of impeachment exhibited against him being for fraud in the issue of the said bonds. The said articles are hereto attached as Exhibit N.

The said persons also had such notice by the resolutions hereto attached as Exhibit C.

This defendant denies that the governor of the State of Florida has eized the line of railroad owned by the Florida Central Railroad Company, or any portion of its property. On the contrary, defendant says that before this suit was commenced, the said governor had by decree of this court been enjoined from making or attempting to make any such seizure.

As to the allegations of paragraph numbered XVIII of said bill, this defendant denies that the decision referred to is correctly stated, and refers for its true meaning to the decision itself, and submits whether this court shall be governed by the rulings of that tribunal, if they are erroneous.

Answering the allegations of the paragraph numbered XXI, this defendant says that if the condition of the said railroad is truly represented, which this defendant does not admit, such condition results from the aggressive litigation which has been carried on against the corporation for the last four or five years, some of which litigation has been just and meritorious, to redeem the corporations and their property from mismanagement and waste, which efforts are about to culminate in success, as to the Florida Central Railroad Company at least, whose property is about to go into the possession and control of its directors elected on the 28th of May, 1877, said property having for the last three years been in the hands of receivers of courts. Other of said litigations have been, as this suit is, unjust, vexatious, and without merit, and greatly injurious to the company's resources and credit. 722 And this defendant says that the action proposed in said paragraph is that which has caused the evils complained of. If, during the several years that said properties have been in the hands of receivers of courts who have been authorized to expend, and have expended upon the properties, all the money that they could get, the said properties have, notwithstanding, depreciated and come to the dilapidated condition represented, it demonstrates that the proposed remedy would be futile, and that the roads can be best managed by their own officers, elected by bona fide stockholders, as the Florida Central Railroad Company's directors now are, which directors being men of good character capable of efficiently managing their trust, and likely to do so, will, more surely than any receiver can, repair and keep in good condition the said railroad.

The credit of every corporation is injured by having a receiver placed over its property. It is an injurious reflection upon the corporation, and this defendant says that no cause exists to warrant any such order as is prayed as to either corporation.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

E. M. L'ENGLE,
In Pro. Per.

723 STATE OF FLORIDA,
Duval County:

Before me, Philip Walter, clerk of the circuit court of the United States for the northern district of Florida, personally came Edward M.

L'Engle, who, being duly sworn, says that the foregoing bill signed by him is true as to all matters positively stated on his own knowledge, and that as to all matters stated on information and belief he believes it to be true.

E. M. L'ENGLE.

Sworn to before me this 2d day of June, A. D. 1878.
[SEAL U. S. COURT.] PHILIP WALTER, *Clerk.*

724 Filed September 14th, 1877.
CHAS. H. FOSTER, *Clerk.*

Rec'd and filed April 20th, 1878.
P. WALTER, *Clerk.*

725 EXHIBIT A.

Answer of E. M. L'Engle.

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

In circuit court, Duval County, Florida.

EDWARD M. L'ENGLE, PLAINTIFF,
vs.
MILTON S. LITTLEFIELD, AARON BARNETT, Edward Houstoun, Mariano D. Papy, George W. Swepson, The Florida Central Railroad Company, The Jacksonville, Pensacola and Mobile Railroad Company, Converse L. Chase, Francis H. Flagg, J. H. Gardiner, Harrison Reed, the governor of the State of Florida; J. P. C. Emmons, the attorney-general of said State; Robert H. Gamble, the comptroller of said State; Simon B. Conover, the treasurer of said State, and John S. Adams, commissioner of lands and immigration of said State, who are, as such officers, trustees of the internal improvement fund of the State of Florida, the Gulf Steamship Company, and Sidney W. Hopkins, L. Lewis Spring, Charles Fouke, Frank H. Collins and Robert J. Carpenter, merchants and copartners doing business in the city and State of New York under the firm name of S. W. Hopkins & Co., defendants.

The plaintiff, in behalf of himself and of all others, who, being stockholders of the Jacksonville, Pensacola and Mobile Railroad Company, or of the Florida Central Railroad Company, shall, in due time, come in and eek relief by and contribute to the expense of this action, complaining, lleges as follows:

That under and by virtue of the provisions of an act of the legislature of the State of Florida, entitled "An act to incorporate the 726 Atlantic and Gulf Central Railroad Company, and for other purposes," approved January 24, 1851, and of the provisions of another act of the legislature of the State of Florida, entitled "An act to amend an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company," approved January 7, 1853, the Florida, Atlantic and Gulf Central Railroad Company was incorporated, and by that name the stockholders and members of said company, their successors and assigns, were authorized to construct and operate a railroad from some tributary of the Atlantic Ocean, within the limits of the State of Florida, having a sufficient outlet to the ocean to admit of the passage of sea steamers; thence running through the State, in the most eligible direction, to some point, bay, arm, or tributary of the Gulf of Mexico, west of the Apalachicola River, in West Florida, having a sufficient outlet for sea steamers.

That, in accordance with the rights conferred by these acts, said company constructed a railroad from the town of Jacksonville, in Florida, to the town of Lake City, in said State, and operated the same for a number of years, and surrendered their right to build any portion of the line west of Lake City.

That in accordance with the authority granted by an act of the legislature of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6, 1855, the said Florida, Atlantic and Gulf Central Railroad Company, for the purpose of constructing the railroad authorized by its charter, issued a large amount of bonds.

That, under the provisions of the said act and the contract therein expressed, these bonds constituted a first lien or mortgage on the said road-bed, iron, equipments, workshops, depots, and franchise of the company.

That, by said act and contract, it was provided that on failure of the company to pay the sinking fund of one per cent., the trustees, named in the act, should take possession of and sell the said road and all the property of said company.

That said company failed to comply with the requirements of the statute aforesaid, and the trustees took possession of the road and sold it, in conformity with the statute and contract aforesaid, at public auction, on the 4th of March, 1868.

That at said sale William E. Jackson and his associates became the purchasers of said road and other property of said company.

That the said purchasers, by an act of the legislature of the State of Florida, approved July 29, 1868, were vested with the powers and franchises granted to the Florida, Atlantic and Gulf Central Railroad Company, by the act aforesaid, entitled "An act to amend an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company," approved January 7, 1853, and they, and their successors and assigns, were authorized and empowered to exercise the said powers and franchises, so far, and only so far, as they appertained to the railroad constructed as aforesaid by the Florida, Atlantic and Gulf Central Railroad Company, from Jacksonville to Lake City, in Florida, and were made a body politic and corporate, under the name of the "Florida Central Railroad Company."

That the said road, if a public work at all, is, and has long been, a completed public work.

727 That the Florida Central Railroad Company, under its charter (which charter is a contract between the individual stockholders

upon the one side, and the State and corporation on the other side), is invested with no functions, rights or powers, except such as pertain to a completed road, and that, in point of fact, the sole purpose for which the corporation exists, and for which the charter was granted, is the operation, control, management and maintenance of a completed line of railroad extending from Jacksonville to Lake City, aforesaid.

That the plaintiff is a stockholder in said Florida Central Railroad and a member of said corporation, and is also a stockholder in the Jacksonville, Pensacola and Mobile Railroad, hereafter mentioned, and a member of that corporation.

That, on the 20th of March, 1869, the Pensacola and Georgia Railroad Company was a corporation, organized and existing under the laws of the State of Florida, with a line of railroad completed from Lake City, Florida, to Quincy, Florida, and engaged in the business of common carriers.

That, on the day aforesaid, the Tallahassee Railroad was a corporation, existing under the laws of the State of Florida, with a line of railway completed from Tallahassee, Florida, to St. Mark's, Florida, and engaged in the business of common carriers.

That both of said railroad companies accepted and issued bonds under the provisions of the act of the legislature of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6, 1855, and became subject to all the provisions of said act.

That, on the 20th of March, 1869, the trustees of the internal improvement fund of the State of Florida, under the authority vested in them by the third section of said act of the legislature of the State of Florida, upon and because of a failure on the part of said railroad companies to provide and pay the sinking fund as required in said act, on the bonds issued by the said companies, duly sold, at public sale, the aforesaid railroads, and all the property of each of said companies of every kind, for the sum of $1,415,000, and, at that sum, one Franklin Dibble and his associates became the purchasers of the said railroads and of all the property of each of said companies.

And that, on the 8th day of April, 1869, the said trustees of the internal improvement fund of the State of Florida made and delivered to said purchasers deeds of conveyance of said railroads and property, which deeds were duly recorded in the office of the clerk of the circuit court of Leon County, Florida, on the 22d and 23d days of October, A. D. 1869.

That the purchasers aforesaid paid the said trustees $960,000 on account of the purchase money of said roads, in first mortgage bonds of said companies (issued under the said act of January 6, 1855), at the par value thereof, and the said purchasers received credit therefor.

That the remainder of said purchase money never has been paid, nor the payment thereof in any manner secured, as the plaintiff is informed and believes.

That one George W. Swepson, in consideration of a large and controlling interest in the stock transferred and conveyed to him by the said Franklin Dibble, and the other persons associated with him in said 728 purchase, and by the consent of the trustees of the internal improvement fund of Florida, acting by their duly appointed agents, and for other considerations, promised to and received by him, undertook to pay the remainder of said purchase money, and to do other things for the benefit of said purchasers, (and of the corporation which they, in conjunction with other persons acting with them, intended to be created into by act of the legislature.) And the said trustees, acting by their duly appointed agents, accepted said Swepson as their debtor in the place of the said purchasers.

That, on the 24th of June, 1869, the legislature of Florida passed an act entitled "An act for the relief of Franklin Dibble, E. M. Cheney and their associates," purchasers of the railroad from Tallahassee to St. Mark's, and of the railroad from Quincy to Lake City, and incorporating the Tallahassee Railroad Company, by which the said purchasers and their associates were created a body corporate, under the name of the "Tallahassee Railroad Company," and were vested with like powers, franchises and privileges as were granted to the Pensacola and Georgia Railroad Company, and the Tallahassee Railroad Company by the acts incorporating said companies.

That, on the 24th June, 1869, by an act of the legislature of Florida, approved on that day, entitled "An act to perfect the public works of this State," and by an act amendatory thereof, approved January 28th, 1870, a corporation called the Jacksonville, Pensacola and Mobile Railroad Company was created, empowered to build and operate a railroad from Quincy to Pensacola in said State, and to consolidate its road or line of intended road with those of the beforementioned Tallahassee Railroad Company, and of the said Florida Central Railroad Company, and to exercise other powers and privileges.

That the Tallahassee Railroad Company already mentioned, and the said Jacksonville, Pensacola and Mobile Railroad Company, as this plaintiff is informed and believes, did, in the manner provided for by said last mentioned act, consolidate their said roads, under the name of the latter company, and re-distributed the stock.

The plaintiff further says, on information and belief, that, before said consolidation, or afterwards, the said George W. Swepson, in consideration that the defendant, Milton S. Littlefield, would pay to the trustees of the internal improvement fund of Florida the remainder of said purchase money of the said railroad, which remainder, or any part thereof, the said Swepson has not paid as he undertook to do, and for other considerations undertaken by said Littlefield to be performed, he, the said Swepson, transferred and conveyed to said Littlefield all of his, the said Swepson's, property and interest in the Tallahassee Railroad Company, or in the said Jacksonville, Pensacola and Mobile Railroad Company, and in the Florida Central Railroad Company (one of these defendants), in which last mentioned company, as in the Tallahassee Railroad Company, or the Jacksonville, Pensacola and Mobile Railroad Company, he, the said Swepson, had a majority of the stock interest.

And the property so transferred and conveyed was of value much greater than the unpaid purchase money due to the said trustees.

That, as the plaintiff is informed and believes, said Littlefield received said transfer of interest, with and upon the distinct promise made
729 by him that he would, out of his own resources, pay such unpaid purchase money. And the plaintiff avers, on his own knowledge, that when the said Littlefield received the said transfer and conveyance, and always before that time, he knew that the said Swepson had not paid said remainder of the purchase money of the said railroad, or any part thereof.

That the said Milton S. Littlefield was elected president of the Jacksonville, Pensacola and Mobile Railroad Company at the time of its organization, and has continued to be president ever since. And that afterwards he was elected president of the Florida Central Railroad Company; and that defendant, Aaron Barnett, claims now to be the president thereof, and to have been elected as such on the 9th or 10th of April, 1872.

That the Jacksonville, Pensacola and Mobile Railroad Company was granted, by the acts incorporating it, the right to build a railroad from Quincy, Florida, westward to the Alabama State line, and that to aid it in doing so the governor of the State of Florida was, by said acts, directed to deliver to the president of said company coupon bonds of the State, to an amount equal to $16,000 per mile, for the whole length of railroad owned by said company, in exchange for first mortgage bonds of said company; and said acts provided that the State should have a statutory lien on said road as security against loss.

That said acts also provide that the governor, for the purpose of further aiding said Jacksonville, Pensacola and Mobile Railroad Company to speedily construct its road, shall deliver to the president of said company other coupon bonds of the State of Florida, to the amount of $16,000 per mile, upon receiving from the president of said company first-mortgage bonds of like amount on any portion of the line of railroad between Quincy and Jacksonville, not exceeding one hundred miles of any part of railroad between those points, which provision is contained in the 4th section of the act approved January 4th, 1870.

That, as president of the Jacksonville, Pensacola and Mobile Railroad Company, the said Littlefield received from the governor of Florida four million dollars of said bonds of said State, of which one million were issued in exchange for a like amount of bonds of the Florida Central Railroad Company, delivered to said governor, by said Milton S. Littlefield, which one million of State bonds were issued under section 4 of the act of 1870 above referred to.

That it is claimed by said Littlefield, and by the governor of the State of Florida, that the said million of dollars of bonds of the Florida Central Railroad Company, delivered to said governor, and in exchange for which the million of State bonds were delivered to said Littlefield, constitute a lien upon the line of said road and the property owned by the said Florida Central Railroad Company, or are valid, legal, and subsisting obligations of said company to the State of Florida.

Plaintiff says further, on information and belief, that the said million of dollars of bonds of the said Florida Central Railroad Company were deposited with the State about the 4th of January, 1871, without the knowledge or consent of the stockholders or directors, generally, of said company, or of its president, and against the wishes of them, or some of them; and that it was done with the knowledge and consent, and secretly, and by the contrivance of the defendant, Milton S. Littlefield, and in fraud of said company and of the stockholders and creditors thereof, 730 and in violation of its charter and of the powers and privileges thereof, which never contemplated that said company should engage in the building of any other than its own line of road, or incur any obligation, or pledge its credit, for any other than the purposes mentioned in the charter.

And the plaintiff says that the State of Florida, acting through its officers, was a party to the fraud, and cannot allege ignorance of the facts, or of the law governing said corporation.

That the said Milton S. Littlefield, through himself and his agents, sold most of the said four million dollars of bonds, and, as the plaintiff is informed and believes, received a very large amount of money therefor; the plaintiff cannot say with positiveness or certainty how much, but to the best of his information and belief more than $1,000,000.

That said bonds were issued by the State and received by the said

Littlefield, as president of the said railroad company, for the purposes stated in said act of the legislature, which were to aid the Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road westward from Quincy to the Alabama line. And the stockholders and creditors of said company confided in him to receive the said funds and apply them to the purposes for which they were intended. But, instead of carrying out that trust and confidence, the said Milton S. Littlefield has received the said money, or a large proportion of it, and has diverted it from the legitimate uses of the corporation, and has misapplied it to his own personal and private uses and purposes, and has applied only a small proportion thereof to the purposes for which said bonds were issued.

That said Milton S. Littlefield has not given, and fails to give, any sufficient account of the application of said funds; that he has made no report of his receipts and disbursements, or of his administration of said roads, and of the affairs of said companies, since he has been president of them respectively. And holding as he does the majority of the stock in both companies he exercises an arbitrary and absolute control over their affairs, and by his votes shapes the directory of each company as he pleases.

That he makes, or permits to be made, nominal transfers of small amounts of stock in each company to such persons owning no stock, or insufficient thereof, as he wants elected directors thereof, in order to give them an apparent qualification as such, and causes them, by his votes, to be elected directors, when, in fact, they do not in good faith own any, or, if any, a sufficiency of stock in said companies, and are not really qualified to act as directors in the respective companies under the respective charters thereof; and causes himself, or such person as he may select, thus to be elected president, and thus he shuns and escapes all investigation into his, or such other person's conduct, as president of said companies respectively.

That the said Milton S. Littlefield has purchased, and claims as his own property, a large amount of the capital stock of the Jacksonville, Pensacola and Mobile Railroad Company, and of the Florida Central Railroad Company, and a large number of the first-mortgage bonds of the Pensacola and Georgia Railroad Company, or of the Tallahassee Railroad Company, or of both (for the non-payment of the sinking fund of which bonds the said roads were, as has been herein stated, 731 sold by the trustees of the internal improvement fund of the State of Florida), which stock in the Jacksonville, Pensacola and Mobile Railroad Company, or a large amount of which he obtained by purchase with money realized and obtained from the assets and earnings of said Jacksonville, Pensacola and Mobile Railroad Company, and the Florida Central Railroad Company, and not with his individual private funds, all of which purchases so paid for belong to the said corporations.

That the following are some of the purchases of stocks of said railroad made by said Littlefield, with funds belonging to the Jacksonville, Pensacola and Mobile Railroad Company, or to the Florida Central Railroad Company, or to both, and claimed now by said Littlefield to be his own property, viz:

From James M. Baker, Silas L. Niblack, and Wilkinson Call purchased 3,750 shares of stock in the Jacksonville, Pensacola and Mobile Railroad Company, being 1,250 shares from each of them.

On information and belief, plaintiff further says, that said Littlefield also in the same manner purchased stock in the Jacksonville, Pensacola and Mobile Railroad Company from Alonzo Huling, F. Dibble, Calvin

Dibble, and other persons, paying for the same, directly or indirectly, with funds belonging to the said corporation.

The plaintiff further says, on information and belief, that the stock so purchased by Milton S. Littlefield, and paid for, or contracted to be paid for, directly or indirectly, out of the funds belonging to the Jacksonville, Pensacola and Mobile Railroad Company, and to the Florida Central Railroad Company, constitute, with that which he has otherwise acquired, a majority of the stock of said companies respectively, claimed by the said Littlefield as his property, and by voting which, directly or indirectly, he controls the organization and management of said companies respectively, and upon which he claims and assumes the right to receive the dividends, if any there be.

All of which stock, so purchased, belongs to the corporations respectively, to be divided among the several stockholders pro rata, or has become extinct as stock, thereby increasing by so much the value of each of the remaining shares of stock.

Plaintiff further says, that said Milton S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, in the latter part of the year 1860, or early in the year 1870, made a contract in writing, with certain commissioners representing the Western Division of the Western North Carolina Railroad Company, whereby more than one million dollars of the funds of the said Jacksonville, Pensacola and Mobile Railroad Company were contracted by said Littlefield, as president, to be paid to said commissioners in satisfaction of a debt due by said Littlefield personally and individually, or which was contracted by said Swepson and assumed by said Littlefield, and for which the said railroad company was in no wise responsible.

On information and belief, plaintiff says, that a part of said money has been paid out of proceeds of the bonds of the State of Florida, issued to said Jacksonville, Pensacola and Mobile Railroad Company, under the act aforesaid, approved June 24, 1869, and that said contract is still subsisting.

Plaintiff further says, that among the many other misappropriations and diversions by the said Milton S. Littlefield, of the funds
732 belonging to the Jacksonville, Pensacola and Mobile Railroad Company, and the Florida Central Railroad Company, he recites, on information and belief, the following, viz:

He caused to be paid out of said funds the following amounts to the following persons, viz: To Jennie Hunter, $300; Alonzo Huling, $5,000; F. A. Dockray $5,000; J. L. ReQua, $5,000; A. G. Cattel, $735.60; J. B. Clark, $75,000; to some persons unknown, "for balance of judgment vs. Pensacola and Georgia Railroad, with interest," $30,000; to J. S. Meech, $12,600; to R. R. Swepson, $50,000; to First National Bank of Knoxville, $19,684.36; to C. F. Bruton, $10,000; John Rankin, $9,225.17; J. R. Campbell, $1,976.87; W. W. Hubbard, $500; W. Cummings & Co., $466; Drew & Davis, $377.53; to some unknown person for "Grocers' Bank judgment *vs.* Road," $5,790; Mrs. E. Holland, $300; John T. Deweese, $20.000; to some unknown person, "balance due on Jacksonville property," $2.590.04; to Governor Reed "on account," $3.500; D. P. Holland "on account," $4,630; T. B. Coddington, $57,895.33; S. W. Hopkins, T. B. Coddington, R. Stewart and others, "for traveling expenses to and from Florida, hotel fares, ocean cables, and other expenses while there," $6,216.38; J. B. Clark, for expenses to Florida, $100; G. B. Carse, do., do. $60; R. Stewart, Washington, $100; to divers unknown persons for "legal expenses, defending suits by N. W. Woodfin and L. P. Bayne," $17,850; to a person unknown, having a "draft from Florida," £4,433.19.3 (in English currency); to Baring Brothers & Co., for A. Barnett's claim, £19,349.14.1 (in English currency); to Clews, Habrecht & Co., for G. W. Swepson, £3,717.18.7 (in English currency); to the Commissioners of the Western Division of the Western North Carolina Railroad Company, £10,000.00.0 (English currency).

Plaintiff further says, on information and belief, that said Littlefield has, as president aforesaid, pledged the proceeds of said State bonds for the payment of the following additional amounts to or on account of the following persons, viz: R. H. Gamble, $15,000; F. H. Flagg, $4,000; T. B. Coddington, $25,000; L. P. Bayne & Co., $200,000; J. H. Porter, $10,000; D. P. Holland, $17,365; Western Division of the Western North Carolina Railroad Company, $350,000; Governor Harrison Reed, $223,750; and that all of said additional amounts are gross and fraudulent misapplications sought to be made of said proceeds.

Plaintiff further says, on information and belief, that said Milton S. Littlefield has drawn for himself, upon the proceeds of said bonds, at one time $1,178.50, and at various other times £4,981.10.5 (English currency), and the plaintiff says, on information and belief, that nearly all, if not the entire amount of the last stated sums, were misapplied and squandered by said Littlefield for his own purposes.

The plaintiff further says, on the information of S. W. Hopkins & Co., of New York and London, that the said Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, offered to them, and sold to them, the said four million of State bonds, being four thousand bonds, at the price of £100 sterling for each bond, when, at that very time, said Littlefield knew that said bonds were contracted to be sold, or were sold by his agents, for the price of £138.1.10 sterling.

That on or about the 2d of October, 1871, the said Milton S.
733 Littlefield, without authority of the stockholders, first had and
obtained, as this plaintiff is informed and believes, executed, as president of the Jacksonville, Pensacola and Mobile Railroad Company, a lease of said company's road for the term of two years, to the defendants Converse L. Chase and F. H. Flagg, for the purposes specified in said lease; among which were, that they should receive the income and profits of said road, and apply the same to the payment of certain specified indebtedness thereof, and to the extension of said road westward.

That under said lease one J. H. Gardiner was appointed superintendent of said road, and that under color of said lease the said C. L. Chase, F. H. Flagg, and J. H. Gardiner assumed, with the consent of said Littlefield, its president, the exclusive management and control of the Florida Central Railroad, and received its income, and applied it, as this plaintiff is informed and believes, to the payment of the debts of the Jacksonville, Pensacola and Mobile Railroad Company, and to the extension of said railroad westward, and to other purposes of said last-mentioned corporation.

That said lease provides that the proceeds, when realized, of the one million dollars of bonds, before mentioned, issued by the State of Florida and received by said Littlefield, as president aforesaid, in exchange for a like amount of bonds of the Florida Central Railroad Company, deposited with the governor of said State, should be applied to the extension of the said Jacksonville, Pensacola and Mobile Railroad westward, and not to legitimate purposes of the Florida Central Railroad Company.

That, as plaintiff is informed and believes, said million, or thereabouts, of said bonds are deposited with or under the control of John Collinson, of London, in the kingdom of England, and have not yet been sold.

Plaintiff states, on information and belief, that the said C. L. Chase, F. H. Flagg, and J. H. Gardiner have not accounted to the respective companies for the receipts of said roads respectively.

The plaintiff further says, on information and belief, that on or about the 30th of November, 1871, the said Milton S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, and the said C. L. Chase and F. H. Flagg, as trustees, under the lease or deed of trust heretofore mentioned, dated October 2d, 1871, did, by their attorneys duly authorized thereto, and in fraud of the rights of the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company, and of said Florida Central Railroad Company, enter into a written agreement with one L. P. Bayne, and L. P. Bayne & Co., and one S. W. Hopkins & Co., of New York, and with one N. W. Woodfin, of North Carolina, representing the Western Division of the Western North Carolina Railroad Company, whereby it was provided, among other things, that out of the proceeds accrued and to accrue of $1,200,000 of bonds of the State of Florida, issued to the said Jacksonville, Pensacola and Mobile Railroad Company, by said State, under and for the purposes specified in the act of the legislature of said State, already mentioned, approved June 24, 1869, which bonds were then in the hands or under the control of said John Collinson, and of which the million of bonds issued upon the security of a like amount of bonds of the Florida Central 734 Railroad Company, as already stated, were a portion, there should be paid to the said L. P. Bayne, for himself, and L. P. Bayne & Co., $200,000; and to said Western Division of the Western North Carolina Railroad Company, $300,000; and by the same contract it was agreed that the Jacksonville, Pensacola and Mobile Railroad Company undertook to secure to the said Western Division of the Western North Carolina Railroad Company the payment of the further sum of $300,000, and to the said L. P. Bayne and L. P. Bayne & Co. the further sum of $140,000.

The plaintiff further says that all of the money above mentioned, provided by said contract to be paid, was for the payment of debts of said Milton S. Littlefield, as an individual, and not of debts of said Jacksonville, Pensacola and Mobile Railroad Company or of the Florida Central Railroad Company; and that, in entering into said contract, the said Milton S. Littlefield and the said C. L. Chase and F. H. Flagg committed a fraud upon the rights of stockholders in said companies respectively.

Plaintiff further says, on information and belief, that the performance of the terms of said contract, has, thus far, been prevented by the intervention of other parties having interests in said fund, but that the same may, unless prevented by this court, be still carried out.

The plaintiff further states, on information and belief, that said Milton S. Littlefield, as president of said Jacksonville, Pensacola and Mobile Railroad Company, and of the said Florida Central Railroad Company, without the advice or consent of the stockholders or directors of said companies (and in violation of section four of the act of the legislature of Florida, already mentioned, approved June 24, 1869, for the incorporation of the Tallahassee Railroad Company) and the said Aaron Barnett, claiming to be a large stockholder and the president of the Florida Central Railroad Company, and one John Scriven, and other persons unknown to the plaintiff, are negotiating together to effect a lease of the said Jacksonville, Pensacola and Mobile Railroad and of the said Florida Central Railroad, to said John Scriven, who is a citizen of the State of

Georgia, and owns a large interest in a railroad out of the State of Florida, or to the Atlantic and Gulf Railroad Company, a corporation created by and existing under the laws of the State of Georgia; among the terms whereof, as the plaintiff is informed and believes, it is designed that the said Milton S. Littlefield shall surrender and assign to such lessee, or to some one else for him, a moiety or a majority of the stock claimed by the said Littlefield as belonging to him in the said Jacksonville, Pensacola and Mobile Railroad Company, and in the said Florida Central Railroad Company, and that all the assets of said companies, including unexpended proceeds of bonds of the State of Florida issued to said Jacksonville, Pensacola and Mobile Railroad Company, as herein stated, and such of said bonds as may still be unsold, shall be delivered to said lessee for the purpose of paying to the trustees of the internal improvement fund of the State of Florida the remainder of the purchase money, still unpaid, of the Pensacola and Georgia and the said Tallahassee Railroads, and for which, not the said corporations, but the individual purchasers of the said last mentioned roads, especially said George W. Swepson and Milton S. Littlefield, who took their stock, as herein stated, with the charge that they should pay the said debt, are liable to the said trustees.

735 Plaintiff further says, on information and belief, that another proposition which the said persons who are negotiating together are considering, in violation of said section of said act of the legislature, is that the said John Scriven, or the said Atlantic and Gulf Railroad Company, shall lease, for a long term of years, the said Jacksonville, Pensacola and Mobile Railroad, and the said Florida Central Railroad, paying yearly a stipulated rental, all of the funds and assets of said companies now in hand being left with said companies to be applied, by said Littlefield, to the payment of the unpaid purchase money of the Pensacola and Georgia Railroad, and of said Tallahassee Railroad, and to other debts, for which, as the plaintiff claims, neither the said Jacksonville, Pensacola and Mobile Railroad Company, nor the said Florida Central Railroad Company, is liable.

On information and belief, plaintiff also says, that said Littlefield or said Barnett, or both of them, are negotiating with C. L. Chase and others to make another lease of said railroads to him and those acting with him, the terms of which are similar to those already stated.

And the plaintiff says that unless the relief hereby prayed is granted, or a portion of it, one of the said propositions, or some other equally injurious to the stockholders of said road, and in violation of said act, and which may work a forfeiture of the charter of the company created by said act, may be adopted and carried into effect to the great damage of the plaintiff as a stockholder in the said Jacksonville, Pensacola and Mobile Railway Company, and in said Florida Central Railroad Company.

The plaintiff further says, that under the management of the said Jacksonville, Pensacola and Mobile Railroad, and of the Florida Central Railroad, as it now is, and for twelve or more months has been, the incomes thereof are improvidently used and applied. The said Milton S. Littlefield, as president, is receiving an extravagant salary of, as the plaintiff is informed, ten thousand dollars per year, and has clerks and servants in his employ at an expense to the said companies, as the plaintiff is informed, of several thousand dollars a year; that, as plaintiff is informed, said Littlefield employs in England, New York, Florida and elsewhere, at the expense of said companies, but for the advancement of his own individual purposes, and not for the advantage of the companies, one or more attorneys-at-law in each of said countries and places, and that said president, clerks, servants, and attorneys are of no use or benefit to said companies.

That on or about the 19th of May, 1871, said Littlefield transferred and assigned to defendant Aaron Barnett, by indenture, recorded in Leon County, Florida, in the clerk's office thereof, 41,963 shares of the stock of the Jacksonville, Pensacola and Mobile Railroad Company, (which he, the said Littlefield, claimed and claims to own), and all other shares which he then owned, or thereafter might acquire, in the stock of said road, and 4,410 shares of stock in the Florida Central Railroad Company, which he, the said Littlefield, claimed and claims to own, and all other shares in the said company's capital stock which he then owned, or thereafter might acquire; which transfer and assignment was in trust, to secure a certain company, known as the Gulf Steamship Company (a corporation created by the laws of Florida, but whose charter, as plaintiff is informed, has been repealed), in the payment by
736 the Jacksonville, Pensacola and Mobile Railroad Company, of all
moneys which might come due thereafter by said railroad company to said Gulf Steamship Company, for work done by said company, in extending the railway of the Jacksonville, Pensacola and Mobile Railroad Company westward from the Chattahooche River.

That, by the terms of said assignment and transfer, said Milton S. Littlefield reserved the right to vote said stock so assigned at all proper times and places.

That said stock of both companies, so assigned, is made up, in large part, of the stock purchased and paid for, or contracted to be paid for, by said Littlefield, with money, belonging to the said companies, as herein stated; and plaintiff says, on information, as to a large portion of said stock so acquired, that the said Barnett knew when he received said stock that said Littlefield had purchased it with money belonging to the said corporations.

That said Gulf Steamship Company has not done any work in extending the said railway westward from Chattahooche River, and has in nowise become entitled to receive any compensation therefor, or upon any other consideration, from said railroad company. That said Aaron Barnett was a member of said Gulf Steamship Company, and, as its agent, received said stock in trust, and, at the time of receiving it, had notice that the said unpaid purchase money of the said Pensacola and Georgia Railroad Company, and of the said Tallahassee Railroad Company, had not been paid to the trustees of the internal improvement fund of the State of Florida.

Plaintiff states, on information and belief, that the defendants, M. D. Papy or Edward Houstoun, or both of them, also claim to hold, or in some way have control over, a portion of the stock in the Florida Central Railroad Company, which said Milton S. Littlefield claims to own, which, as herein stated, has been assigned and transferred to said A. Barnett, in trust, and that said Papy or Houstoun, or both of them, claim the right to vote, and do vote, the said stock, or some of it.

That, as plaintiff is informed, said Papy, or Edward Houstoun, or both of them, claim to hold or control said stock, or a portion of it, and also a number of the first mortgage bonds of the said Pensacola and Georgia Railroad Company, or of the said Tallahassee Railroad Company, which are claimed so be the property of said Littlefield, or in which he has some legal or equitable interest by virtue of, and for the performance of, some trust, unknown to plaintiff, and which plaintiff calls on them to set forth and substantiate.

And he says further, that, if the stock and bonds belong to the said Littlefield, they and all stock owned by him, as well as all of his other property, should be held subject to payment of demands of the said corporations and of the stockholders whose money and assets he has misapplied and converted to his own use.

Plaintiff further says, on information, that the defendants herein named, as constituting the mercantile firm of S. W. Hopkins & Co., claim, or are alleged to have, an interest in the last mentioned trusts, and in the bonds and stocks affected, or claimed to be affected, by these trusts, and also in the bonds of the State of Florida, herein mentioned, and that therefore they are made parties defendant to this suit.

Plaintiff further says that the trustees of the internal improve-737 ment fund of the State of Florida have commenced suit against the Jacksonville, Pensacola and Mobile Railroad Company, and other defendants, to recover the sum of $472,000, unpaid purchase money, due as herein stated, and interest thereon from the day of the sale of said roads, and have prayed for and obtained the appointment of a receiver of the said roads, and of the other property of said company, and have prayed for and obtained an order that said receiver take the absolute and exclusive control of not only the Jacksonville, Pensacola and Mobile Railroad, but also of the Florida Central Railroad, and the receiver, who is Jonathan C. Greeley, has so taken possession and control of said railroads, and the said trustees seek to have the net earnings, not only of the Jacksonville, Pensacola and Mobile Railroad, but also of the Florida Central Railroad, go into the hands of said Greeley and be applied, under the order of the court, to the payment of the purchase money still unpaid, and have obtained an order to that effect.

Plaintiff further says that said Milton S. Littlefield and said Aaron Barnett, in violation of their duty as president of said Florida Central Railroad Company, and in disregard of the interests of said company, and of stockholders therein, have permitted and still permit said receiver to take and hold possession of said railroad, and have made no attempt to recover it, nor to defend said suit.

That said Littlefield, as president of said Jacksonville, Pensacola and Mobile Railroad Company, has made no attempt to recover possession of said road, nor, as plaintiff is informed, does he intend to defend said action, but will allow judgment to be had by default against said corporation.

Plaintiff further says, on information and belief, that Aaron Barnett, one of these defendants, has received from Milton S. Littlefield, individually, or as president of one of the said railroad corporations, a large sum of money, amounting to about $100,000, for the purchase from him, the said Barnett, of steamboats, and for other considerations, uses and purposes which were not intended in and by the act of the legislature of Florida entitled "An act to perfect the public works of the State," approved June 24th, 1869, and the amendments thereto.

That the payments and advances, so made to said Aaron Barnett, were made out of the proceeds of the bonds of the State of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, as herein stated, under said act; and that said Barnett, at the time he sold said steamboats and received said money therefor, and for other considerations, uses and purposes not contemplated by said act, knew that said money was the proceeds of the said bonds, and was affected and charged with the trust imposed by said act, and that said trust was violated by the payments made to him.

Plaintiff further says, on information and belief, that said Aaron Barnett received from said Littlefield, individually or as president of said railroad company, a large number of the said bonds of the State issued to the Jacksonville, Pensacola and Mobile Railroad Company for the purposes specified in said act of June 24th, 1869. That said bonds were not delivered to said Barnett for any legitimate lawful purpose or use of said Jacksonville, Pensacola and Mobile Railroad Company, un-under the authority of the said act, but for speculative purposes outside of said act, and for uses and upon considerations foreign thereto; all of which was well known to said Littlefield and to said Barnett.

738 And the plaintiff says that said Barnett has not applied either said money or said bonds, or the proceeds of said bonds, to the legitimate uses of said Jacksonville, Pensacola and Mobile Railroad Company as intended and prescribed by the act aforesaid.

Wherefore the plaintiff demands judgment—

1st. That the delivery of one million dollars of bonds of the Florida Central Railroad Company to the governor of the State of Florida, in exchange for one million dollars of the State bonds, be declared to be a fraud perpetrated upon said company and the stockholders; and that said bonds be declared to have no binding legal validity as obligations of said company.

2d. That the defendant Milton S. Littlefield be required to render a full, true, and accurate statement in detail of his receipts and expenditures, and of those of his agents, from the proceeds of the State bonds, and from the income and assets of said Jacksonville, Pensacola and Mobile Railroad Company and said Florida Central Railroad Company, respectively, and a statement of the considerations upon which such expenditures were made; and that a reference be had to ascertain and report such receipts and expenditures, and the sources thereof and consideration therefor.

3d. That the defendant Milton S. Littlefield be required to surrender all stock in either of said railroads, and all railroad bonds and other property purchased or paid for, in whole or in part, directly or indirectly, with the receipts or assets of said railroad companies, or either of them; and that such purchases be declared to inure to the benefit of said railroad companies, respectively, with whose funds, wholly or partly, the purchase may have been made; and that such stocks, bonds, and other property be delivered for safe keeping to the receiver who may be appointed in this suit, and be held subject to the order of this court.

4th. That the defendants Papy and Houstoun be required by the final decree of this court to deliver to a receiver all stock and evidences of title thereto in the Florida Central Railroad Company, and all bonds of the Pensacola and Georgia Railroad Company, and of the Tallahassee Railroad Company, held or controlled by them, or either of them, wherein the said Milton S. Littlefield, or the said Jacksonville, Pensacola and Mobile Railroad Company, or the said Florida Central Railroad Company, has a legal or equitable interest. That the said Barnett be required to deliver to a receiver all stocks, and evidences of title thereto, in the Jacksonville, Pensacola and Mobile Railroad Company and in the Florida Central Railroad Company, and all bonds of the Pensacola and Georgia Railroad Company, and of the Tallahassee Railroad Company, and all other property held or controlled by him wherein the said M. S. Littlefield, or the said Jacksonville, Pensacola and Mobile Railroad Company, or the Florida Central Railroad Company, has a legal or equitable interest, and all bonds of the State of Florida, issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company, received by him from that company, or from its president, or its or his agents or attorneys, or from Milton S. Littlefield, or George W. Swepson, or their agents, or the agent of either of them; and all proceeds of such bonds of the State of Florida, so received by him, the consideration for the reception of which by him was different from the purposes for which said bonds were issued.

739 That the lease of the Jacksonville, Pensacola and Mobile Railroad, made on the 2d October, 1871, by defendant Milton S. Littlefield, be annulled and set aside. That said C. L. Chase, F. H. Flagg, and J. H. Gardener be required to render a full and accurate statement of the receipts from, and the expenditures on account of, the Jacksonville, Pensacola and Mobile Railroad, and of the Florida Central Railroad, severally and respectively, and a statement of the sources of such receipts, and of the considerations and purposes of such expenditures; and to pay to a receiver or other person, under the order of this court, all moneys received from the income or assets of said roads, respectively, and not expended legitimately and legally for the sole and exclusive use, benefit, and advantage of said corporations, respectively, from which moneys may have been received, and that a reference be had to ascertain these facts.

6th. That the defendants F. H. Flagg and C. L. Chase be enjoined from receiving any of the proceeds of State bonds of Florida issued to the Jacksonville, Pensacola and Mobile Railroad Company, and from expending any of such proceeds in their hands.

7th. That the said M. S. Littlefield, president as aforesaid, and his successors, and the said F. H. Flagg and C. L. Chase, their agents and attorneys, be enjoined from carrying out, or attempting to carry out, any part of the agreement made by them through themselves or their attorneys on the 30th day of November, 1871, or about that time, with L. P. Bayne, L. P. Bayne & Co., and S. W. Hopkins & Co., of New York, and N. W. Woodfin, of North Carolina, representing the Western Division of the Western North Carolina Railroad Company, which provided for the payment to the parties above mentioned, or any of them, of any portion of the unexpended proceeds of the bonds of the State of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, under the act of the legislature of Florida approved June 24th, 1869, and the amendments thereto; or for the payment to any of said parties of any other moneys by said Jacksonville, Pensacola and Mobile Railroad Company, from any other source which said agreement may provide for the payment of.

8th. That the president of the Jacksonville, Pensacola and Mobile Railroad Company, and of the Florida Central Railroad Company, and the successors of each of them, and the said corporations, be enjoined from leasing said roads, or either of them, or any part thereof, to John Scriven or his associates, or to the Atlantic and Gulf Railroad Company, or any other person or corporation, until the ownership of the stock of said companies be determined by the court, and until duly qualified directors and other officers of said companies have been elected by the votes of holders of a legal and bona fide majority of shares of stock, to be ascertained and determined by the court; and that under all circumstances the said corporations, and their officers, respectively, be enjoined from leasing said railroads on terms violative of the rights or interests of any stockholder or creditor, or violative of the law governing said corporations, and that if any lease has already been made that it be vacated and set aside.

9th. That the defendants Aaron Barnett, M. D. Papy and Edward Houstoun be enjoined from selling, transferring, assigning, pledging, making advances upon, or charging, or otherwise disposing 740 of or encumbering any of the stock of the Jacksonville, Pensacola and Mobile Railroad Company, or of the Florida Central Railroad Company, or any of the Pensacola and Georgia Railroad Company's bonds, or of the Tallahassee Railroad Company's bonds, or any of the bonds of the State of Florida, which they, or either of them, may hold or control in the manner hereinbefore set forth, and especially that the said Barnett may be enjoined from selling, assigning, transferring, hypothecating, charging, making advances upon, or otherwise disposing of or encumbering any of the stock of the Jacksonville, Pensacola and Mobile Railroad Company, or of the Florida Central Railroad Company, which he holds or held in trust, by indenture to him by M. S. Littlefield executed on or about the 19th of May, 1871, to secure the Gulf Steamship Company in certain undertakings then had by and between said Littlefield and said Gulf Steamship Company. And that said Papy, Houstoun, and Barnett be enjoined from voting any of said Jacksonville, Pensacola and Mobile Railroad Company's, or Florida Central Railroad Company's stock, in any meeting of stockholders of said companies, or either of them.

10th. That said Milton S. Littlefield be enjoined, until further order of the court, from selling, transferring, assigning, pledging, or otherwise disposing of or encumbering any of the stock in the Jacksonville, Pensacola and Mobile Railroad Company, or in the Florida Central Railroad Company, owned or claimed by him, or in which he has, or claims to have, an interest, legal or equitable.

That he be enjoined from voting, in any stockholders' meeting, any stock in either of said companies which was purchased or paid for, in part or in whole, directly or indirectly, with any money or assets of said railroad corporations, or either of them. And that he be required to deliver to a receiver, to be appointed by the court, all such stocks and bonds, to be held subject to the judgment in this suit.

11th. That the said Jacksonville, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company, and the president of each of said companies, and the said Milton S. Littlefield, and said Aaron Barnett, be enjoined, until the further order of this court, from using or in any wise disturbing the bonds of the State of Florida, if unsold, or their proceeds if sold, which were issued in exchange for bonds of the Florida Central Railroad Company.

12th. That the trustees of the internal improvement fund of the State of Florida be enjoined from proceeding in their said suit, or upon their alleged cause of action, against the Jacksonville, Pensacola and Mobile Railroad Company, till they have exhausted George W. Swepson and Milton S. Littlefield. And that they be enjoined from proceeding at all, and under any circumstances, against the Florida Central Railroad Company.

13th. That the said Jacksonville, Pensacola and Mobile Railroad, and the said Florida Central Railroad, be taken out of the hands of the receiver appointed in said suit of said trustees and that they be put in the custody and control of a receiver, to be appointed for the purposes of this suit; and that the order in said suit appointing a receiver be vacated; and that the earnings of said roads, and all property of said companies in the hands of the receiver, appointed at the instance of the said trustees, be delivered and paid to the receiver herein prayed 741 to be appointed.

14th. That Aaron Barnett be required to deliver and pay to the receiver herein prayed for, or to such other person as the court may name, the money received by him out of the proceeds of bonds of the State of Florida issued to the Jacksonville, Pensacola and Mobile Railroad Company, or out of the funds or assets of the said Florida Central Railroad Company, with interest thereon from the time of his receiving the same.

15th. That a receiver, or receivers, be appointed for the purposes of this suit, with the necessary and usual powers, and that he or they be instructed and empowered as herein prayed.

16th. That the plaintiff may have such other relief as may be just and requisite for the protection or enforcement of his rights, and that he may recover his costs in this suit.

E. M. L'ENGLE,
In pro. per.

Edward M. L'Engle, being sworn, says that he has read the foregoing complaint, and knows the contents thereof, and that the statements therein when made on his own knowledge are true, and that when made on information and belief he believes them to be true.

E. M. L'ENGLE.

Sworn to and subscribed before me, the 11th day of May, A. D. 1872.

W. A. McLEAN,
County Judge.

742 EXHIBIT B.

In the U. S. circuit court.

J. FRED SHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Answer of E. M. L'Engle.

JACKSONVILLE, FLA., *February 8th*, 1871.

Messrs. HOLJE BOISSEVAIN,
Bankers, Amsterdam, Holland:

GENTLEMEN: On December 18th, 1870, Governor Harrison Reed, of Florida, received a telegraphic dispatch from you substantially as follows:

"Being negotiating four million bonds issued by your State, the Jacksonville, Pensacola and Mobile Railroad beg to know by telegraph from you whether provision made for payment interest, whatever result railroad traffic. Financial position of State really sound, and bonds undoubted security?"

To this dispatch Governor Reed replied as follows:

"Bonds recently recalled by the company, no provision will therefore be made for interest."

743 It was hoped that Governor Reed's telegram would have the effect of causing the bonds to be returned, as the railroad companies desired they should be. This has not been done, but on the contrary more bonds than were then out have been sent to Europe for negotiation, though no money I infer has yet been realized. I feel it to be my duty, therefore, to make a statement of facts to you, which I hope

that you will lay before others who may be interested with you in the negotiations.

When the legislature of Florida enacted the laws under which the bonds your telegram inquired about were issued, it was believed by the two railroad companies, hereafter named, that the proceeds of the State bonds when sold would be honestly and legitimately applied to the extension, through the western portion of this State, of the lines of railroad already built from the eastern to the middle portion. That extension was so much desired by the two companies owning the completed railroads that they were willing to mortgage, and did mortgage, their roads to the State, in order to secure the issuing of State bonds upon which to raise money to enable the newly organized company to build said extension. The railroads which so pledged their mortgage bonds to the State were the Florida Central Railroad, sixty miles long, and the Tallahassee Railroad, one hundred and fifty miles long. The former gave its mortgage bonds to the amount of one million dollars, the latter to the amount of three million dollars: and this latter road consolidated its line with that proposed to be built westward from the completed road, and the two companies became one, under the name of the Jacksonville, Pensacola and Mobile Railroad Company. But the Florida Central Railroad, commencing at Jacksonville and running westward sixty miles, was not included in the consolidation. Subsequently, and after three million of the State bonds had been sent to Europe, it was discovered that the president of the Jacksonville, Pensacola and Mobile Railroad, who had been active in procuring the legislation and inducing the completed roads to give to the State their bonds in exchange for the State's bonds which were issued to him, had made, even before he got the bonds, secret contracts with some of his creditors, by which the larger portion of the proceeds were to be diverted from the purposes for which the bonds were issued, and were to be applied in payment of individual debts. This produced such dissatisfaction, and caused such investigations by the companies which had mortgaged their roads to the State, as resulted in both of the companies, through their several directories, rescinding the action by which their roads were mortgaged, and recalling the bonds. The million of bonds issued by the State, on the security of a like amount pledged to the State by the Florida Central Railroad, had not then gone into the hands of the president of the Jacksonville, Pensacola and Mobile Railroad, but were held by a party till certain conditions precedent were performed, before delivery to the president of the Jacksonville, Pensacola and Mobile Railroad. That million of bonds then were returned to the State, and the bonds of the company, upon the security of which the others were issued, were withdrawn from deposit with the State, and were in the hands of the party already referred to, to be returned to the company for cancellation, when they were by that party, without the authority or knowledge of
744 the railroad company, or of any of its officers, and in violation of the company's resolutions of recall and rescission, delivered to an agent of the president of the Jacksonville, Pensacola and Mobile Railroad, who by influences best known to himself effected with the governor of the State their re-exchange for the State bonds, which latter were hurriedly and secretly sent out of the State and to Europe before any legal process could be obtained for their detention. This re-delivery to the governor of Florida of the Florida Central Railroad Company's million of bonds is a gross fraud on that company, and none who are advised of it, and buy or advance money on the State's bonds for which they were exchanged, will have any legal or moral right to ask that they

receive any benefit or advantage from the security so wrongfully obtained.

The same may be said of the three million of State's bonds issued on the pledge of the same amount of bonds of the Tallahassee or Jacksonville, Pensacola and Mobile Railroad. No one who, having notice of that company's rescission of its action and recall of its bonds, advances money on or buys the State's bonds for which the others were pledged, will have legally, or morally, any locus standi in curia as against that railroad company. The creditors and stockholders of the railroad companies will assert their right, resist the wrongs that have been perpetrated and attempted, and seek, successfully, redress in the judicial tribunals. You have had the above-mentioned action of the railroad companies brought to your notice by the telegram from Governor Reed, who sent it after consulting with the said companies, and at their instance, and you have incurred all the legal disqualifications to urge against the railroad companies any claim based on their supposed suretyship for any bonds of the State.

An examination of the law under which the State's bonds were issued discloses that the governor has caused half a million more of bonds to be issued than the law provides for. The law allows the issue of $16,000 per mile upon so much of said roads as may be completed and in running order; only 210 miles were, when the bonds were issued, completed, and only a mile and a half have been completed since, and no more is being completed. This would allow of an issue at the time it was made of only $3,360,000. Add the liberal allowance of ten miles for side tracks, &c., if such unreasonable construction of the law be claimed, and it legalizes only $3,520,000 of the bonds.

To secure the principal and interest of the Jacksonville, Pensacola and Mobile Railroad Company's bonds (but not of the bonds of the Florida Central Railroad), the law gives the State of Florida a statutory lien, valid as a first mortgage, on that company's road and property, and authorizes the governor, on failure of the company in any payment of principal or interest, to seize and sell the road at auction, and authorizes the State to purchase and to pay for it with any evidence of indebtedness the State may hold against the road, while every other bidder would, in case of purchase, have to pay cash. This summary process is not applicable to the Florida Central Railroad, but to the other road only. What would be the result in case of failure of the Jacksonville, Pensacola and Mobile Railroad to pay principal or interest on its bonds?

The State, if no resistance, or if unsuccessful resistance through
745 the courts were had, might seize, sell, and buy, paying for the
purchase with the road's obligations, while the State might not, perhaps could not, or would not, pay her own; nor is there any way known to our system of government by which a State can be compelled to pay its obligations. You will thus perceive the character of the securities offered you, and the taints of fraud that affected them from their first issue, and that still do, and will act advisedly. This communication is made in the interests of the stockholders of the companies whose bonds have, by misrepresentation and bad faith, been obtained and exchanged with the State of Florida for the State's bonds, which you have been, and may still be, negotiating for. The stockholders do not intend to submit to the fraud which has been attempted on them. They seek to have the State's bonds brought back, and a re-exchange effected, and it is to that end that this letter is written. Such a course will prevent litigation. Persistence in the wrong will insure it. Attempts may be made to give credit to the bonds by professional and perhaps by judicial

opinions from this State, but the facts that I state are incontestible, and I can give you much more and more detailed information concerning the worthlessness of the securities that you are negotiating for, and I will do so if desired. But I have said enough to make discreet men repudiate the securities and abandon negotiations.

I will say further that since the mortgage of the railroads to the State, 128 miles of the completed road, being all except twenty-two miles on which the State has any statutory lien, have been sold by the United States under a judicial process in their favor, issued from a United States court; thus divesting the company's title, and vesting it in the individual purchaser. That sale of course relieves that much of the road of the lien created in favor of the State of Florida by the mortgage before mentioned. You are at liberty to show this letter to whom you please, and to give it the widest publicity, and will oblige me by acknowledging its receipt. I will presume on a very slight acquaintance, to refer you, touching myself, to Hon. H. S. Sanford (late U. S. minister to Belgium) at Brussels.

Respectfully,

E. M. L'ENGLE,

Of Counsel for the Florida Central Railroad Company.

746 EXHIBIT C.

In the U. S. circuit court.

J. FRED. SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Answer of E. M. L'Engle.

At a meeting of the directors of the Florida Central Railroad Company, held November 21, 1870, upon motion of Mr. Papy, a committee was appointed to take in consideration the past issue of bonds, and also to report upon the policy of issuing bonds of the company and the amount.

The president appointed Messrs. Papy, Baker, and Huling said committee.

The board then adjourned to 4 p. m.

4 p. m.—The directors convened pursuant to adjournment, Colonel Sanderson, president, in the chair.

Mr. Papy presented the following report:

The committee finding that the bonds signed by G. W. Swepson, president, and countersigned by H. H. Thompson, treasurer, are in such form as that they cannot be used to carry out the intention of their 747 issue when they were adopted, report the following resolution in respect thereto:

Resolved, That the resolution adopting the bonds to be issued by this company, signed by George W. Swepson, president, and H. H. Thompson, treasurer, at a meeting of the board of directors held on the 2d of June, A. D. 1870, be, and the same is hereby, rescinded, and that said bonds be destroyed.

M. D. PAPY,

Chairman.

On motion the report was received and adopted.

On motion of Mr. Foster, the resolution was unanimously adopted.

Mr. Papy made the following report:

The committee report the following resolutions in reference to the issue of bonds of the company and the securing the same:

Resolved, That the president cause bonds, payable to bearer, to be prepared, signed, and executed in due form, which shall be issued for purposes of the company, not exceeding seven hundred thousand dollars in amount, with interest at seven per centum per annum, not having more than thirty years to run, with coupons, for interest, attached, payable in New York semi-annually.

Resolved, That said bonds and the interest thereon shall be a first lien or mortgage on the Florida Central Railroad, its equipments, workshops, depots, franchises, and property of every kind; and that the president cause to be prepared and executed such deed of trust or other necessary instrument of writing, under the seal of this company, as may be needful to make the first lien or mortgage in favor of said bonds, and the interest thereon, effectual to all intents.

M. D. PAPY,
Chairman.

On motion the report was received and adopted.

On motion of Mr. Huling the resolutions were unanimously adopted.

Adjourned to 4 o'clock next day, at which time the following resolution was adopted:

Resolved, That this board approve of the form of the trust deed read to the directors to secure the first lien or mortgage of the bonds and interest thereon authorized to be issued, and that the president of this company is authorized to select the trustees to whom said deed is to be made, not to exceed three in number.

Adopted.

I hereby certify that the foregoing is a true and correct copy from the records of the board of directors.

[SEAL.] F. H. FLAGG,
Secretary.

748 EXHIBIT D.

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY
et al.

Answer of E. M. L'Engle.

At a meeting of the directors of the Jacksonville, Pensacola and Mobile Railroad Company, held December 10th, A. D. 1870, the following preamble and resolutions were offered and adopted:

"Whereas bonds of the Jacksonville, Pensacola and Mobile Railroad Company have been issued according to the provisions of the act incorporating this company, and the amendments thereto, which bonds have been exchanged for bonds of the State of Florida, according to the provisions of said act. And whereas said bonds of the State of Florida were delivered by the governor to the president of this company. And whereas though previous to the consolidation of the Tallahassee Railroad Company with this company, authority was granted by the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company to its president to issue, negotiate, dispose of and apply the bonds for the purpose authorized by the act of incorporation, no action was had thereon after such consolidation, either by the stockholders or directors, then newly elected, authorizing the issue or disposal of bonds. And whereas though no such action was formally taken, yet the stockholders and directors were advised that bonds had been issued and exchanged for an equal amount of State bonds, and were in the hands of the president to be disposed of and applied, as they supposed, according to the law authorizing their issue, and they were satisfied therewith if a proper application was to be made thereof; and whereas the directors are now advised that a contract was made by the president and George W. Swepson, as president of the Florida Central Railroad Company, and certain persons as commissioners appointed by an act of the legislature of North Carolina, which contract was executed in April last, by which the bonds of the State of Florida, taken in exchange for the bonds of this company, were to be disposed of, and the proceeds to be divided, according to the terms of said contract, between the above-named Florida railroads and the commissioners aforesaid, dollar for dollar, until an amount of over one million of dollars, with interest, should be paid to said commissioners. And whereas said contract was unknown to the directors, and is in violation of the law of this State authorizing the issue of said bonds, and is a misapplication of said bonds or their proceeds: Therefore, be it

749 "Resolved, That all authority in the president of this company to dispose of or negotiate said bonds is hereby withdrawn.

"Resolved further, That a demand be made upon the president, or whomsoever else may have possession, control, or custody of said bonds, to return the same to the treasurer of this company forthwith.

"Resolved further, That a copy of the foregoing preamble and resolutions be communicated by the secretary to S. W. Hopkins & Co., 71 Broadway, New York, and 58 Broad street, London, and to the president of this company, and whomsoever else may have said bonds or any part thereof, in their hands or control."

I hereby certify that the foregoing is a true copy from the minutes of the board.

[SEAL.] F. H. FLAGG, *Secretary.*

750 EXHIBIT E.

In the U. S. circuit court.

J. FRED SHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Answer of E. M. L'Engle.

OFFICE FLORIDA CENTRAL RAILROAD,
Jacksonville, Fla., Oct. 28th, 1873.

E. M. L'ENGLE,
Managing Director Florida Central Railroad Company:

MY DEAR SIR: In 1869 I purchased of A. Huling lots at Jacksonville, Florida, deeds of which were made to the Florida Central Railroad Company. I paid the money, $5,000; also, in 1869, I paid several thousand dollars to the late President Sanderson to pay for the locomotives Lee and Stonewall, none of which has been refunded to me, nor has the company taken any action on either case. While I know the condition of the company is such that they cannot now refund, I do not call for immediate repayment, but I do want some action taken by the company in relation to the future payment.

There being a meeting of the board of directors called, I address this note to you, that it may be called up for action.

Truly yours,

M. S. LITTLEFIELD.

751 EXHIBIT F.

In the circuit court, fourth judicial circuit of Florida, Duval County.

In the name of the State of Florida: To Milton S. Littlefield, James M. Baker, Julia B. Coffin, William Redmond, Henry Gourdin, Geo. M. Merrill, F. Parker, C. B. Coddington, Louis J. Dupre, Charles B. Fenwick, and Edward M. L'Engle, stockholders of the Florida Central Railroad Company:

Whereas it has been suggested to us by the petition of the Western Division of the Western North Carolina Railroad Company, or corporation, created by and under the laws of the State of North Carolina, that it is in equity and good conscience the owner of four thousand three hundred and seventy shares of stock of the said Florida Central Railroad Company, claimed to be owned by you, the said Milton S. Littlefield, said stock being a large majority of all the stock of said last-named company; that said Western Division of the Western North Carolina Railroad Company has now depending in the circuit 752 court of the United States for the northern district of Florida its bill in equity, wherein it avers its right to said stock, and seeks to maintain the same; that a long period of time must elapse before the said suit can be determined and a final decree obtained thereon; that in the meantime the interests of the Western Division of the Western North Carolina Railroad Company in the said stock, as well as the property of all kinds of the said Florida Central Railroad Company, is suffering serious detriment; that the forfeiture of its franchise may occur and take place; that the interest of the people of the State of Florida in the said railroad as a public thoroughfare of trade, travel, and commerce, and in the preservation of said franchise, as well as the aforesaid interest of the said Western Division of the Western North Carolina Railroad Company therein, is exposed to the hazard of irreparable damage, and perhaps of entire destruction; that the said railroad is in pressing need of repairs, and that no material for such repairs can be obtained by reason of the failure, neglect, and refusal of you the said stockholders of the said Florida Central Railroad Company to assemble together and elect directors of the said Florida 753 Central Railroad Company, and that it is made the duty of you the said stockholders of said company, by the charter thereof, to meet once in each year and elect nine directors of said company, and that said directors being so elected shall thereupon choose a president, &c. And whereas it is further suggested by the petition of the said Western Division of the Western North Carolina Railroad Company, that no election of such directors, president, or other officers has been

had or holden by you for more than two years last past; and that you the said Littlefield, and other stockholders, did on the 29th day of January, A. D. 1877, meet at the principal office of the said Florida Central Railroad Company, in the city of Jacksonville, for the averred purpose of electing directors and other officers, as provided in the said charter; that the said meeting was adjourned without said election, and still stands adjourned, and so continues from day to day, upon the pretense, on the part of you, or some of you, that the corporate seal and stock-book of the said Florida Central Railroad Company
754 are not now in your possession, and that certain certificates of
stock standing in the name of the said Littlefield *and* not now in his possession, although the said Littlefield (as suggested in said petition) has heretofore represented said stock at the regular election of directors of said company.

And whereas it is further suggested by the said petition that without the interposition of this court by the process of mandamus, the intent of the said Western Division of the Western North Carolina Railroad Company in the said Florida Central Railroad Company and its franchise and property of all kinds, as well as the interests of the people of the State of Florida therein, hereinbefore set forth, are in great jeopardy, exposed to the hazard of irreparable damage, and perhaps entire destruction, as well as for divers other good and sufficient reasons, in the said petition expressed, (for the more particular detail of which reference is here made to the said petition.) we, being willing that full and speedy justice should be done in the premises, do command you, or such number of you as may be found to be the owners or holders together of
755 stock of the said Florida Central Railroad Company, amounting in
the aggregate to more than one-half of all the stock of said company, that is to say, to more than one-half of five thousand five hundred & fifty shares thereof; that you do meet and assemble together at the principal office of the said Florida Central Railroad Company, in the city of Jacksonville aforesaid, on the 27th day of February, A. D. 1877, and that you then and there proceed to the election of nine directors for the said Florida Central Railroad Company, and that you do then and there choose and elect from among the stockholders of said company the said nine directors, and that such of you as may be thus elected directors shall then and there choose and elect from among this number a president and such others officers as by the provisions of said charter they may be required to elect, said directors to be so elected to serve until the first Tuesday of May, A. D. 1877, or until their successors are elected and qualified, and that in all things you do observe the
756 charter of said company and the provisions thereof, or else that
you appear before me at the court-house in the said city of Jacksonville, at 10 o'clock a. m. on the 26th day of February, A. D. 1877, to show cause why you refuse to do so. It is further ordered that notice of this order be published at least three times each week in a newspaper published in the city of Jacksonville, Florida, until the 26th day of February, 1877.

(Signed) R. B. ARCHIBALD, *Judge.*

At Chambers, Jacksonville, Fla.. Feb'ry 15, 1877.

In testimony whereof I, Thomas E. Buckman, clerk of the circuit court for the fourth judicial circuit of Florida, in and for Duval County, have hereunto set my hand and the seal of said court this the 15th day of February, A. D. 1877.

T. E. BUCKMAN, *Clerk.*

757 **EXHIBIT F 2.**

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Answer of E. M. L'Engle.

In the circuit court, fourth judicial circuit of Florida, Duval County.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
MILTON S. LITTLEFIELD ET AL.

In the name of the State of Florida:

And now at the session of the court began and held at 10 o'clock a. m. on the 15th day of March, A. D. 1877, pursuant to adjournment, comes the petitioner, by its attorneys, Joseph B. Stewart and E. M. Thompson, and no further return or answer being made to the alternate writ of mandamus heretofore granted and argued and determined, on the demurrer interposed to the sufficiency thereof by Henry R. Jackson and H. Bisbee, jr., esq., on the part of Joseph H. Durkee, receiver, Frank R. Sherwin, as agent of G. M. Boissevain, Adrain J. Mildens, and Adrain Stoop, claiming to be bondholders, and Robert Walker and Patrick Houstoun and Edward Lewis, stockholders, the same having been overruled upon argument, and leave granted until Wednesday, the 14th instant at 12 o'clock m., if the respondents, or any of them, should elect to so do, or have further answer to make, and the court having met pursuant to adjournment at 12 o'clock m., and the counsel for respondents not appearing, was further adjourned by the court until the session now held for the further hearing and final order in said alternate writ; and the court being fully advised in the premises and in order that speedy justice may be done, doth now issue this its further command and 758 peremptory writ of mandamus to you, Milton S. Littlefield, James M. Baker, William Redmond, George M. Merrill, Henry Gourdine, Julia B. Coffin, F. Porcher, T. B. Coddington, Lewis J. Dupre, Charles B. Fenwick, and Edward M. L'Engle, stockholders of the Florida Central Railroad Company, and thereupon do now command you, or such number of you as may be found to be owners or holders together of stock of the said Florida Central Railroad company, amounting in the aggregate to more than one-half of five thousand five hundred and fifty shares thereof, that you do meet and assemble together at the principal office of the said Florida Central Railroad Company, in the city of Jacksonville aforesaid, in the manner heretofore commanded, pursuant to your adjournment for that purpose made, not to exceed one day from this date, to wit, on or before the expiration of this 16th day of March, A. D. 1877, and that you do then and there proceed to election of nine directors for the Florida Central Railroad Company, and that you do then and there choose and elect from among the said stockholders of said company the said nine directors, and that such of you as may then be chosen directors shall then and there choose and elect from among their number a president and such other officers as by the provisions of said charter they may be required to elect, said directors to be so elected to serve until the first Tuesday of May, A. D. 1877, or until their successors are elected or qualified, and that in all of this you observe the said charter of said company and the provisions thereof, and do you return and make answer to your proceedings in obedience to this writ on or before Saturday, the 17th day of March, A. D., 1877, at 12 o'clock m. of that day. Herein fail not.

(Signed) R. B. ARCHIBALD, *Judge*.
MARCH 15, 1877.

In testimony whereof I, Thomas E. Buckman, clerk of said circuit court for the fourth judicial circuit of Florida, in and for Duval County, have hereunto set my hand and affixed the seal of said court on the 15th day of March, A. D. 1877.

[L. S.] T. E. BUCKMAN, *Cler*

I hereby certify that the foregoing is a full and correct copy from the original now on file in my office.

In witness whereof I have hereunto set my hand and seal of said court this 10th day of May, A. D. 1877.

[SEAL.] T. E. BUCKMAN, *Clerk*.

759 F 3d.

Return.

In the circuit court, fourth judicial circuit of Florida, Duval County

IN THE MATTER OF THE PETITION FOR MANdamus by the Western Division of the Western North Carolina Railroad Company
vs.
MILTON S. LITTLEFIELD & OTHERS.

The return of Milton S. Littlefield, Edward M. L'Engle, Charles B. Fenwick and James M. Baker, to the peremptory writ of mandamus issued and directed to them as stockholders of the Florida Central Railroad Company in the above-entitled proceeding, respectfully shows: That in obedience to the said writ they assembled together at the principal office of the said company in the city of Jacksonville, Florida, on Thursday, the 15th day of March, A. D. 1877; and that said respondents, being then and there assembled, represented and were entitled to vote more than a majority of all the stock of said company, and forthwith elected nine directors for said company, who thereafter, to wit, on the same day, and in the same place, convened and elected a president and such other officers as required by the provisions of the 760 charter of said company, and in obedience to the said writ, whereupon it is prayed that respondents be discharged.

March 16th, 1877.

(Signed) M. S. LITTLEFIELD.
(") CHAS. B. FENWICK.
(") JAMES M. BAKER.
(") E. M. L'ENGLE.

I hereby certify that the foregoing is a true and correct copy of the original on file in my office.

In witness whereof I have hereunto set my hand and the seal of the circuit court this 2d day of June, 1877.

[SEAL.] THOMAS E. BUCKMAN, *Clerk*,
By CHAS. H. BRUSH, *D. C.*

761 EXHIBIT G.

In the U. S. circuit court, northern district of Florida.

J. FRED. SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY ET AL.

Answer of E. M. L'Engle.

This memorandum of contract and agreement, made and entered into this day between Edward Houstoun, party of the first part, and Milton S. Littlefield, party of the second part, witnesseth: That Edward Houstoun has this day sold to Milton S. Littlefield four drafts drawn by George W. Swepson on Milton S. Littlefield, dated August 2, 1869, and accepted by said Littlefield, one for twenty-six thousand five hundred and twenty dollars ($26,520), due at six months; one for twenty-seven thousand and thirty dollars ($27,030), due at nine months; one for twenty-seven thousand five hundred and forty dollars ($27,540),
762 due at fifteen months, and that said Houstoun has this day sold
to said Littlefield one thousand three hundred shares of stock in the Florida Central Railroad Company. In payment for said drafts and said stocks, said Littlefield has paid said Houstoun ten thousand dollars in cash, and the drafts of said Littlefield, of this date, on S. W. Hopkins & Co., of 71 Broadway, N. Y., for one hundred and sixty-three thousand and seventy and twenty hundredths dollars, due sixty days from date. To secure the payment of said draft of $163,070 20-100, it is agreed that said Houstoun shall retain possession of said four drafts by George W. Swepson on said Littlefield, and also the one hundred and ten bonds of the Pensacola and Georgia Railroad Company, and the Tallahassee Railroad Company, now in his possession as collateral, and in addition thereto, said Littlefield hereby obligates himself immediately to deposit with F. H. Porter, of the banking-house of Soutter & Co., 53 William street, New York, certificate of stock for 3,110 shares of the stock of the Florida Central Railroad Company, with directions to said Porter to hold said certificates till said draft of $163,070 20 100 shall fall due, and then if said draft is not promptly paid within ten days after it falls due, to deliver said certificate to said Houstoun, or his order, and in the event said certificate shall be so delivered to said Houstoun, he is hereby authorized to sell the said three thousand one hundred and ten shares of the stock of the Florida Central Railroad Company at public auction to the highest bidder, on mailing to the address of M. S. Littlefield, Tallahassee, Florida, and to the address of George W. Swepson, Haw River, North Carolina, and to the address of S. W. Hopkins & Co., No. 71 Broadway, New York, notice of the time and place of such sale in the city of New York, ten days previously to day of sale, and said Houstoun may become a purchaser at said sale.

On the payment of said drafts said Houstoun hereby obligates himself to transfer the said shares of stock hereby sold, to deliver to said Littlefield the said 1,300 shares of stock sold, and also the one hundred and ten bonds of the Tallahassee Railroad Company, which Houstoun now holds as collateral security for the payment of said four drafts, together with all the coupons on said bonds falling due from and after the 20th of March, 1869.

This is understood and intended to be a full, complete and final settlement of all matters between either George W. Swepson or M. S. Littlefield and Edward Houstoun.

In testimony of all which, the parties aforesaid have hereunto set their hands and seals, at Tallahassee, Florida, the thirteenth day of May, A. D. 1870.

E. HOUSTOUN. [SEAL.]
M. S. LITTLEFIELD. [SEAL.]

Signed, sealed, and delivered in presence of—
ROLLIN STEWARD.
D. S. WALKER.

763 **EXHIBIT H.**

In the U. S. circuit court.

J. FRED. SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Answer of E. M. L'Engle.

Whereas by an arrangement between Edward Houstoun and S. W. Hopkins, representing the firm of S. W. Hopkins & Co., it is agreed between them that the certificates of stock in the Florida Central Railroad Company held by said Houstoun and standing in the names of the following-named persons, and for the following amounts, and numbered as follows, be and are deposited with M. D. Papy, who is to hold the same, and not to be delivered by him to any person unless directed to do so by M. S. Littlefield and S. W. Hopkins jointly, or unless directed to be delivered to M. S. Littlefield by said S. W. Hopkins, or to be delivered to S. W. Hopkins by M. S. Littlefield, viz:

	No. 40, in the name of Edward Houstoun, for	100	shares
	No. 41, " " "	100	"
	No. 42, " " "	100	"
	No. 43, " " "	100	"
	No. 44, " " "	100	"
	No. 45, " " "	100	"
	No. 47, " " "	100	"
	No. 48, " " "	100	"
	No. 49, " " "	100	"
	No. 50, " " "	100	"
	No. 51, " " "	70	"
764	No. 57, in the name of Edward Houstoun, guardian for Eliza V. Houstoun	70	shares
	No. 58, in name of Edward Houstoun, guardian for Claudia Houstoun	70	"
	No. 59, in name of James S. Houstoun, for	20	"
	No. 79, " Edward Houstoun	30	"
	No. 80, " " "	3,110	"
		4,370	"

It is also agreed that the one hundred and three thousand dollars of the first mortgage bonds of the Pensacola and Georgia Railroad Company, and of the Tallahassee Railroad, which said Houstoun has heretofore held as security for draft in his favor, given by M. S. Littlefield, president, &c., on S. W. Hopkins & Co.. dated May 13th, 1870, be also depositited with M. D. Papy, to be delivered only on the same terms and directions as declared with respect to the delivery of the said stock certificates aforesaid.

It is agreed, in addition, that the delivery of said certificates and said bonds is not to be made to said Littlefield unless, in addition to the requirements aforesaid, the suit instituted in New York against said Edward Houstoun and others, by the Western Division of the Western North Carolina Railroad Company, claiming the stock represented by said certificates, No. 80 for three thousand one hundred and ten shares, and the suits brought against said Houstoun by T. L. Clingman in Pennsylvania and New Jersey, and by Rogers and Bayne and L. P. Bayne, in New York, shall have been dismissed.

It is further agreed, that the four drafts of George W. Swepson on M. S. Littlefield, accepted by Littlefield, and amounting in the aggregate to the sum of one hundred and nine thousand one hundred and forty dollars, exclusive of interest thereon, be likewise deposited with M. D. Papy, and are not to be delivered to said Littlefield unless and until directed to do so by said S. W. Hopkins.

Said Edward Houstoun has delivered to said S. W. Hopkins three certificates of stock of said Florida Central Raialroad Company—one, No. 77, in the name of James M. Baker, for ten shares, transferred in blank by said Baker; one, No. 78, in name of George R. Foster, for ten shares, transferred in blank by said Foster, and one, No. 82, in name of Edward Houstoun, for twenty shares, transferred in blank, making together forty shares. The said certificates are delivered to said Hopkins in order that they may be transferred to enable persons to become directors in said Florida Central Railroad Company, but the same are to be held by whomsoever said Hopkins directs as part of the securities growing out of the advance made by said Hopkins & Co., to take up the draft in favor of said Houstoun, given by M. S. Littlefield, and the new certificates in lieu thereof are likewise to delivered to M. D. Papy, and are to be subject to the joint direction of said Hopkins and Littlefield, or of either of them, in favor of the other, as prescribed in regard to the other certificates and bonds deposited with M. D. Papy as aforesaid.

Witness my hand this 12th day of April, 1871.

EDWARD HOUSTOUN. [SEAL.]
S. W. HOPKINS & CO. [SEAL.]

765 **EXHIBIT I.**

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Answer of E. M. L'Engle.

In the circuit court, fifth circuit of the United States, northern district of Florida. In equity.

ROBERT J. WASHINGTON
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY, the Western Division of the Western North Carolina Railroad Company, Lawrence P. Bayne, Henry J. Rogers, Thomas L. Clingman, Fanny S. Papy, as executrix of the last will and testament of Mariano D. Papy, deceased; Raymond M. Demere, James H. Johnson, and James P. S. Houstoun, as executors of the last will and testament of Edward Houstoun, deceased, and T. Mayhew Cunningham.

Now comes the complainant, by E. M. L'Engle, his counsel, and moves the court for the appointment of a trustee or trustees in the 766 place of Mariano D. Papy, deceased, to hold the shares of capital stock in the Florida Central Railroad Company, mentioned in the bill. And came also the defendants, the Western Division of the Western North Carolina Railroad Company, Thomas L. Clingman, Lawrence P. Bayne, and Henry J. Rogers, by Joseph B. Stewart, their attorney, and consented to the granting of the said motion. And came also the defendants, Fanny S. Papy, as executrix of the last will and testament of Mariano D. Papy, deceased, and the Florida Central Railroad Company, and made no objection to the granting of the said motion. And came also the defendants, Raymond M. Demere, James H. Johnson, and James P. S. Houstoun, as executors of the last will and testament of Edward Houstoun, deceased, and James P. S. Houstoun, in his own right, and T. Mayhew Cunningham, who had made defaults, and after argument of counsel and consideration by the court, it is decreed and adjudged that Mariano D. Papy was, in his lifetime, the trustee of the four thousand three hundred and seventy shares of capital stock in the Florida Central Railroad Company, described as follows; that is to say:

100 shares of said stock, embraced in certificate No. 40, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 41, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 42, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 43, standing in the name of Edward Houstoun.

100 shares of said stock, embraced in certificate No. 44, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 45, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 47, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 48, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 49, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 50, standing in the name of Edward Houstoun.
70 shares of said stock, embraced in certificate No. 51, standing in the name of Edward Houstoun.
70 shares of said stock, embraced in certificate No. 57, standing in the name of Edward Houstoun, guardian of Eliza Houstoun.
70 shares of said stock, embraced in certificate numbered 58, standing in the name of Edward Houstoun, guardian of Claudia Houstoun.
20 shares of said stock, embraced in certificate numbered 59, standing in the name of James P. S. Houstoun.
30 shares of said stock, embraced in certificate numbered 79, standing in the name of Edward Houstoun.
3,110 shares of said stock, embraced in certificate numbered 80, standing in the name of Edward Houstoun.

Four thousand three hundred and seventy shares of said stock.

767 It is further decreed that said trust still subsists for the purposes set forth in the indenture creating it, and for the further purposes of this suit, and that the office of trustee has been made vacant by the death of said Mariano D. Papy.

It is, therefore, further ordered and decreed that A. Doggett, esquire, of the city of Jacksonville, in Duval County, State of Florida, be and he is hereby appointed trustee of the said four thousand three hundred and seventy shares of the capital stock of the Florida Central Railroad Company in the place and stead of the said Mariano D. Papy, to hold the same upon the trusts declared in the indenture mentioned in the bill of complaint in this cause, whereby the said trust was created and the said Mariano D. Papy appointed trustee; and further to hold the same for the purposes of this suit and until the further order of this court, and subject to the orders and decrees of Judge Woods in this behalf.

It is further ordered that the decrees pro confesso heretofore taken against the defendants, James P. S. Houstoun, Raymond M. Demere, and James H. Johnson, as executors of the last will and testament of Edward Houstoun, deceased, and against James P. S. Houstoun, in his own right, and against T. Mayhew Cunningham, be opened, and that the said defendant be allowed to answer the said bill by the rule day of June, 1877, on the following terms and not otherwise, that is to say, that the said defendants file in this cause, with the clerk of this court, the above-mentioned certificates of shares of said capital stock which were taken from the possession of the trustee, Mariano D. Papy, at the suit of Edward Houstoun, deceased, as set forth in the bill filed in this cause.

THOMAS SETTLE, *Judge.*

Filed May 7th, 1877.
[SEAL.]

P. WALTER, *Clerk.*

I, Philip Walter, clerk of the United States circuit court, fifth judicial circuit, northern district of Florida, do hereby certify that the foregoing is a true copy of the original on file and of record in my office.

In witness whereof I have hereunto set my hand and official seal this 28th day of May, A. D. 1877, and of the Independence of the United States the 101st year.

[SEAL.] **PHILIP WALTER**, *Clerk.*

768 **EXHIBIT J.**

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY ET AL.

Answer of E. M. L'Engle.

Stockholders' meeting.

OFFICE FLORIDA CENTRAL RAILROAD COMPANY,
Jacksonville, Fla., May 12, 1877.

Meeting convened pursuant to adjournment, a majority of the stock being represented.

On motion the meeting adjourned to Monday, May 28th, at 12 m.

CHAS. B. FENWICK,
Secretary.

Stockholders' meeting.

OFFICE FLORIDA CENTRAL RAILROAD COMPANY,
Jacksonville, Fla., May 28, 1877.

The meeting of stockholders convened pursuant to adjournment. E. M. L'Engle was called to the chair, and C. B. Fenwick acted as secretary.

769 The chairman appointed W. J. Lawton, esq., and N. K. Sawyer, esq., a committee to examine the certificates and report the number of shares represented, and by whom represented.

The chairman informed the meeting that Aristides Doggett, esq., had been appointed by a decree of the court of the United States, trustee of four thousand three hundred and seventy shares of the capital stock of this company, and Mr. Doggett presented a certified copy of such decree, under the seal of the court, which the secretary was directed to spread upon the minutes, and it is done, as follows:

(The said decree is omitted, it appearing elsewhere as an exhibit.)

The committee on stock reported as follows: The whole number of shares represented in the meeting are—

That is to say, forty-three hundred and seventy shares embraced in the decree of the circuit court of the United States for the northern district of Florida, appointing A. Doggett, esq., trustee thereof, and represented by A. Doggett, esq., as such trustee.

Seventy shares, embraced in certificate number , issued A. D. 1868, are represented by E. M. L'Engle, agent.

Forty shares, embraced in certificate number sixty-four, for sixty shares, issued , 1868, under seal of the company, to , are represented by E. M. L'Engle, assignee.

Ten shares of said stock, embraced in said certificate number sixty-four for sixty shares, are represented by J. C. L'Engle, as assignee of such ten shares under an assignment, in writing thereof, from E. M. L'Engle, dated March 15, 1877.

Ten shares of said stock, embraced in said certificate number sixty-four for sixty shares, are represented by George R. Foster, as assignee of such ten shares under an assignment, in writing thereof, from E. M. L'Engle, dated March 15, 1877.

Fifty shares of said stock, embraced in certificate numbered seventy, for one hundred shares, issued November 9, 1868, to Jacob Barrett, are represented by C. B. Fenwick, assignee.

Ten shares of said stock, embraced in certificate number seventy, for one hundred shares, are represented by J. M. Baker, as assignee of such ten shares, under an assignment, in writing thereof, from C. B. Fenwick, dated March 15, 1877.

Ten shares of said stock, embraced in certificate number seventy, for one hundred shares, are represented by W. J. Lawton, as assignee of such ten shares under an assignment, in writing thereof, from C. B. Fenwick, dated March 15, 1877.

Ten shares of said stock, embraced in certificate number seventy, for one hundred shares, are represented by N. K. Sawyer, as assignee of such ten shares under an assignment, in writing thereof, from C. B. Fenwick, dated March 15, 1877.

Ten shares of said stock, embraced in certificate number seventy, for one hundred shares, are represented by M. S. Littlefield, as assignee of such ten shares under an assignment, in writing thereof, from C. B. Fenwick, dated March 15, 1877.

Ten shares of said stock, embraced in certificate number seventy, for one hundred shares, are represented by J. B. Stewart, as assignee of such ten shares under an assignment, in writing thereof, from C. B. Fenwick, dated March 15, 1877.

770 Forty shares of said stock, embraced in certificate number thirty-nine, issued to A. D., are represented by C. B. Fenwick, agent.

Ten shares of said stock, embraced in certificate number twenty-one, issued to W. L. Hambruch, October 7, 1868, and endorsed by him in blank, are represented by C. B. Fenwick, agent.

Forty shares of said stock, embraced in certificate number seventy five, issued March 11, 1869, to George W. Swepson, are represented by C. B. Fenwick, agent.

Thirty shares of said stock, embraced in certificate number twenty-three, issued 7th of October, 1868, to Johnson Hagood, are represented by C. B. Fenwick, agent.

Seventy shares of said stock, embraced in certificate number eighty-three, issued the 10th of February, 1871, to E. A. Hopkins, are represented by C. B. Fenwick, agent.

Seventy shares of said stock, embraced in certificate number fifty-three, issued 16th of October, 1868, to M. D. Papy, are represented by C. B. Fenwick, agent.

Ten shares of said stock, embraced in certificate number seventy-four, issued , 1868, to are represented by C. B. Fenwick, agent.

One hundred shares of said stock, embraced in certificate number sixty-two, issued under the corporate seal of the company October 21, A. D. 18 8, are represented by E. M. L'Engle, as agent and attorney.

Twenty shares of said stock, embraced in certificate number , issued under the corporate seal , A. D. 1868, to F. B. Porcher, are represented by E. M. L'Engle, as proxy.

Fifty-two shares of said stock, embraced in certificate number, issued to under the corporate seal A. D. 1868, to J. R. Coffin, are represented by E. M. L'Engle, as proxy.

All of these certificates were produced before the committee, and are stamped with the seal of the company, and signed by the presidents in office at their dates respectively. The committee reported as follows: the number of shares present or by proxy, five thousand and forty-two shares of stock.

On motion, the report was adopted.

On motion of J. M. Baker, the meeting now proceeded to elect nine directors for the current year.

A. Doggett and J. B. Stewart were appointed tellers.

A canvass being had, the following persons received the number of votes set opposite their names:

E. M. L'Engle	5,042	votes.
J. M. Baker	"	"
M. S. Littlefield	"	"
J. C. L'Engle	"	"
G. R. Foster	"	"
J. B. Stewart	"	"
W. J. Lawton	"	"
N. K. Sawyer	"	"
C. B. Fenwick	"	"

771 And they were declared the duly elected directors of said company.

On motion of W. J. Lawton the meeting adjourned.

CHAS. B. FENWICK,
Secretary.

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EXHIBIT K.

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Answer of E. M. L'Engle.

Directors' meeting.

OFFICE OF THE FLORIDA CENTRAL RAILROAD COMPANY,
Jacksonville, Florida, May 28, 1877.

The board of directors elected by the stockholders (at their meeting this day) convened at the office of the company at 2 p. m., were present:

E. M. L'Engle, J. M. Baker, M. S. Littlefield, J. B. Stewart, N. K. Sawyer, W. J. Lawton, and C. B. Fenwick—the same being a business quorum.

Hon. J. M. Baker was called to the chair, and C. B. Fenwick, esq., acted as secretary.

The election of president being now in order, W. J. Lawton was appointed teller. A ballot being had, E. M. L'Engle, esq., was declared to have received six votes; thereupon it was

Resolved, That E. M. L'Engle, esq., was duly elected and is the president of this company.

On motion it was ordered that the board do now proceed to the election of a secretary and treasurer, and that W. J. Lawton, esq.,
773 act as teller. A ballot being had, C. B. Fenwick was declared to have received six votes; whereupon it was

Resolved, That C. B. Fenwick, esq., was duly elected, and is the secretary and treasurer of this company.

* * * * * * *

[FLA. CENTRAL RAILROAD COMPANY.] CHAS. B. FENWICK,
Secretary.

I certify that the above is a true copy and forms a part of the record of this company.

CHAS. B. FENWICK,
Secretary.

774 EXHIBIT L.

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Answer of E. M. L'Engle.

Stockholders' meeting.

OFFICE FLORIDA CENTRAL RAILROAD COMPANY,
March 20, 1877.

The meeting convened pursuant to adjournment, a majority of the stock being represented.

E. M. L'Engle was called to the chair, and C. B. Fenwick acted as secretary.

The minutes of the last meeting were read and adopted.

The following preamble and resolutions were presented by J. B. Stewart, esq., and adopted without dissent:

Whereas the Florida Central Railroad Company has, for several years, been involved in ruinous litigation, arising from conflicting claims to the possession or control of its road and other property, and to a majority of its shares of capital stock, which litigation and the causes thereof still continue and have involved the said company in indebtedness greater than the company is able to pay from its net earnings in the present condition of its property;

And whereas the iron and rolling-stock of said company's railroad is worn out and inadequate to the demands of its business;

And whereas the preservation of said company's existence, as a common carrier, demands that the above mentioned conflicting claims be adjusted, and said litigation be terminated, and said indebtedness be paid, that new iron and new and sufficient rolling-stock and material be provided; therefore, be it

Resolved, That for the purposes above recited this company shall issue forthwith coupon bonds of the par value of $1,000 each, due thirty years after date, to an amount not exceeding $590,000, bearing seven per cent. interest per annum, principal and interest being payable in gold—which bonds shall be secured in their payment by a first-mortgage lien on all the property of said company.

Be it further resolved, That the bonds to be issued in accordance with the resolution of the stockholders of this company be appropriated to the several purposes recited in the said resolution in such amounts as the directory shall determine.

CHAS. B. FENWICK,
Secretary.

I certify that the above is a true copy, and forms a part of the record of this company.

CHAS. B. FENWICK,
Sec'ty.

775 EXHIBIT M.

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Answer of E. M. L'Engle.

Florida State bonds.

TALLAHASSEE, FLORIDA, *June*, 1871.

To Chairman States and Corpor'tions Arrears Committee, 193, 194, 195,
Gresham House, London:

SIR: It is understood here that General M. S. Littlefield, the president of the Jacksonville, Pensacola and Mobile Railroad Company, a corporation existing under the laws of Florida, Messrs. S. W. Hopkins & Co., financial agents and representatives of the corporation, and perhaps others in the same interest, are endeavoring, with a prospect of success, to negotiate a sale of a very large number of bonds of the State of Florida, issued under the provisions of the act of the legislature of this State, entitled "An act to perfect the public works of the State," and subsequent acts amending the acts named.

It is only fair that capitalists who have been induced to think favorably of these State bonds as an investment should be informed as to the character of the securities in which they are about to embark their means, and the purpose of this letter is to place you, and through you others concerned, in possession of such facts connected with the history of these bonds, and the law under which they were issued, as it may be to their interest to know.

776 The Pensacola and Georgia Railroad Company, and the Tallahassee Railroad Company, were railroad corporations existing under the laws of this State. These corporations having availed themselves of the benefits of the act of the legislature of this State, commonly called the internal improvement act, approved January 6th, 1855, and having failed afterwards to comply with its requirements, by payments of the semi-annual interest and sinking fund due upon the debt

contracted on account of the first-mortgage bonds issued by the companies under the provisions of the said act, these road-beds, property, and franchises were, in accordance with the requirements of the said act, taken possession of by the trustees of the internal improvement fund and sold, after due advertisement, to the highest bidder, on the day of , 1869. This sale was, in one essential feature, a fraud. The law permitted that the trustees sell either for cash, or for additional approved security, as they might think of most advantage to the fund and the first-mortgage bondholders, to satisfy whose claim the sale was made. In this case the trustees elected to sell for cash, and so advertised to the world up to the moment of sale. And the sale purported to be a cash sale. In point of fact, however, the purchasers did not pay cash, but only made partial payment by a surrender to the trustees of about $1,000,000 of the first mortgage bonds. The entire first-mortgage debt of the two companies was about $1,473,000, and this payment of $1,000,000 in the bonds left a balance due upon the price bid which was in amount equal to the entire bonded debt, of about $473,000, which amount on payment would have been at once applicable to take up and pay off the balance of bonds outstanding, about $473,000 in amount. The trustees, however, delivered possession of the railroad property to the purchasers upon this partial compliance by them with the terms (cash) of the sale. This indebtedness, which has never been paid except in small part (there being still about $300,000 of first-mortgage bonds outstanding and unsatisfied), has a legal priority, and has been always so recognized by the parties now in possession, through this purchase, as a first lien, anterior to all others now existing, or that may be created upon the property and franchise of the Jacksonville, Pensacola and Mobile Railroad Company, (formerly, as will appear hereafter, the Pensacola and Georgia and Tallahassee Railroad Companies.) The parties in possession of the property have constantly promised payment, and doubtless have induced persons abroad to believe that they have already paid off this debt. After the sale of the Pensacola and Georgia and Tallahassee Railroads, referred to above, the parties in possession, through this incomplete sale, procured the passage by the legislature of several acts for their benefit, and first among them, of the "Act to perfect the public works of the State," approved June 24th, 1869. This act consolidated the Pensacola and Georgia and Tallahassee Railroad Companies, and incorporated the Jacksonville, Pensacola and Mobile Railroad Company, and authorized aid to be given by the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company, by the issue to the company of bonds of the State to the amount of $14,000 per mile. The act, however, provided that the State, as a condition precedent to the issue of its bonds, should be made secure by a lien to be taken by the State upon the property and franchise of the corporation for whose benefit this aid
777 was to be given. This was a condition fixed by the act, and with this provision it passed the legislature; and when, some time after the act had passed, it appeared that by its fraudulent enrollment the provisions securing the State had been omitted, and that a forged law had been filed in the office of the Secretary of State, and officially published as a law of the State, certain citizens of the State, property-holders and tax-payers, filed their bill on the chancery side of the circuit court of Leon County, second judicial circuit of Florida, praying for an order of injunction against Harrison Reed, governor of Florida, and against S. B. Conover, treasurer of the State, and for an order of the court against these officers, to restrain and enjoin them from signing,

countersigning, or delivering the bonds authorized by this fraudulent law, and from doing any acts whatever under the pretended act, upon the ground of the forgery and fraud practiced, in omitting from the enrolled bill the clause which required a security to the State, in the issue of its bonds by a mortgage upon the railroad property and franchise. You will readily perceive, in view of the fact that the balance of $473,000 first mortgage debt referred to was unpaid, that the purpose in this fraud was to relieve the railroad company of the necessity of paying off its existing incumbrances before getting the benefit of the funds to be raised on the State bonds.

The court acted favorably and at once upon this application, and granted, without hesitation, the injunction prayed for; and so patent was the fraud that no answer was ever made to the bill, and no effort was ever made to dissolve the injunction. So matters rested until the next convening of that great and good body of law-givers—the Florida legislature. This next legislature, which assembled on the day of , 1870, passed an act to alter and amend the aforesaid act, which last act validified and made of force the "Act to perfect the public works of the State," which had been enjoined, except as amended and modified by the last law. Under these two acts Messrs. Littlefield and associates, parties in present possession of the railroad property, are now endeavoring to raise money upon State bonds. These acts authorized the aid to be given to the corporation, but required, as a condition precedent to the granting this aid, and the delivery of the State bonds, that the State be made secure by a lien, to be taken in the manner pointed out by the acts, on the Jacksonville, Pensacola and Mobile Railroad property and franchise, and of course that corporation could not be in a condition to comply with the requirement and give this lien until incumberances, already existing and resting on the property, should be removed by payment of the outstanding first-mortgage bonds of the Pensacola and Georgia and Tallahassee Railroad Companies.

That the statement as to this liability is correct there is not the least doubt, and in order to show you that it is admitted to be correct, I refer you to the annexed copy of a letter addressed by me to Harrison Reed, governor of the State of Florida, to whom it was entrusted under the law to see that the State was protected before the delivery of its bonds, and his reply endorsed. In both the letter and the pledge endorsed in reply, the position is taken that the unpaid first-mortgage bonds of the Pensacola and Georgia Railroad and Tallahassee Railroad Companies, outstanding, constitute a first-lien upon the railroad 778 property and franchise, and that no issue of the State bonds could or would be made until these lien incumberances, resting upon the property, should be removed by payment and satisfaction of the first-mortgage bonds outstanding, after which the company would acquire the power to mortgage unincumbered property to the State. Notwithstanding these admitted opinions of Governor Reed, this solemn, written pledge, and his full knowledge that this first-mortgage bonded indebtedness outstanding against the railroad was unpaid, after quieting the apprehensions of the holders of the unpaid first-mortgage railroad bonds by this pledge, he signed, at a time when he had lulled suspicion, and delivered the State bonds, thus imposing upon the State a security which he knew to be imperfect. Can you suppose that a vast indebtedness, placed upon a people already insolvent under these circumstances, will ever be paid?

The principal security which those who may invest in the bonds of this State will have, must be that security which has been given to the State. The principal security for any investment to be made in railroad securities of this State must be the road-bed and franchise. In the light of the past and present history of this State, you cannot rely either upon its willingness or ability to pay a security of the character of these bonds when all the benefits result to stockholders in the corporation. In this case, the chief security being incumbered by prior mortgages, it is clearly the interest of the purchaser of the State bonds to see that such an amount of the money paid as may be necessary be applied to the discharge of this prior indebtedness. The bonds representing this prior incumbrance may be purchased at reasonable rates, but they will not be sacrificed by the holders. In the meantime suit has been instituted and is now pending in the United States circuit court for the district of Florida, for the purpose of subjecting the railroad property to sale, unless the original first-mortgage debt outstanding be paid up. You may have been advised that the purchaser of the State bonds will have nothing to do with the corporation, and may look entirely to the State; but a very little reflection must show the error into which this view may lead those who may purchase the State bonds. It is true, a bond of this character is a State bond, and imports a State liability; but the law makes no specific provisions by which the holder of the bond can collect either the principal or interest from the State, and in the absence of such a provision any intelligent lawyer will advise you that the bondholder has no remedy in the courts by which principal or interest can be collected by judicial process from the people or out of their property. And even if such provision existed as a part of the law, it could not be enforced in a case where the bonds have been issued by means of a fraud upon that requirement of it which stipulates that the State should have been made secure by a good lien on unincumbered property as a precedent condition.

The sole reliance, then, of a holder of State bonds must be the good faith of the State, and that good faith under all the circumstances connected with the issue of these bonds will not be measured by the letter of the contract, but will be fixed entirely by the value of the security which the corporation has placed in the hands of the State, to indemnify it against loss, and that security should be the road-bed and franchise of the road itself, unsaddled by anterior laws.

I especially direct attention, in connection with this consideration 779 of the State's security, to the provisions of section 13 of the "Act to perfect the public works of the State," which gives to the railroad company the privilege of paying off and discharging the lien taken by the State, at any time before maturity of the debt, in the State's own paper, now immensely depreciated by reason of the great quantity issued during the past few years beyond its capacity to pay. It is very evident, and ought to be patent to every one who will be at the pains to examine this provision, that it is to the interest of the railroad company to depreciate all the paper of the State—to depreciate the very bonds they are now selling, and the moment the bonds shall be sold, Littl'field and associates will become the enemies of the holders; for their interest will clearly be to buy up the paper of the State—these very bonds will answer as good a purpose as any other, and thus relieve their mortgage to the State, and the result will be that the purchasers will be left looking to the State, when the security of the State is gone. Littlefield to-day can force $500,000 of State bonds upon the market and buy them at 25 cents, and can with them destroy the State security to the extent of a half million. You may rest assured that to that extent the people will think your bonds should be retired also. You must perceive that it would be great folly to make any investment in the State bonds, unless those investing shall secure an application of a sufficient amount of the money paid, to a settlement of the incumbrances existing on the railroad property on account of the original first-mortgage bonded debt now outstanding.

But even after this shall have been done, it concerns the interest of capitalists to reflect upon the following facts, additional to those already set forth.

1. The people of Florida have not the ability to pay this debt.

2. The legislature which passed the acts referred to did not, to any extent, represent the tax-payers and property-holders of the State, and the legislature which fixed this indebtedness upon the State was notoriously corrupt, and in the interest of a few railroad speculators, not identified even by citizenship with the people of Florida; and these men manipulated the votes of the legislators by corruption so open and flagrant that there are at this time indictments pending in the circuit court of Leon County against several of the legislators for receiving, and against General Littlefield for paying, bribes to secure the passage of the very acts under the provisions of which these State bonds were issued.

3. The whole series of acts, both in and out of the legislature, including and beginning with the sale of railroads referred to in the first part of this communication, connected with the issue of these State bonds, has been dishonest, flagrantly corrupt, and going solely to aggrandize Littlefield, Hopkins, and a few others, their co-schemers and confederates; and it cannot be matter of surprise that the entire property-holding and tax-paying part of the people of Florida are not only adverse but hostile to the payment of a debt which they know to have been put upon the State by the combined fraud of their governor, their indigent legislators, and a set of sharks and financial free-lances, under the leadership of Milton S. Littlefield, now president of the Jacksonville, Pensacola and Mobile Railroad Company. The people of this State, while they earnestly desire the success of any railroad enterprise
780 which is legitimate and conducted with honesty, would greatly
regret if foreign capitalists should make so injudicious an investment as a purchase of these State bonds must be. The State bonds, without the road as a security available for the benefit of the bondholders (which now is not the case), amount to nothing. And if there be any truth in a report now current, that certain persons abroad have been already induced to make advances upon the State bonds, they should require such legislation to be had as will enable them to get this security. As a matter of course, they can, by refusing to advance further, force the corporation to make any just contract within its corporate powers, or that the legislature will authorize. If the holders of the State bonds had the simple authority to exchange securities with the State it would be a great advantage to them. It is certainly advisable, at any rate, that they get all the security they can. One hundred and sixty miles of completed road, after being relieved of its existing incumbrances, can certainly be made a good security for the cost of constructing a road of same distance, and this, with a mortgage also upon the newly constructed road, will be safe security. I ask that these suggestions may be considered.

Respectfully,

T. W. BREVARD, JR.,
Counsel for holders of first-mortgage bonds
of P. & G. & T. R. R. Cos.

P. S.—I enclose herewith copies of the acts of the legislature referred to in the above communication, as officially published; also majority report of a committee of the assembly of the legislature of Florida, appointed under resolutions of that body to examine and take evidence concerning the conduct of Harrison Reed, governor, pending proceedings then inaugurated to impeach the governor upon charges of corruption in office, certain portions of which will be of some interest to you in connection with the history of the railroad manipulations to which reference is made in the above.

TALLAHASSEE, *February* 21, 1870.

His Excellency HARRISON REED,
Governor of Florida:

DEAR SIR: On behalf of parties holding original first-mortgage bonds of the (late) Pensacola and Georgia and Tallahassee Railroad Companies, I have been authorized to institute legal proceedings by an application for an injunction to restrain the issue of the State bonds in exchange for first-mortgage bonds upon the railroad property under the provisions of the act of the legislature passed at its late session, entitled "An act to alter and amend an act to perfect the public works of the State," the parties whom I represent apprehending that by such issue of bonds as that proposed by the said law their rights of lien would be imperiled.

I am satisfied, however, that such proceedings will not be necessary if your excellency shall agree with me in the following proposi-
781 tions, viz: (1st), That the original first-mortgage bonds of the Pensacola and Georgia Railroad, and the Tallahassee Railroad Companies, which remain outstanding and unpaid, incumber the said property with a lien prior to all others now existing, or that may be created; and (2d), That there can be properly no issue of first-mortgage bonds upon the said property until the outstanding unpaid first-mortgage bonds of the original issue shall be paid up (at the pro rata valuation fixed by the sale) and cancelled.

I am sure that should your excellency agree with me in these views, no bonds of the State will be signed and delivered to the parties who are the beneficiaries under the said act until after a redemption of the outstanding bonds referred to, in which event the right of the new company to rebond the property cannot be disputed.

Very respectfully, your obedient servant,

T. W. BREVARD, JR.

Reply endorsed:

"I concur in the view of Colonel Brevard, and shall issue no bonds under the new law until the lien upon the road is satisfied."

(Signed) "HARRISON REED,
Governor."

782 **EXHIBIT N.**

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Answer of E. M. L'Engle.

Articles of impeachment, exhibited by the assembly of the State of Florida, in the name of themselves and of all the people of Florida, against Harrison Reed, governor of Florida, in maintenance and support of their impeachment against him for high crimes and misdemeanors in office, for incompetency and malfeasance, and conduct detrimental to good morals.

ARTICLE I. That said Harrison Reed, governor of Florida, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, unmindful of the high duties of his office, of his oath of office, and of the requirement of the constitution that he shall see that the laws are faithfully executed, did unlawfully and in violation of the constitution and laws of the State of Florida, cause to be issued, and did himself sign his official signature as governor, to a large number of State bonds to the amount of five hundred and twenty-eight thousand ($528,000) dollars in excess of the amount of bonds authorized to be issued by the act of the legislature of the State of Florida, entitled "An act to alter and amend an act entitled an act to perfect the public works of the State," approved June 24, A. D. 1869, approved January 28, A. D. 1870, with intent, then and there, to violate the said act, whereby the said Harrison Reed, governor of Florida, did then and there commit and was guilty of a high crime in office, of incompetency, and malfeasance.

ARTICLE II. That in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, said Harrison Reed, governor of Florida, unmindful of the high duties of his office, of his oath of office, and in violation of the constitution of the State of Florida, and contrary to the provisions of an act entitled "An act to alter and amend an act entitled an act to perfect the public works
783 of the State," approved June 24, A. D. 1869, approved January
28, 1870, did then and there, with intent to violate the constitution of the State and the act aforesaid, and without authority of law, fraudulently conspire to issue State bonds to the amount of one million of dollars ($1,000,000) for the purpose of purchasing the stock of the Florida, Atlantic and Gulf Central Railroad Company, for the use and benefit of persons and parties, and with full knowledge of and consent to said purpose, and in collusion with such persons and parties, for his and their pecuniary benfit, whereby said Harrison Reed, governor of Florida, did then and there commit, and was guilty of a high crime in office, and of incompetency and malfeasance.

ARTICLE III. That said Harrison Reed, governor of Florida, unmindful of the high duties of his office, and of his oath of office, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, did cause to be issued and did himself sign his official signature, as governor, to one million dollars of State bonds, for the purpose of purchasing the stock of the Florida, Atlantic and Gulf Central Railroad Company, for the use and benefit of persons and parties, contrary to and in violation of the constitution of the State of Florida, and of the laws of the State of Florida, and especially in violation of an act of the legislature of the State of Florida, entitled "An act to alter and amend an act to perfect the public works of the State," approved June 24, A. D. 1869, approved January 28, A. D. 1870, and with intent to violate the laws of the State of Florida, and especially said act, whereby the said Harrison Reed, govornor of the State of Florida, did then and there commit, and was guilty of a high crime in office, and of incompetency and malfeasance.

ARTICLE IV. That Harrison Reed, governor of Florida, in the year of our Lord one thousand eight hundred and seventy, in Tallahassee, in the State of Florida, unmindful of the high duties of his office, and of his oath of office, and in violation of the constitution and laws of the State, and especially of an act entitled "An act to alter and amend, &c.," did cause to be issued, and did himself sign his official signature, as governor, to four million dollars of State bonds, for the use and benefit of the Jacksonville, Pensacola and Mobile Railroad Company, in the State of Florida, having full notice of the fraudulent title of said company to the property of the Pensacola and Georgia and Tallahassee Railroads, and with intent to violate the constitution and laws of the State of Florida, and especially of the act of the legislature of the State of Florida entitled "An act to alter and amend an act entitled an act to perfect the public works of the State," approved June 24, A. D. 1869, approved January 28, 1870, whereby the said Harrison Reed, governor, &c.

784 (Indorsed:) In the U. S. circuit court, 5th C., W. D. of Florida, in equity. J. Fred Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, and others, vs. The Western Division of the Western North Carolina Railroad Company, Edward M. L'Engle, and others. Exhibits to answer of Edward M. L'Engle.

Filed Sept. 14th, 1877.

CHAS. H. FOSTER, *Clerk*.

Received and filed April 20, '78.

P. WALTER, *Clerk*.

785 *Separate answer of the Florida Central Railroad Company.*

In the circuit court of the United States, northern district of Florida.

J. FRED SCHUTTE, JAN PRINS, ADRIANUS Prins, Heinrich Ulrici, et al., complainants,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, the Florida Central Railroad Company, et al., defendants.

The defendant, the Florida Central Railroad Company, by protestation, not admitting the matters and things alleged in complainants' bill to be true in point of fact, or good and sufficient in law to be answered unto, for answer to the same, or such parts thereof as this defendant is advised it is material for it to answer, says:

I. This defendant is advised it is true that the Pensacola and Georgia and Tallahassee Railroads were sold by the trustees of the internal improvement fund of the State of Florida on the 20th of March, 1869, as alleged in paragraph I of complainants' bill.

II. This defendant has no knowledge whether said sale was fairly conducted or not, and neither admits nor denies the same.

III. It is admitted that F. Dibble and associates purchased said railroad at said sale, and received deeds for the property.

786 IV. This defendant has no knowledge of the alleged cancelling of bonds, or the giving of any promises to pay on the part of George W. Swepson, or his acting as agent for the trustees of the internal improvement fund, as alleged in paragraph IV of complainants' bill.

V. Defendant admits that F. Dibble and associates were incorporated after the said purchase, to wit, on the 24th day of June, 1869, into a body corporate and politic, as the "Tallahassee Railroad Company," but denies that said Dibble and associates ever conveyed the said railroads comprising the said Tallahassee Railroad Company, as incorporated in 1869, to the Jacksonville, Pensacola & Mobile Railroad Company, as alleged in paragraph V of complainants' bill, but avers the said Tallahassee Railroad Company consolidated its road with the said Jacksonville, Pensacola & Mobile Railroad Company, which was incorporated on the same 24th day of June, 1869, as will better appear by the said articles of consolidation, dated on or about the 24th day of May, 1870, made part hereof, marked Schedule A.

VI. This defendant has no knowledge whatever about the exchange of bonds of any description being made by Harrison Reed, the governor of Florida, with the Jacksonville, Pensacola & Mobile Railroad Company, but is advised that the said allegations in that behalf, as made in the VI paragraph of complainants' bill, are false, and, therefore, denies the same, and demands proof thereof.

VII. This defendant has no knowledge as to whether the said Jacksonville, Pensacola & Mobile Railroad Company exchanged three thousand (3,000) of its bonds with the State of Florida for the bonds of 787 said State, but this defendant denounces and denies as utterly false the allegation in the VII paragraph of complainants' bill, that one thousand (1,000) of this defendant's bonds ever were at any time delivered to the State of Florida in exchange for bonds of said State, to be delivered to the said Jacksonville, Pensacola & Mobile Railroad Company, or for any other purpose, and denies that this defendant ever issued any such bonds to be delivered to or exchanged with the said State, or for any other purpose.

VIII. This defendant denies the allegation in the VIII paragraph of the complainants' bill, as to this defendant ever having executed or authorized the execution of the bonds therein mentioned. And this defendant, further answering, avers that it never at any time authorized the creating or executing of the said 1,000 papers called bonds of this defendant, described in the complainants' bill.

That this defendant exists as a body corporate and politic under and by virtue of its charter, created by an act of the legislature of Florida, passed and approved on or about the 29th day of July, 1868, a copy of which is made part hereof, marked Schedule B. That said charter conferred no right or authority on this defendant to issue $1,000,000 of bonds, payable to the State of Florida, for the use and benefit of the Jacksonville, Pensacola & Mobile Railroad Company, or for any other purposes. That no such body corporate as the last named company then existed, and did not until about a year later, to wit, the 24th day of June, 1869.

That the capital stock of this defendant was fixed by its corporators at about 5,550 shares of $1,000 each, representing a par value of about $555,000. That the railroad of this defendant extends from Jacksonville to Lake City, a distance of about sixty miles. That its said road was finished previous to the incorporation of the said Jacksonville, Pensacola & Mobile Railroad Co., on the 24th of June, 1869, and before the consolidation of the Tallahassee Railroad Company, incorporated on the same day, and hence had no necessity to create a debt of $1,000.000, paying 8 per cent. interest, or the enormous sum of $80,000 per annum, a sum of money wholly beyond its capacity to pay,
788 and that not for the benefit of this defendant, but for the alleged
benefit of another corporation, over the affairs of which this defendant could exercise no control, and which bonds, constituting this destructive debt (about double its capital stock), this defendant could not secure the application of to the purpose for which it was pretended they were created.

And this defendant, further answering, denies that any meeting of stockholders ever was held whereby the said 1,000 papers, called bonds of this defendant, were authorized to be issued, or that such paper as complainants' Schedule B ever was in the custody of this defendant, or exhibited at any stockholders' or directors' meeting, or that any such bonds ever were known to or spread upon the records of this defendant, and defendant avers that said papers, called bonds, never were signed by any officer of this defendant, with its knowledge or by its authority. It is informed that George W. Swepson signed such papers fraudulently for his own purposes. That it was done without the authority or knowledge of this defendant, and not at its business office, nor in the State of Florida.

And defendant, further answering, states that the signature of H. H. Thompson was false and fraudulent, and his signing his name as treasurer of this defendant to said papers, called bonds, was a corrupt and forged signature for fraudulent purposes. That said Swepson, and Littlefield, and others, intending to create said bonds for their own use and purposes, and in order to conceal their intention and acts, did not venture to bring said pretended bonds to the attention of this defendant, or to procure the signature of the lawful and bona fide treasurer of this defendant, F. H. Flagg, who was then, and during the whole of said period, the treasurer of this defendant, and at all times present at his office ready to affix his signature to all lawfully and authorized papers, but that said so called bonds never were presented for his signature as treasurer, but, on the contrary, were carefully concealed and kept out of sight, as aforesaid.

That the corporate seal of this defendant was affixed to said so-called bonds without its authority, knowledge, or consent. This defendant is informed that said so-called bonds, after being so fabricated and fraudulently signed by said Swepson and Thompson, were delivered to said Edward Houstoun, as part of certain private transactions between said Houstoun, Swepson, and Littlefield, which were in no man-
789 ner for the benefit of this defendant, or the said Jacksonville,
Pensacola & Mobile Railroad Company. That said pretended bonds of this defendant were, by those conspiring to have them uttered, carried secretly to a place near the office of this defendant, and those who had access to the corporate seal of this defendant were induced to take said seal out of its office, and to a place where said bonds were concealed, and then and there affix said seal to the same as a further means of fraudulently circulating said pretended bonds. All of which

was done without the authority or knowledge of this defendant, as aforesaid.

That said bonds were never fully executed, there being two blanks on the face of the same, one as to where the said bonds were issued, and showing that they were not issued from the office of this defendant, then situated at Tallahassee, and a further blank as to the signature of the governor of the State of Florida, certifying that said pretended bonds were issued under the said act of the 28th of January, 1870, as required in order to complete and fully execute said bonds, and that the same are not and never were in such condition as to impart notice to persons dealing with the same, and that they are not the act and deed of this defendant, as will better appear by the inspection of said imperfect and unfinished paper, made part hereof, marked E.

IX. And this defendant, further answering, denies that it at any time was consolidated with, or formed part of, the Jacksonville, Pensacola & Mobile Railroad Company, and charges that all and singular the allegations of the complainants' bill in that behalf and all pretenses of consolidation are absolutely false; that there never was any stipulation or agreement made or entered into by and between this defendant and the said Jacksonville, Pensacola & Mobile Railroad Co. for the purpose of such consolidation, and never was any authority conferred by law upon this defendant authorizing such consolidation, even had the same been desired by this defendant, which was not the case.

That this defendant, in its corporate capacity, has been subject to
many abuses at the hands of those who have, in disregard of law, tres-
passed upon its franchises and property as is now attempted to
790 be done by those conducting the suit in the name of the com-
plainants, but this defendant denies that it has ever at any time
been deprived of, or surrendered, its existence as a body politic and corporate, or that the said Jacksonville, Pensacola & Mobile Railroad Company ever at any time acquired the right to make, execute, or circulate any debt, bond, or obligation as a charge upon the franchise and property of this defendant.

That this defendant never at any time issued or delivered any bond or promise to pay money to or for the use of the said Jacksonville, Pensacola & Mobile Railroad Company, or to anybody to be applied to or for its use; and never by its president or other officer applied to the State of Florida for the exchange of any bonds in manner and form as alleged in complainants' bill, or otherwise. That the president of this defendant never executed or delivered to the governor of Florida any certificate, upon oath or otherwise, asking for any exchange of bonds under said act of the 28th of January, 1870, or any other act for the use of this defendant, or for the use of the said Jacksonville, Pensacola & Mobile Railroad Co., or for any other purpose; and that no bonds of the State of Florida ever were issued or delivered to the president of this defendant or to any one else for its use or benefit; or at its request to anybody else for the use and benefit of the said Jacksonville, Pensacola & Mobile Railroad Company, as falsely pretended in complainants' bill.

X. Further answering, on information, this defendant states, that after the fabricating and signing and sealing said pretended bonds of this defendant by the said Swepson and Thompson, the same were placed with said Houstoun pursuant to a certain private contract between said Houstoun and Littlefield, dated May 30, 1870, and that just three days after the date of said contract, to wit, on the 2d day of June, 1870,

the said Littlefield, with other parties who were privy to the fraudulent intent, held what for their purposes they called a stockholders' meeting, and passed a pretended resolution adopting the said Swepson-Thompson bonds as the bonds of this defendant, and at the same time directed the same to be applied to the payment of private debts, but in no manner for the use and benefit of the said Jacksonville, Pen-
791 sacola & Mobile Railroad Company; that said meeting was a mere fraud and scheme to serve the purposes of the said Houstoun, Littlefield, and others; that said meeting was not regularly convened according to the requirements of the law, and was not attended by bona fide stockholders.

That subsequent thereto, and about the 21st day of November, 1870, when the fraudulent character of said Swepson-Thompson bonds became known, the directors of this defendant passed a resolution ordering the said papers, called bonds, of this defendant to be destroyed, which resolution was made known to said Houstoun, who still had possession of said papers, called bonds, and also to the State of Florida, through its governor and comptroller. That after this resolution was passed, and due notice thereof given to said State of Florida and said Houstoun, the said State, through its governor, fraudulently and corruptly conspired with said Houstoun and one Thomas B. Coddington, whereby the said Coddington pretended to receive from said Houston, in trust and for his account, the said pretended one thousand bonds of this defendant, being the same bonds so fraudulently signed by said Swepson and Thompson, as aforesaid. The declared "trust" and "account" for which said bonds were received was to pay certain private debts specified in said trust receipt so signed by said Coddington, dated the 11th day of January, 1871, made part hereof, marked Schedule F.

XI. Further answering on information, this defendant says, with a full knowledge of the fact above stated, the State of Florida corruptly delivered to the said Coddington certain other papers, called bonds, of the State of Florida, which purported to be issued to the said Jacksonville, Pensacola & Mobile Railroad Company, under said act of the 28th of January, 1870, numbered from 3,001 to 4,000 inclusive, and received therefor the 1,000 papers aforesaid, signed and fabricated by said Swepson and Thompson in the name of this defendant; the said State of Florida, through its said governor, at the time of such exchange and delivery of said bonds, well knowing the false and fraudulent
792 character of the same, and well knowing that the said so called bonds were not intended to be used or applied for the benefit of either this defendant or the Jacksonville, Pensacola & Mobile Railroad Company, but for the express and stipulated purpose of paying and discharging a large amount of private debts between said Milton S. Littlefield and others, being the same debts specified in three written agreements, dated the 13th and 30th of May and 7th of June, 1870, respectively, and of which fraudulent appropriation of said State bonds the State of Florida and its governor had a guilty knowledge, as this defendant is advised and charges to be true.

XII. On information, defendant further says that at the time said Coddington got possession of said so-called bonds of this defendant on the said 11th day of January, 1871, the same were under an injunction in suits brought by Hon. James D. Westcott, jr., and Hon. Robert Gamble against Houstoun, forbidding the handling and delivery of said bonds, and of which suit and injunction the State of Florida and said Coddington had due notice, and which injunction has never yet been dissolved. That in disregard of the resolution of this defendant ordering said pretended bonds, so issued in its name, to be destroyed as aforesaid, and in violation of said injunction. the State of Florida delivered its bonds, numbered above 3,000, to said Coddington for the illegal and corrupt purposes aforesaid; when the said Coddinton, in order to avoid further injunctions on the part of other stockholders of this defendant, made haste to depart from the State of Florida secretly in a private conveyance, carrying with him the said 1,000 bonds, numbered from 3,001 to 4,000, all of which was wholly unknown to this defendant and without its authority or consent.

XIII. Defendant further, on information, says that after surrendering the pretended bonds of this defendant to the State of Florida and receiving the said State bonds, numbered from 3,001 to 4,000, and
793 escaping from the State of Florida with the same as aforesaid, the
said Coddington took the said State bonds to London, where they at once became involved in litigation, but none of them were sold in that market. That for some reason 224 of said bonds were cancelled, including those numbered from 3,777 to 4,000 inclusive, leaving outstanding but 776 of the said last named State bonds. That of the said 776, about 208 were pledged to raise money to pay interest on the other portion of said pretended State bonds, numbered from 1 to 3,776 inclusive, that is, to pay interest on bonds that were not sold, and 568 were placed in a bank in London, where they still remain, subject to the order of the State of Florida. That the said 568 of said bonds so held in said bank in London, and the 208 pledged to pay interest, and the 224 cancelled, constitute and account for the whole of said so-called State bonds numbered above 3,000, and which were so illegally and corruptly exchanged for the pretended bonds of this defendant, as aforesaid.

XIV. And this defendant, further answering, states that, as has been already stated, it was chartered as a body corporate and politic on the said 29th day of July, 1868, which charter was duly accepted, and this defendant organized as a corporation under the same. That said charter has never been amended, or altered, and hence this defendant possesses and can exercise just such powers as are centred in its said charter, and no other. That there was no power conferred by its said charter to issue said 1,000 papers called bonds, payable to the State of Florida, as a donation to the said Jacksonville, Pensacola & Mobile Railroad Company, or for any other purpose.

That said so-called bonds purport to have been issued under the second and fourth sections of the act of the legislature of Florida passed January 28, 1870, creating a statutory contract between the State of Florida and the Jacksonville, Pensacola & Mobile Railroad Company for the exchange of bonds at the rate of $18,000 per mile upon certain conditions therein stated, but that said statute was not intended to amend, enlarge, or alter the charter of this defendant, and that this defendant never accepted or adopted any of the provisions of said statute, which it in truth had no right or power to do, and is in all respects a total stranger to the same.

794 That the said statute was never a binding or a valid law, because the said agreement and undertaking to exchange the bonds of the State for the bonds of the company, or this defendant, had there in truth ever been any such agreement entered into, was prohibited by the constitution of the State of Florida, and has so been declared by the supreme court of the said State; and that the said so-called bonds, had they been free from all other objections, are null and void, and could not constitute a lawful consideration for any agreement or undertaking whatever, and certainly said null and void State bonds could constitute

no good or lawful consideration for imposing said bonded debt of $1,000,000 on this defendant, from the creation of which it was not possible this defendant could derive any good or benefit whatever.

That the proviso in the fourth section of the said statute limited the power of the State to issue and exchange its bonds on any finished portion of said Jacksonville, Pensacola & Mobile Railroad for a greater distance than one hundred miles east of Quincy, which limit of one hundred miles after leaving Quincy is exhausted long before reaching Lake City, the terminus of the railroad of this defendant, which is more than 155 miles east of Quincy, and that were it possible to otherwise apply said statute to this defendant, and were it not declared unconstitutional, null, and void, it still could not reach or affect the railroad of this defendant.

XV. Further answering, this defendant says that the complainants are not the holders of any lawful bonds or obligation of the State of Florida, and are not, and never were, the holders of any bonds or obligations of this defendant. That the said statutory agreement, created under the said act of January 28th, 1870, had it been valid as a law, did not create any relation, such as debtor and creditor, pledger and pledgee, between this defendant and the holders of the bonds of the State; that the complainants are the creditors of the State of Florida only, if of any one, and have no right to intermeddle with the affairs of this defendant in any event, and certainly could have no better legal demand against this defendant than their supposed debtor, the said State of Florida, could have and maintain under said statute.

795 That the so-called bonds of the State of Florida did not depend for the payment of either principal or interest upon the property, credits or receipts of this defendant, and that complainants, as the alleged purchasers thereof, did not purchase with reference to any liability of this defendant, to whose corporate existence and transactions they were and are total strangers, and they have no right in law or in equity to make or pretend any demands whatever against this defendant.

XVI. Answering the IX paragraph of the complainants' bill, this defendant says it has no knowledge in what manner the said Jacksonville, Pensacola & Mobile Railroad Company sent the bonds it received from the State of Florida to England, but denies, as before stated, that the said Jacksonville, Pensacola & Mobile Railroad Company ever sent any of the bonds numbered above 3,000, which are pretended to be a charge upon this defendant, and sold them through any agents or otherwise; that said Jacksonville, Pensacola & Mobile Railroad Company never touched or handled one of said bonds, nor was one of them ever sold for its use, as falsely pretended in complainants' bill, but that said bonds were attempted to be fraudulently used and appropriated by the State of Florida and said Houstoun and Coddington for the discharge of private debts, as aforesaid, and in no manner for the benefit of the Jacksonville, Pensacola & Mobile Railroad Company, or this defendant.

That said Coddington acted as the agent of the State of Florida in taking said State bonds, numbered from 3,001 to 4,000, to London, and not as the agent of said company, and that both the said State and the said Coddington knew that the whole proceedings were fraudulent.

And this defendant, upon information, denies that said so-called State bonds sold in London for high prices, or ever brought as high as eighty-one per cent. On information, defendant avers that though the bonds of the State of Florida were payable in gold coin of the United States, they were sold for less than sixty per cent., and some as low as forty per cent. because of the notoriously fraudulent character of said

bonds. That as to how long the interest was paid on said State bonds, this defendant is not advised, but charges the fact to be, that
796 whenever paid, it was not done by the State of Florida, but by the procurement of said Coddington, Collinson, Boissevain, Mildens, and others, who were speculating in said bonds, so as to force their sale in the market, well knowing the false and fraudulent character thereof.

XVII. This defendant has no knowledge of what representations were made through the agents of the said Jacksonville, Pensacola & Mobile Railroad Company to the public in England, Holland, Germany, and France, as stated in the X paragraph of complainants' bill; or whether the said bonds were alleged to be a veritable and lawful obligation of the State of Florida; or whether it was represented that "there was provided by law of said State, as a security for the payment of said bonds, a lien on the whole line of railroad from Jacksonville west," or whether said "line was represented to be owned by the Jacksonville, Pensacola & Mobile Railroad Company alone," as alleged in complainants' bill, but this defendant avers that such false representations, by whomsoever made, could not bind or affect this defendant. It was competent for as well as the duty of the complainants to examine the alleged law, and ascertain the facts as to whether this defendant, then a subsisting body corporate, was, or had become the property of, and "owned by the Jacksonville, Pensacola & Mobile Railroad Company alone," all of which were acts and facts of such notoriety, that the said complainants and all others were bound to take notice of or be advised, at their peril. Their mistakes could not forfeit to their use and relief the franchise and property of this defendant, or the just and lawful owners of its stock as a body corporate.

XVIII. Defendant has no knowledge of what amount of bonds issued by the State of Florida to the Jacksonville, Pensacola & Mobile Railroad Company the complainants may own, as alleged in the XI paragraph of the complainants' bill, but defendant denies they are the owners of any bonds of the State of Florida issued to or upon the credit of this defendant, or that are a charge at law or in equity upon its franchises and estate.

797 This defendant admits that a petition was written by Charles D. Willard, and sworn to by Frank R. Sherwin on the 22d day of September, 1876, wherein it was alleged and sworn to as true, that said Sherwin was the accredited agent of the complainants and others, the holders of 3,206 of said bonds issued by the State of Florida, as will better appear by said petition, made part hereof, marked Schedule G.

That upon the said petition, and upon no other facts, and without the exhibition of one word of written authority from any one, addressed to the said Sherwin, the governor of Florida, on the 30th day of December, 1876, assumed to seize and advertise for sale, the railroad of this defendant, without either notice or demand of any sort.

That a few days thereafter, to wit, on the 10th day of January, 1877, the governor of Florida addressed to said Sherwin a letter, stating that the grounds upon which the railroad of this defendant had been seized where wholly insufficient, but at the same time advising him how and in what manner the said seizure would be continued or renewed, as will better appear by said letter, made part hereof, marked Schedule H. That the letter was addressed to said Sherwin, then present in Tallahassee, and who had then made known to the governor a scheme "for reorganizing" the railroad of this defendant, and which being approved by the governor, the said Sherwin took the same to Savannah, Georgia, where the same was signed on the 12th day of January, 1877, just two days after the governor's letter to the said Sherwin (who, with said Willard, appeared as the representatives of the complainants); that said scheme, which was described as the "memorandum plan," was signed by said Sherwin, H. R. Jackson, and Charles H. Simonton, who on the same day addressed the governor a letter, made part hereof, marked Schedule I, advising him of the signing and executing of the said "memorandum plan" between themselves and said Sherwin on that day, and that they were advised of the intention of the governor to make a forced sale of said road, according to the terms of said scheme, and which, among other things, provided that in the sale of the railroad of this defendant, together with the railroad of the said Jacksonville, Pensacola & Mobile Railroad Company, the said governor should 798 receive in payment therefor the said annulled and repudiated bonds of the State of Florida as cash at par for the principal and accumulated interest thereon, as will better appear by the terms of said "memorandum plan," made part of complainants' bill, marked D.

That after the signing of this "plan," according to the provisions of which the railroad of this defendant was to be seized and sold, the said Sherwin, just seven days later, to wit, on the 19th of January, 1877, addressed the governor another letter, urging the sufficiency of his facts to justify the seizure and sale of the railroad of this defendant, and designating a time therefor, as will be seen by said letter, made part hereof, marked Schedule J; and again, on the next day, to wit, the 20th of January, 1877, addressed the governor a personal and private letter referring to and discussing their proposed mode for appropriating and using the railroad of this defendant after the same should have been reorganized, as will better appear by the terms of the same, made part hereof, marked Schedule K; and just three days after this, to wit, the 23d day of January, 1877, the said Charles D. Willard, the associate of said Sherwin in this adventure, addressed a letter to George P. Rainey, the attorney-general of Florida, referring to the former letters and proofs, and again urging the sale of the railroad of this defendant on the first Monday in May, 1877, as will better appear by said letter, made part hereof, marked Schedule L; all of which said letters and papers propose to sell the railroad of this defendant in such manner as that the corresponding parties shall become the purchasers without the payment of any money, but shall be allowed to pay in said repudiated and annulled Florida State bonds to the full amount of the principal and interest thereof, and this, too, though the same was in direct violation of the law under which the said governor was urged to exercise the extraordinary power of seizing and selling the railroad of this defendant, without the least regard to law, as shown by the complainants' bill.

Further answering, this defendant states it has no knowledge about the payment of interest on said State bonds, or up to what time the same was paid, as alleged in the said XI paragraph of complainants' bill, except that this defendant is advised that 208 of the said State bonds, or the greater part thereof, were pledged by one John Col- 799 linson after the month of August, 1872, to raise the money to pay the interest on the whole of said State bonds due on the first of January, 1873. But no demand for the payment of interest on any bonds ever was made on this defendant on account of said bonds or any of them.

XIX. This defendant has no knowledge of the matters alleged in the XII paragraph of complainants' bill, and therefore neither admits or denies the same.

XX. The statements made in the XIII paragraph of complainants' bill are not true as therein alleged and set forth. No election of directors of this defendant was held for some three years, though an attempt at holding an election was made in 1875, but was abandoned. In January, 1877, a stockholders' meeting was called for the 29th day of that month to elect a board of directors, which, defendant is informed, was prevented by certain fraudulent and collusive proceedings on the part of the complainants, through their representatives and agents, Frank R. Sherwin and others, which rendered it necessary, in the opinion of those claiming to be the lawful and equitable owners of the stock of this defendant, to apply to the honorable circuit court for Duval County, Florida, for a writ of mandamus, upon allegations stated in a petition presented in that behalf, which was granted on the 15th, returnable on the 27th, unless cause was shown at 10 o'clock a. m. on the 26th of February. That on the said last-named day the complainants, by their agents and representatives, Frank R. Sherwin, Gideon M. Boissevain, Adrian J. Mildeus, Joseph Zaddock, and Adrian Stoop, by their counsel, H. R. Jackson and H. Bisbee, jr., esqs., appeared and demurred to said alternate writ; as also appeared R. Walker, Edward Lewis, and Patrick Houstoun, who claimed to be directors of this defendant, under said alleged election of 1875, and joined with the complainants in said demurrer, which, upon argument, was overruled and the peremptory
800 writ of mandamus was thereafter issued, and a board of directors for this defendant was elected in obedience to the judgment of said court, in a manner that was just and lawful, and any and all charges of fraud made by complainants against the said judicial proceedings and the judgment rendered thereon, and the election held pursuant thereto, are wholly and absolutely false and gratuitous, as will appear by the inspection of said proceedings, to which this defendant craves leave to refer when necessary for the purposes of this suit. Defendant denies that it has issued any new certificates of stock, as charged.

XXI. Defendant denies that the governor of Florida has yet seized the railroad or other property of this defendant, but admits that he attempted to do so, and admits that he is ready and willing at all times to do so.

This defendant is in no manner concerned in the matters alleged in the XV paragraph of the complainants' bill, and therefore neither admits or denies the same.

XXII. This defendant has no knowledge as to whether the complainants' are averse to litigation, or as to what they were advised were their full rights, or to what extent they were advised the railroad of this defendant was in a state of dilapidation, as alleged in the XVI paragraph of their bill, but defendant charges that about the 12th day of January, 1877, the parties, or some of them who are using the names of the complainants in the prosecution of this suit, did execute the paper mentioned in said paragraph, marked D, whereby they proposed a scheme "for the reorganization" of the railroad of this defendant by dividing the same into about three parts, and giving one part to the complainants and taking two parts to the said Sherwin, Willard, and others for their trouble in reorganizing this defendant's railroad, as the inspection of the said complainants' Schedule D will show to be true.

XXIII. Further answering, this defendant says it is not true
801 "that some time in the year 1875 the persons who held a majority of the shares of the stock of the Florida Central Railroad Company at the time when the transactions took place, whereby the railroad

from Jacksonville to Lake City became consolidated with the one owned by the said Jacksonville, Pensacola & Mobile Railroad Company, and by which means said railroad became pledged for the complainants' bonds, met in Tallahassee and elected certain persons directors" of thi defendant, as is in the XVII paragraph of complainants' bill is alleged; that no such persons met and elected any board of directors, and that such consolidation never occurred, as hereinbefore stated.

And this defendant denies that it ever has been dissolved, or ceased to exist and act in its corporate name and capacity, and defendant denies that the persons mentioned in said paragraph were ever at any time elected a board of directors of this defendant, or ever acted as such.

XXIV. And this defendant denies the allegation of the XVIII paragraph of the complainants' bill as to the fact of the character and effect of the litigation therein contained. The said decisions and each of them, so far as they attempted to create any liability of this defendant to complainants for or on account of their being the holders of the null and void bonds of the State of Florida, or attempted to make or create any contract between the complainants and this defendant, who, in fact, never had contracted with each other, was wholly extrajudicial and mere obiter dictum, as the issue so alleged to have been decided was not raised by the pleadings and the parties to be bound and affected by such decision, to wit, among others, the complainants, or any other holders of said bonds were not parties to the said suits or either of them, or before the court, and that said decision had not the force or effect of law, and does not in any manner conclude the right of this defendant, as alleged in the XVIII and the said XIX paragraphs of complainants' bill. And defendant denies all and singular the allegations therein in that behalf made. The only lawful decision made in said court, so far as this defendant is concerned, was
that the State of Florida had no cause of action against this
802 defendant; that none of the said State bonds claimed to be a lien
upon the railroad of this defendant, had been sold, and judgment was given in favor of this defendant, dismissing the bill of the State of Florida, and is a bar to this suit on the part of the complainants, if they were parties to or beneficiaries under said judgment.

XXV. Defendant has no knowledge of, or interest in, the matters alleged in the XX paragraph of the complainants' bill, and therefore neither admits or denies the same.

XXVI. Further answering, this defendant states that it has no knowledge of any surveys caused to be made by the complainants of the railroad of this defendant, or for what ultimate object the same was done, but denies the right of the complainant, or those using their names, to intermeddle with the railroad of this defendant in any way, or for any purpose.

XXVII. That as to the matters contained in XXII, XXIII, XXIV, and XXV paragraphs of complainants' bill, this defendant is advised it is not therein concerned, and therefore neither admits or denies the same.

XXVIII. Defendant admits that its capital stock is 5,550 shares, and that about 4,370 thereof stood in the name of Edward Houstoun on the books of this defendant at the time of his death. But defendant denies that said Houstoun was the owner thereof, and refers to the answer of its co-defendant, Edward M. L'Engle, for a correct statement of the manner in which said Houstoun acquired and held said shares of capital stock, and of the manner in which they were and are situated and

affected. Defendant denies that the title to said stock is involved in any suit pending in the State of Georgia, and denies that any court out of the State of Florida has or can acquire any jurisdiction over
803 this defendant's stock. This defendant admits, however, that the said shares of stock are claimed as the property of its co-defendant, the Western Division of the Western North Carolina Railroad Company, and as the property of other claimants by titles adverse to each other, and says that said stock is now held by Aristides Doggett, esq., as trustee, under judicial proceedings, for the benefit of the true owner of said stock.

XXIX. And this defendant, further answering, and in response to the supplemental bill filed on behalf of the complainants, says it is true that the stockholders of this defendant whose annual meeting is fixed for the second Wednesday in April of each year, did convene pursuant to notice duly advertised therefor on the day named, to wit, on the 11th day of April, 1877, and adjourned from time to time until the 28th day of May, 1877, when an election was held according to law, and a board of directors elected for the year expiring on the said second Wednesday in April, 1878.

That at said election Aristides Doggett, esq., who had been duly appointed by the order of this honorable court a trustee in the place of M. D. Papy, deceased, to represent the stock of this defendant described in the trust deed or appointment signed by Edward Houstoun and S. W. Hopkins, dated the 12th day of April, 1871, to the amount of 4,370 shares, did convene with the stockholders of this defendant, as it was his lawful duty to do, and as such trustee did vote said stock in the election of said board of directors.

That the appointment of said Doggett as such trustee was for the especial and declared purpose, among others, of voting said stock, and that in consequence thereof the counsel and representatives ot the complainants appeared and opposed the said appointment; that the said stockholders' meeting was then standing adjourned, and awaiting the action of this court in making the appointment of a trustee; that the appointment was made upon due notice, and the said stockholders' meeting and proposed election were duly advertised and were held according to law, and were not intended to affect any rights or equities
804 of the complainants, as alleged in their said bill of complaint, and that all charges of combination and fraud in said election are entirely false.

And for further answer this defendant relies upon and adopts, so far as is material to its rights, all and singular the allegations and denials in the separate answer of the defendant, E. M. L'Engle, esq., and the separate answer of the Western Division of the Western North Carolina Railroad Company filed in this cause, which are consistent herewith.

And this defendant, denying all and singular the allegations of the complainants' bill not herein specifically denied, and denying all charges of corruption and fraud, prays that the complainants' bill shall be dismissed and that defendant have judgment for its costs in this behalf expended.

THE FLORIDA CENTRAL RAILROAD COMPANY,
[CORPORATE SEAL.] By CHAS. B. FENWICK,
Sec'ty and Treasurer.

By JAMES M. BAKER,
Counsel for Florida Central Railroad Company.

805

SCHEDULE A.

Proceedings of a meeting of the stockholders of the Jacksonville, Pensacola & Mobile Railroad Company, held on the 24th of May, 1870.

TALLAHASSEE, *May 24th*, 1870.

Pursuant to adjournment, the stockholders convened at the office of the company.

Col. J. P. Sanderson was called to the chair and F. H. Flagg appointed secretary.

Gen. Littlefield moved that a committee of five be appointed by the chair to confer with a similar committee on the part of the Tallahassee Railroad Company, to take into consideration the manner and terms and conditions of a consolidation of the two companies; which was adopted, and the chair appointed Messrs. Cheney, Stearns, Wentworth, Holland, and Purman said committee.

The meeting then adjourned over until 9 o'clock a. m. on to-morrow.

TALLAHASSEE, *May 25th*, 1870.

The stockholders came together this day, Col. Sanderson in the chair.

The stock being represented as follows, viz: M. S. Littlefield, 9,930 shares; J. P. Sanderson, 10 shares; M. L. Stearns, 10 shares; G. E. Wentworth, 10 shares; E. M. Cheney, 10 shares; W. J. Purman, 10 shares: J. L. ReQua, by Cheney, 10 shares; D. P. Holland, 10 shares—10,000 shares.

Mr. Cheney then made the following report:

Report of the committee appointed by the Jacksonville, Pensacola & Mobile Railroad Company to arrange and report upon a basis of consolidation with the Tallahassee Railroad Company.

We, the undersigned, would respectfully report as follows:

We have agreed with the committee appointed by the Tallahassee Railroad Company, that the capital stock of this company shall be $3,000,000, to be divided into 30,000 shares. That the capital stock of the Tallahassee Railroad Company shall be $3,000,000, also divided into 30,000 shares. That the capital stock of the two companies be put together, making the whole stock of the consolidated companies $6,000,000, divided into 60,000 shares.

That the sixty thousand shares be divided among the stockholders as follows, viz: M. S. Littlefield, 38,433 shares; E. M. Cheney, 4,166 shares; J. L. ReQua, 4,166 shares; J. P. Sanderson, 5,250 shares; A. Huling, 1,875 shares; J. M. Baker, 1,250 shares; S. L. Niblack, 1,250 shares; C. B. Dibble, 2,330 shares; F. Dibble, 1,250 shares; M. L. Stearns, 10 shares; Geo. E. Wentworth, 10 shares; W. J. Purman, 10 shares—60,000 shares.

806 That the liabilities of the Tallahassee Railroad Company created since its organization shall be assumed by the Jacksonville, Pensacola & Mobile Railroad Company.

Respectfully submitted,

E. M. CHENEY, *Chairman*,
GEO. E. WENTWORTH,
W. J. PURMAN,
D. P. HOLLAND,
M. L. STEARNS,
Committee.

All of which was adopted, and the terms therein recited were unanimously agreed to.

A committee appointed by the Tallahassee Railroad Company appeared before the meeting, and by M. D. Papy, their chairman, stated as follows:

"We have been appointed a committee of the stockholders of the Tallahassee Railroad Company to notify the stockholders of the Jacksonville, Pensacola & Mobile Railroad Company that the stockholders of that company have unanimously agreed to the terms of consolidation proposed by the committee, (before that time appointed to consult with the committee appointed by this company), and that they have resolved, according to the terms of the fourteenth section of the act entitled 'An act to perfect the public works of the State,' to consolidate with this company upon those terms and upon the condition that the Jacksonville, Pensacola & Mobile Railroad Company shall assume all debts incurred by that company since its organization, and especially the transportation tickets issued by that company, and we submit to this meeting a copy of the resolution adopted by that company:

[Copy.]

"Whereas by the fourteenth section of an act entitled 'An act to perfect the public works of this State' it was made lawful for this company to consolidate with the Jacksonville, Pensacola & Mobile Railroad Company by a vote of the owners of a majority of its stock in interest so as to become one corporation under the name of the said Jacksonville, Pensacola & Mobile Railroad Company, on such terms as may be agreed on: Be it therefore

"Resolved, That the Tallahassee Railroad Company be and the same is hereby consolidated with the Jacksonville, Pensacola & Mobile Railroad Company and merged in the same under the corporate name of said company, and that the Tallahassee Railroad shall hereafter be merged in the said Jacksonville, Pensacola & Mobile Railroad, upon the terms agreed on by the parties in interest.

"Resolved further, That as a condition to the consolidation aforesaid, the said Jacksonville, Pensacola & Mobile Railroad Company shall assume all debts and obligations created by this company since its organization, and especially that it shall resume the redemption of the
807 transportation tickets issued by the said Tallahassee Railroad Company."

Whereupon Gen. Littlefield offered the following:

"Whereas by the fourteenth section of an act entitled entitled 'An act to perfect the public works of this State' it was made lawful for the several roads from Quincy to Jacksonville and from Tallahassee to St. Mark's, &c., by a vote of the owners of a majority of the stock in interest, and with the consent of the owners of a majority of stock in interest of the Jacksonville, Pensacola & Mobile Railroad Company, to consolidate with said Jacksonville, Pensacola & Mobile Railroad Company so as to become one corporation under its name on such terms as may be agreed upon; and whereas the Tallahassee Railroad Company have agreed to consolidate with this company by virtue of the provisions of said section: Be it therefore

"Resolved, That the consent of the owners of the stock in this company is hereby given to such consolidation, and that the said Tallahassee Railroad Company be, and the same is hereby, consolidated with this company, and that hereafter the said Tallahassee Railroad shall be merged in the Jacksonville, Pensacola & Mobile Railroad.

"Resolved further, That upon such consolidation the Jacksonville, Pensacola & Mobile Railroad Company will assume all debts and obligations created by the said Tallahassee Railroad since its organization, including the transportation tickets issued by said company."

All of which was unanimously adopted and agreed to.

On motion, Messrs. Holland, Purman, and Wentworth were appointed to report to the stockholders of the Tallahassee Railroad Company the acceptance of the terms of consolidation, and that the directors be authorized to receive from the Tallahassee Railroad Company the Tallahassee Railroad, with all its engines, cars, material, and property of every kind belonging to said company.

The meeting then adjourned to meet in a joint stock meeting of the two companies as consolidated.

I certify the foregoing to be true and correct extracts from the minutes of the stockholders of the Jacksonville, Pensacola & Mobile Railroad Company.

F. H. FLAGG, *Secretary.*

808 SCHEDULE B.

A bill to be entitled an act for the relief of William E. Jackson, Edward Thomas, William Spear, John Craig, James B. Walker, and their associates, now owning and operating the railroad from Jacksonville to Lake City.

Whereas at a sale of the Florida, Atlantic & Gulf Central Railroad, and all its property and franchise, on the fourth day of March, 1868, by the trustees of the internal improvement fund, under and by virtue of the provisions of the internal improvement law, William E. Jackson and his associates became the purchasers thereof; and

Whereas it is essential for the interests of the people of the State that these parties should be invested with such corporate powers as are necessary for the operation of the road, as well as more accurately to define the duties of the said road: Therefore,

SECTION 1. The people of the State of Florida, represented in senate and assembly, do enact as follows: That the said William E. Jackson and his associates be and they are hereby vested with the powers and franchise granted to the Florida, Atlantic & Gulf Central Railroad in and by an act entitled "An act to amend an act to incorporate the Florida, Atlantic & Gulf Central Railroad Company," approved January 7th, 1853, and they and their successors and assigns are hereby authorized and empowered to exercise the said powers and franchise so far as they appertain to the railroad constructed from the city of Jacksonville, in Duval County, to Lake City, in Columbia County, in this State, and that the said William E. Jackson and his associates are hereby made a body politic and corporate under the name of the Florida Central Railroad Company, and by that name they and their successors shall be capable to enjoy and hold the said railroad from Jacksonville to Lake City, and all the benefits thereof, subject only to the condition annexed to the sale thereof by the trustees of the internal improvement fund, and as such body politic and corporate shall be entitled as aforesaid to exercise all the powers and franchise granted in said above referred to act to the Florida, Atlantic & Gulf Central Railroad Company, and by and in the name of the Florida Central Railroad Company they, their successors and assigns, may purchase, receive, and hold lands and tenements, goods and chattels of whatsoever character the same may be, that shall be necessary or useful for the purposes of said railroad, and the same to grant, sell, mortgage, or dispose of, to sue and be sued, to plead and be impleaded, to make a common seal, and at pleasure to break or alter the same, and to establish and put in execution such by-laws and regulations as may be deemed necessary and expedient.

809 SECTION 2. Be it further enacted, That the provisions of said act to amend an act to incorporate the Florida, Atlantic & Gulf Central Railroad Company for the protection of said railroad from trespass, injury, or intrusion, and providing for the punishment of persons who shall trespass upon or injure the same, be and they are hereby extended to said Florida Central Railroad Company, which company shall be entitled to all the benefits thereof.

SECTION 3. Be it further enacted, That the said William E. Jackson and his associates shall be entitled to declare the amount of which the stock in said Central Railroad Company shall consist, and to divide the same into shares, which shares, however, shall not be less than one hundred dollars each.

SECTION 4. Be it further enacted, That the said Florida Central Rail road Company may, when they shall see fit, rent, lease, or farm out all or any part of the privileges with which they are invested, or the railroad itself, to any person or persons, corporation or corporations, for such term as may be agreed upon.

SECTION 5. Be it further enacted, That the said Florida Central Rail road Company shall not be dissolved for failure to elect officers so long as the said railroad shall be kept running and in operation.

SECTION 6. Be it further enacted, That nothing in this act shall be so construed, nor shall it be so operative as to divest the State of the right to make the Florida Central Railroad and all its property of every sort, character, and description the subject matter of taxation on the part of the State.

SECTION 7. Be it further enacted, That nothing in this act shall be so construed, nor shall it so operate as to give any additional validity to the bonds issued under the provisions of an "act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, 1855, or as a recognition to any extent that they are contracts which it is within the power of the State to make.

Passed the senate July 24, 1868.
Passed the assembly July 27, 1868.
Approved July 29, 1868.

810 SCHEDULE E.

No. 501.] UNITED STATES OF AMERICA, [$1,000

STATE OF (Florida coat of arms) FLORIDA.

Bond of the Florida Central Railroad Company.

Cut of train of cars.] [Cut of steamship.

Know all men by these presents, that the Florida Central Railroad Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars, for value received, which sum the said Florida Central Railroad Company promises and agrees to pay to the State of Florida on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the first days of July and January in each year, on the presentation and delivery of the proper coupons hereto attached.

This bond is one of a series of like tenor, limited to sixteen thousand dollars per mile, issued in accordance with an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled an act to perfect the public works of the State," approved June 24th, eighteen hundred and sixty-nine, and given in exchange for bonds issued by the State of Florida to aid the Jacksonville, Pensacola &
811 Mobile Railroad Company to complete, equip, and maintain its road for an equal amount in accordance with said act.

In witness whereof, the said company has caused this bond to be signed and attested in its behalf by its president, and its common seal affixed at its office in this first day of January, in the year 1870.

{ FLORIDA CENTRAL }
{ RAILROAD CO., 1868. }

GEO. W SWEPSON,
President.

H. H. THOMPSON, *Treasurer.*

Issued in accordance with the provisions of an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled an act to perfect the works of the State," approved June 24th, eighteen hundred and sixty-nine.

January 1st, 1870.

Governor's certificate.

EXECUTIVE OFFICE, TALLAHASSEE,
January 31, 1877.

I, George F. Drew, governor of Florida, hereby certify that the within is a true and correct copy of original bond No. 501, now on file in the office of the State treasurer.

GEO. F. DREW,
Governor.

812

SCHEDULE F.

TALLAHASSEE, FLA., *January* 11, 1871.

Received from Edward Houstoun, esq., in trust and for his account, one thousand Florida Central Railroad Company first mortgage bonds, payable to the State of Florida, for one thousand dollars each, with which I hereby undertake to arrange with General M. S. Littlefield and other parties interested, and collect from him or them the amount which it is admitted is now due to said Houstoun, viz, one hundred and sixty-three thousand and twenty-six 70-100 dollars, with interest thereon at seven per cent. from the time M. S. Littlefield's draft on S. W. Hopkins & Co. for said amount fell due, and in addition thereto the sum of five thousand dollars for costs and expenses incurred by said Houstoun in suits brought by parties against said Houstoun in relation to those bonds or other bonds and the stock of the Florida Central Railroad Company; it being understood that all proceedings at law or otherwise are to be discontinued, or if that be impossible, he is to be indemnified by responsible parties against all such damages or costs arising out of said proceedings; it being further understood that said Houstoun shall, when paid, transfer and assign to said Littlefield all the stock of the Florida Central Railroad Company, or other securities which he holds or which were given him as collateral security to secure the above amounts due to said Houstoun.

And it is further understood and agreed that said Coddington is to collect the further sums of money and pay to said Houstoun for account of the parties named below, which it is understood are a lien subsequent and inferior to said Houstoun's lien on these bonds, viz:

M. D. Papy, esq., the sum of sixteen thousand dollars.

Col. R. H. Gamble, the sum of fifteen thousand dollars; who is to surrender to said Littlefield three hundred shares of stock in the Florida Central Railroad Company, and seventeen hundred dollars in the bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, at par.

J. P. Sanderson, esq., the sum of fifty-seven thousand five hundred and sixty dollars, and said J. P. Sanderson is to surrender to said Littlefield seventy shares of stock in the Florida Central Railroad Company, and comply with his agreements with said Littlefield, for which a part of said sum is in consideration.

F. H. Flagg, esq., the sum of four thousand dollars; for which he is to surrender the Central Railroad Company stock and the Pensacola and Georgia Railroad bonds which he holds, to said Littlefield.

And also to pay for seventy shares of stock now or lately held by J. D. Westcott, jr., esq., the sum of thirty-eight hundred and forty-five 33/100 dollars, when said stock is to be delivered to said Littlefield.

This arrangement is based on the assumption that the money will be paid from the proceeds of bonds negotiated by S. W. Hopkins &
813 Co., of New York; the remainder of said proceeds is to be disposed of as directed by the parties interested.

(Signed) T. B. CODDINGTON.

I approve and assent to the same.

(Signed) M. S. LITTLEFIELD,
Pres't J. P. & M. R. R. Co.

814 SCHEDULE G.

To his excellency Hon. M. L. STEARNS,
Governor of the State of Florida:

The undersigned respectfully represents:

That he is the duly authorized and accredited agent in this country of the committee of foreign bondholders in the city of Amsterdam, in the kingdom of Holland, having in charge the interest of Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddocks, Adrian Stoop, and others of said kingdom, who are bona-fide purchasers and holders for a valuable consideration to a very large amount, to wit, to the amount of more than three million two hundred thousand dollars of the bonds of the State of Florida, issued by said State in aid of the Jacksonville, Pensacola & Mobile Railroad Company and the Florida Central Railroad Company of said State, which bonds bear date the first day of January, 1870, payable on the first day of A. D. 1900, which were issued by the said State of Florida in pursuance of an act of the legislature thereof, passed June 24th, 1869, and the act amendatory thereof, approved January 28, 1870, in which act and amendment it was and is, among other things, provided that in exchange for the bonds so issued by the said State, the said companies should execute and deliver to the said State its own first-mortgage bonds, embracing all and singular its railroad property and appurtenances, and which latter-named bonds were so issued and delivered to the said State in compliance with the laws aforesaid, and are now held by the said State as a trustee, for the benefit of the purchasers of the said State bonds as an additional security for payment of the same.

The undersigned further represents, in the name and on behalf of the said committee of foreign bondholders and the holders of the said bonds of the State of Florida that the said State has failed to pay the interest thereon at maturity, according to the tenor of its obligation, and has so failed to pay said interest for a period of more than twelve (12) months thereafter, or that is to say, for the period of about five (5) years on all of said bonds.

The undersigned further represents that your excellency has, in pursuance of the said acts of the legislature of said State, taken possession of and advertised for sale the said the Jacksonville, Pensacola & Mobile Railroad, together with all its property and appurtenances.

The undersigned further represents that as yet no provisions have been made, as required by law, for the payment of the bonds of said State issued in exchange for the said bonds of the said the Florida Central Railroad Company; that your petitioner further says he has recently arrived in this country from Amsterdam, in the said kingdom of Holland, for the purpose hereinbefore referred to; that before so doing he spent much time in consultation with the said committee of foreign bondholders and its counsel and various holders of the said bonds of the said State of Florida, and in the examination of the books, cor-
815 respondence, and other data in the possession of said committee
and its counsel, pertaining to this subject, and your petitioner, from his own personal knowledge, derived from such examination, says that there is now held and owned in the said kingdom of Holland more than three million two hundred thousand dollars of the said bonds of the State of Florida, purchased and held for a valuable consideration, of which said amount more than two hundred thousand dollars of said bonds were issued by the said State in exchange for the bonds of the said the Florida Central Railroad Company, and that the said State has failed to pay any part of the interest thereon for a period of about five years. Your petitioner further represents that he received a cablegram from the said Gideon Maria Boissevain, J. Wertheim, the latter being counsel for the said committee of foreign bondholders, and Charles Mueller, the American consul, dated at Amsterdam, in the said kingdom of Holland, on the 20th day of September, eighteen hundred and seventy-six, which states the number of said State bonds sold absolutely in the said kingdom of Holland, to be at least three million two hundred and six thousand dollars ($3,206,000), which said cablegram your petitioner begs leave to attach herewith as a part of his said petition. Your petitioner further says that all of the said State bonds were sold in the market through the said Gideon Maria Boissevain, one of the late leading and principal banking houses in the said city of Amsterdam, and that the said Charles Mueller, now and for many years past the American consul at the said city of Amsterdam, has extensive knowledge of the sale in said market of said bonds of the State of Florida by reason of having been selected to make an examination of the books, papers, and other data in the possession of the said banking house of the said Boissevain relating to the sale of the same. Your petitioner, in the name and on behalf of the holders and owners of the said bonds of the said State, to the extent of two hundred thousand dollars or more,

issued in exchange for the bonds of the said The Florida Central Railroad Company, therefore demands that your excellency shall, with due diligence, make provision for the prompt payment of said bonds and overdue coupons thereon, and to this end that your excellency shall enter upon and take possession of the Florida Central Railroad, together with all of its appurtenances and franchise, and sell the same at public auction for the benefit of the holders and bona-fide owners of said bonds in pursuance of the said acts of the legislature hereinbefore referred to.

Your petitioner further represents to your excellency that he will hold himself ready at any and all times to maintain and make proof in such manner as your excellency shall see fit to indicate as to the holders and owners of said bonds of the said State of Florida. And you petitioner will ever pray.

FRANK R. SHERWIN.

DISTRICT OF COLUMBIA,
County and City of Washington, ss:

816 I, Jos. T. K. Plant, a commissioner of the State of Florida for said District, certify that before me personally came Frank R. Sherwin, who, being first duly sworn, says the facts set forth as of his own knowledge in the foregoing petition are true, and those stated on information and belief he believes to be true.

Witness my hand and official seal, Sept. 22, 1876.

[L. S.] JOS. T. K. PLANT,
Commissioner of the State of Florida.

817 SCHEDULE H.

STATE OF FLORIDA, EXECUTIVE OFFICE,
Tallahassee, Fla., Jan. 10, 1877.

SIR: The Jacksonville, Pensacola & Mobile Railroad having been seized and advertised for sale under the act of February, A. D. 1870, entitled an act to alter and amend an act entitled "An act to perfect the public works of the State, approved June 24th, A. D. 1869," and the act of June 24th, 1869, so amended, it is my intention to sell the same according to the present advertisement, and such intention will be carried out unless, upon representation of the bondholders, it should be shown that such sale should be postponed for a very short time. It is not the intention of this office to encumber its administration with the operation or management of a road, which it is the purpose of the law it should seize only for the purpose of selling.

As to the Florida Central Railroad, I am without sufficient testimony of there being any bona fide holders for value of State bonds issued to the Jacksonville, Pensacola & Mobile Railroad Company in exchange for the bonds of the Florida Central Railroad Company, and shall not seize the Florida Central Railroad and property by the lien of its bonds held by the State, until such evidence of bona fide ownership as would at least satisfy a judicial tribunal, has been presented by such bona fide owners for value of such State bonds or their duly authorized agents.

I must respectfully say that the affidavit made by yourself, filed, as to your being the representative of the foreign bondholders, is not sufficient evidence of such agency. I would not be willing to act on such evidence in such matters coming from any one claiming to be such agent.

Should I seize the Florida Central Railroad, I should sell it just as soon as the law permits. All evidence of any matters involving the roads, their seizure or sale, must be submitted in writing.

It is my desire that the State be released as soon as possible of all railroad trusts and complications, and my disposition shall be to perform all my duties promptly.

Governor of Florida.

To **Frank R. Sherwin**, Esq.,
Tallahassee, Fla.:

I, Geo. P. Rainey, do hereby certify that the foregoing is a correct copy of the originial on file in my office.

GEO. P. RAINEY,
Attorney-General, Florida.

May 10, 1807.

818 **Schedule I.**

Savannah, Ga., *January* 12, 1877.

To His Excellency **George F. Drew**,
Governor of Florida:

Sir: The undersigned beg leave to call your attention to the fact that they are the attorneys in fact of a very large majority of the holders of the bonds of the Pensacola and Georgia Railroad Company of Florida, and that a plan has been agreed upon between the holders of said bonds and Frank R. Sherwin, the agent of the holders of the bonds of the State of Florida issued in aid of the Jacksonville, Pensacola & Mobile Railroad Company, which it is believed can and will be carried into effect, thereby resulting in the return to the State of its bonds now held in Europe, and the speedy settlement of the litigation, and place the railroad upon a substantial business basis. We are gratified to learn that it is your intention, as trustee for the holders of said State bonds, to sell the said railway property at as early a day as practicable for the benefit of all concerned, thus rendering a great public service to the State as well as an act of justice, long deferred, to both classes of bondholders.

With consideration of high respect, we remain, sir, very respectfully,

HENRY R. JACKSON.
CHARLES H. SIMONTON.

I certify that the foregoing is a correct and true copy of the original on file in my office.

(Signed) GEO. P. RAINEY,
Attorney General.

819 **Schedule J.**

New York, *January* 19, 1877.

To His Excellency **George F. Drew**,
Governor of Florida:

Sir: I have the honor to enclose herewith the affidavit of Gideon Maria Boissevain, of Amsterdam, Holland, explicitly stating the number of Florida bonds purchased and now held there by bona fide holders. It confirms my affidavit in all details except that the number of bonds which are a lien upon the Florida Central Railroad proves to be 208 instead of 206. Mr. Willard will also transmit you from Washington the certificate of the American consul at Amsterdam, corroborating the affidavit of Boissevain, which I trust, when received by you, will be deemed sufficient evidence to warrant the seizure and advertisement of the Florida Central Railroad, and the postponement of the sale of the Jacksonville, Pensacola and Mobile Railroad to take place on the same day.

I remain, with great respect, your obedient servant,

FRANK R. SHERWIN.

P. S.—I would request that your reply to this be addressed to me, care of Mr. Willard, at Washington, who will read and forward it.

F. R. S.

I certify that the foregoing is a correct and true copy of the original on file in my office.

GEO. P. RAINEY,
Attorney General.

MAY 19, 1877.

820 SCHEDULE K.

Personal.] NEW YORK, *January* 20, 1877.

To His Excellency GEORGE F. DREW:

DEAR GOVERNOR: I desire, before sailing, to reiterate to you personally, in writing, the assurance which I have verbally given, that the railroads reorganized by me will be managed in a liberal spirit, with the view, so far as may be consistent with business principles, of fostering and developing State interests. To be explicit, it is my belief that the permanent prosperity and increasing value of the road can be best secured by competing sharply with all rivals for the Gulf and up-river trade, and by favoring Jacksonville and Fernandina as our outlets, and discriminating in their favor, if at all, as between them and Georgia ports. I have said as much to Gen. Jackson, and he recognizes it as impossible that I should favor Savannah. My plans for the development of the State are comprehensive, and render me not less earnest than yourself in the desire and determination to advance the material prosperity by every legitimate means, and I am confident you will find the endeavors of my associates and myself, to that end, a valuable aid to your administration, under which, I predict, Florida will enjoy great prosperity.

With every assurance of esteem and support, I am, sir, faithfully yours,

FRANK R. SHERWIN.

I certify that the foregoing is a correct and true copy of the original on file in my office.

(Signed) GEO. P. RAINEY,
Attorney General, Florida.

MAY 19, 1877.

821 SCHEDULE L.

WASHINGTON, D. C., *January* 23, 1877.

Hon. GEO. P. RAINEY,
Attorney General, Tallahassee, Fla:

DEAR SIR: The enclosed certificate of Charles Mueller, U. S. Consul at Amsterdam, previously referred to, states of his own knowledge that

"Boissevain and co-operators had, in good faith and at fair prices, purchased, of one John Collinson, 3,206 of above-named bonds of Florida." This, in connection with the sworn statement of said Boissevain, previously mailed to you by me from New York, would now seem to be full and explicit enough to establish the fact that there are 208 of the State bonds now in the hands of bona fide holders, and I therefore trust you may seize the Central Road and advertise the same for sale on the first Monday in May, and postpone the sale of the J., P. & M. R. R., to take place at the same time.

Hoping that I may hear from you upon this subject at your earliest convenience, I remain very respectfully,

C. D. WILLARD.

I certify that the foregoing is a correct and true copy of the original on file in my office.

GEO. P. RAINEY,
Attorney General, Florida.

MAY 19, 1877.

Received and filed April 20th, 1878.

P. WALTER, *Clerk.*

Filed July 30th, 1877.

CHARLES H. FOSTER, *Clerk,*
By F. T. MYERS, *D. C.*

822 *Cross-bill of the Fla. Central R. R. Co.*

In the United States circuit court, fifth circuit, northern district of Florida. In equity.

J. FRED. SCHUTTE, JAN PRINS, HEINRICH ULRICI, and others, complainants,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Florida Central Railroad Company, and others, defendants.

THE FLORIDA CENTRAL RAILROAD COMPANY, complainant,
vs.
J. FRED. SCHUTTE, JAN PRINS, HEINRICH Ulrici, The Western Division of the Western North Carolina Railroad Company, Geo. F. Drew, governor of the State of Florida, and others, defendants.

823 In the circuit court of the United States, fifth circuit, northern district of Florida. In equity.

To the judges of said court:

The Florida Central Railroad Company, a citizen of the State of Florida, brings this, its cross-bill of complaint, against J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, Van Taer, C. Both, L. L. Wertheim, Wysman de Vogt, T. P. Roeloptz, Jan Tichelaar, jr., Jacobus

Wertheim, P. Van Reyser, Mey de Beneditby Beer, Gerard A. Heineken, T. Colone, Charles Gosewinkel, Boon Hartsink, Van Tyeo, N. J. Franket, Johannes William Donk Vander Stoop, and Bery, who are aliens and subjects of the King of the Netherlands. The Western Division of the Western North Carolina Railroad Company, a corporation created by and existing under the laws of said State, and a citizen thereof; the Jacksonville, Pensacola and Mobile Railroad Company, a corporation created by and existing under the laws of the State of Florida, and a citizen thereof; George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer of the State of Florida, citizens of the State of Florida; and Robert J. Washington, a citizen of the State of Virginia.

Complainant files this cross-bill in the case of J. Fred. Schutte, Jan Prins, Adrianus Prins, and others, vs. the Western Division of the Western North Carolina Railroad Company; the Jacksonville, Pensacola and Mobile Railroad Company; the Florida Central Railroad Company, and others. defendants. The said original bill has been filed
824 in the United States circuit court, fifth circuit, northern district of Florida, and among other things alleges that the Florida Central Railroad has been consolidated with the Jacksonville, Pensacola and Mobile Railroad, and is therefore liable to be seized and sold for the payment of certain bonds claimed to be the bonds of the Florida Central Railroad Company, exchanged for State bonds, and that this company has no legal organization, and has no right to perform corporate functions, and prays, among other things, that the complainants in said bill may be deemed to be the bona fide holders of the bonds of this company; that the entire line of the said companies' may be treated as consolidated as to their liability for payment of certain bonds, and that the governor be authorized to seize and sell the said entire line of road from Jacksonville to Chattahoochee; that the present organization of the board of directors of the Florida Central Railroad Company be deemed to be illegally constituted, and that they be enjoined from acting as such, and that George F. Drew, governor, be appointed special receiver of said railroad.

And thereupon your orator complains and says:

That under and by virtue of an act of the legislature of the State of Florida, entitled "An act to incorporate the Atlantic and Gulf Central Railroad Company, and for other purposes," approved January 24th, 1851, and of the provisions of another act of the legislature of the State of Florida, entitled "An act to amend an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company, and for other purposes," approved January 7th, 1853, the Florida, Atlantic and Gulf Central Railroad Company was incorporated, and by that name the stockholders and members of said company, their successors and assigns, were authorized to construct and operate a railroad from some tributary of the Atlantic Ocean, within the limits of the State of Florida, having a sufficient outlet to the ocean to admit of the passage of sea steamers, thence running through the State in the most eligible direction to some point, bay, arm or tributary of the Gulf of Mexico west of the Apalachicola River, in West Florida, having a sufficient outlet for sea steamers.

That, in accordance with the rights conferred by these acts, said company constructed a railroad from the town of Jacksonville, in Florida, to the town of Lake City, in said State, and operated the same for a number of years, and surrendered their right to build any portion of the line west of Lake City.

That in accordance with the authority granted by an act of the legislature of Florida, entitled "An act to provide for and encourage 825 a liberal system of internal improvements in this State," approved January 6th, 1855, the said Florida, Atlantic and Gulf Central Railroad Company, for the purpose of constructing the railroad authorized by its charter, issued a large amount of bonds.

That under the provisions of the said act, and the contract therein expressed, these bonds constituted a first lien or mortgage on the said road-bed, iron, equipments, workshops, depots, and franchises of the company.

That by said act and contract it was provided that on the failure of the company to pay the sinking fund of one per cent. the trustees named in the act should take possession of and sell the said road and all the property of said company.

That said company failed to comply with the requirements of the statute aforesaid, and the trustees took possession of the road and sold it in conformity with the statute and contract aforesaid, at public auction, on the 4th of March, 1868. That at said sale William E. Jackson and his associates became the purchasers of said road and other property of said company.

That the said purchasers, by an act of the legislature of the State of Florida, approved July 29th, 1868, were vested with the powers and franchise granted to the Florida, Atlantic and Gulf Central Railroad Company by the act aforesaid, entitled "An act to amend an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company," approved January 7th, 1853, and they and their successors and assigns were authorized and empowered to exercise the said powers and franchises so far, and only so far, as they appertained to the railroad constructed, as aforesaid, by the Florida, Atlantic and Gulf Central Railroad Company, from Jacksonville to Lake City, in Florida, and were made a body politic and corporate under the name of the "Florida Central Railroad Company."

That the said road, if a public work at all, is and has long been a completed public work.

That the Florida Central Railroad Company, under its charter (which charter is a contract between the individual stockholders upon the one side, and the State and corporation on the other side), is invested with no functions, rights, or powers except such as pertain to a completed road, and that in point of fact the sole purpose for which the corporation exists and for which the charter was granted is the operation, control, management, and maintenance of a completed line of railroad, extending from Jacksonville to Lake City, aforesaid.

826 That on the 20th day of March, 1869, the Pensacola and Georgia Railroad Company was a corporation organized and existing under the laws of the State of Florida, with a line of railroad completed from Lake City, Florida, to Quincy, Florida, and engaged in the business of common carriers. That on the day aforesaid the Tallahassee Railroad Company was a corporation existing under the laws of the State of Florida, with a line of railway completed from Tallahassee, Florida, to Saint Mark's, Florida, and engaged in the business of common carriers.

That said corporations had constructed their roads between the terminal points above mentioned, under the provisions of their charters and of the act of the legislature of Florida known as the internal improvement act, and had surrendered all rights to build any greater length of railroad under the provisions of said last-mentioned act than they had already built.

And said railroads, if public works at all, were and have long been completed public works.

That both of said railroad companies accepted and issued bonds under the provisions of the act of the legislature of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, 1855, and became subject to all the provisions of said act.

That on the 20th of March, 1869, the trustees of the internal improvement fund of the State of Florida, under the authority vested in them by the third section of the said act of the legislature of the State of Florida, upon and because of a failure, on the part of said two last-mentioned railroad companies to provide and pay the sinking fund, as required in said act, on the bonds issued by the said companies, duly sold, at public sale, the aforesaid two companies' railroads, and all the property of each of said companies of every kind, for the sum of $1,415,000, and, at that sum, one Franklin Dibble and his associates became the purchasers of the said railroads and of all the property of each of said two companies.

And that on the 8th day of April, 1869, the said trustees of the internal improvement fund of the State of Florida made and delivered to said purchasers deeds of conveyance of said two railroads and property, which deeds were duly recorded in the office of the clerk of the circuit court of Leon County, Florida, on the 22d and 23d days of October, A. D. 1869. That the purchasers aforesaid paid the said trustees 827 $960,000, on account of the purchase money of said two roads, in first-mortgage bonds of said companies (issued under the said act of January 6th, 1855), at the par value thereof, and the said purchasers received credit therefor. That the remainder of said purchase money has never been paid, nor the payment thereof in any manner secured, as this cross-complainant is informed and believes.

That on the 24th of June, 1869, the legislature of Florida passed an act entitled "An act for the relief of Franklin Dibble, A. Huling, E. M. Cheney, and their associates, purchasers of the railroad from Tallahassee to St. Mark's, and of the railroad from Quincy to Lake City, and incorporating the Tallahassee Railroad Company;" by which the said purchasers and their associates were created a body corporate under the name of the "Tallahassee Railroad Company," and were vested with like powers, franchises, and privileges as were granted to the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company by the acts incorporating said companies.

That on the 24th of June, 1869, by an act of the legislature of Florida, approved on that day, entitled "An act to perfect the public works of this State," and by an act amendatory thereof, approved January 28th, 1870, a corporation called the Jacksonville, Pensacola and Mobile Railroad Company was created, empowered to build and operate a railroad from Quincy to Pensacola in said State, and to consolidate its road, or line of intended road, with those of the before-mentioned Tallahassee Railroad Company, and of the said Florida Central Railroad Company, and to exercise other powers and privileges.

That the Tallahassee Railroad Company, already mentioned, and the said Jacksonville, Pensacola and Mobile Railroad Company, as this complainant is informed and believes, did, in the manner provided for by said last mentioned act, consolidate their said roads under the name of the latter company, and redistributed the stock. But the Florida Central Railroad Company never accepted any of the provisions of the said last mentioned acts, and neither that company nor its railroad has ever been consolidated with the Jacksonville, Pensacola and Mobile Railroad Company, or its road, or with the Pensacola and Georgia Railroad Company, or its railroad, or with the Tallahassee Railroad Company, or its railroad, or with any other railroad or company by whatever name called.

Your orator further states that the Florida Central Railroad, ever since its organization under said charter mentioned, has maintained a substantial organization in fact, separate, apart, and distinct from 828 any other organization by whatever name called. That no person concerned in the management of the Jacksonville, Pensacola and Mobile Railroad Company ever had any right or authority to treat the line of road between Lake City and Jacksonville, known as the Florida Central Railroad, as the property of the Jacksonville, Pensacola and Mobile Railroad Company, or as constituting a part of said road, or to permit the earnings of the Florida Central Railroad to be used for the benefit of that company.

That, on the contrary, during the time from the 12th day of December, 1870, until the 13th day of May, 1871, the Florida Central Railroad Company managed and controlled the Jacksonville, Pensacola and Mobile Railroad, that is to say, the line of railroad from Lake City to Quincy and to St. Mark's, as lessee thereof, and that during other portions of the time since its organization the Florida Central Railroad was managed and controlled by its own officers. And if it ever was apparently under the management of the Jacksonville, Pensacola and Mobile Railroad Company, it was not in default of a distinct organization, but on account of connivance of M. S. Littlefield, during part of the year 1872, when he was the president of the Florida Central Railroad Company. That if any contract effecting the road between Lake City and Jacksonville was made by any person whomsoever, in the name of the Jacksonville, Pensacola and Mobile Railroad Company, recognizing a consolidation of the two companies, it was fraud upon the rights and interests of the Florida Central Railroad Company and its stockholders. That the interests and accounts of both companies were always kept separate and apportioned to each by the company having the management. The operation of the entire line by either company was by the understanding of both companies, and the separate existence of each was understood.

That the pretended lease of said road to Converse L. Chase and F. H. Flagg, on the 2d day of October, 1871, was made, as your orator is informed and believes, by the president of the Jacksonville, Pensacola and Mobile Railroad Company, without authority of the stockholders, and contrary to their interests and wishes.

That some of said stockholders expressed their dissent to said illegal lease, by vigorously prosecuted suits in the courts for the protection of their interests.

That E. M. L'Engle, a stockholder, commenced a suit in the circuit court of the State of Florida, in Duval County. A copy of the 829 complaint in said suit is herewith filed, marked Exhibit A, to which reference is prayed. That an injunction was issued in said cause and is still in force.

That said L'Engle brought a similar suit in the circuit court of Columbia County, and procured the appointment of a receiver, in whose hands the Florida Central Railroad remained for several months. That the railroad went from the hands of the receiver into the hands of the company, and the said alleged trustees never after exercised, or attempted to exercise, any control over the said Florida Central Railroad.

That Francis P. Porcher, another stockholder in this company, expressed his dissent to said lease, by a suit brought in the United States circuit court for the northern district of Florida, by the said E. M. L'Engle, his attorney, wherein a writ of injunction was granted.

That all said suits by stockholders were instituted for the purpose of maintaining the integrity and rights of the Florida Central Railroad Company, as a separate and distinct corporation.

That none of said suits have been dismissed, but are all still pending.

That on the 8th day of February, 1871, the dissent of the said Florida Central Railroad Company was expressed by its attorney, E. M. L'Engle, esq., in a letter addressed to a banking-house in Amsterdam, in Holland, asserting on behalf of said company its distinctive rights, and protesting against the frauds practiced upon it as a corporation, a copy of which is herewith filed, marked Exhibit B.

Your orator further shows that Milton S. Littlefield, who claimed to own a majority of the stock in the Florida Central Railroad Company. did not acquiesce in any pretended consolidation of said companies, but asserted the independent and separate existence of this corporation in a contract under seal with J. P. Sanderson, dated May the 17th, 1870. An extract of which is hereto attached, marked Exhibit C, to which reference is prayed.

Your orator further shows, that an affidavit was made by said M. S. Littlefield, in the United States circuit court, on the 12th day of September, 1873, in the case of James E. Searles and others, against the Jacksonville, Pensacola and Mobile Railroad Company, M. S. Littlefield and others, in which, among other things, said Littlefield swears that "the Jacksonville, Pensacola and Mobile Railroad commences at Lake City, in the county of Columbia, in said State of Florida, and is completed to the Chattahoochee River, in Gadsden County, in said State."

830 That the State of Florida, in a bill filed in the Supreme Court of the United States, in December, 1873, against Edward C. Anderson and others, admitted the separate and independent existence of the Florida Central Railroad Company, and its railroad, as will appear by reference thereto.

Your orator further shows, that in a case brought by the State of Florida, against the Florida Central Railroad Company and others, in the year 1874, in the circuit court for Duval County, a decree was made adjudging, among other things, that said companies were consolidated, which decree being appealed from by the Florida Central Railroad Company to the Supreme Court in 1875, was then, in that respect, reversed, and all questions of such consolidation of said company finally settled and determined.

That on the 9th day of April, 1873, which was the regular day for the annual meeting of stockholders of the Florida Central Railroad Company, a meeting of stockholders convened at Tallahassee, Florida, the duly appointed place of meeting, and adjourned from day to day. At this meeting there were represented more than a majority of the shares of the capital stock of said company, the whole number of its shares being 5,550.

That Edward Houstoun, of Savannah, Georgia, was the legal holder of about 4,410 shares, which stood in his name on the books of the company, and which he acquired in the manner hereinafter stated.

That at said meeting one Charles E. Dyke, of Tallahassee, appeared there and presented the duly executed and regular power of attorney of said Edward Houstoun, to vote the said about 4,410 shares of stock, which power of attorney was recognized and admitted to be obligatory upon the meeting and the company.

That said meeting was adjourned on the 13th of May, 1873, subject to the call of the managing director, who was E. M. L'Engle.

That on the 27th day of October, 1873, the stockholders of said company again convened in Tallahassee, at the call of the managing director, and adjourned from day to day, till the 30th day of October, 1873, when a large majority of the stockholders being represented, and Edward Houstoun being there by Charles E. Dyke, his proxy, an election was held for nine directors, which resulted in the choice of Charles E. Dyke, P. Houstoun, R. H. Gamble, E. Lewis, Edward Houstoun, F. F. L'Engle, B. Williams, T. Hartridge, and E. M. L'Engle.

That at a meeting of said nine directors, held on the same day, 831 E. M. L'Engle was elected president, and George R. Foster was elected its secretary and treasurer.

That said railroad, and all the property of said company, remained in the hands of E. M. L'Engle, as president, until about the 14th of April 1874, when they were seized by J. C. Greeley, a receiver, appointed by the circuit court of Florida, for Duval County, from whom the same were taken by Robert Walker, a receiver appointed by the Supreme Court of the United States. They remained in said Walker's possession until June, 1876.

Complainant further says that no legal and valid election of directors of said company was held after the 30th day of October, 1873, until the time next stated, but the directors and other officers then elected remained in office under the charter until their successors were qualified.

That on the 15th day of March, 1877, at an election of directors for the then current year, held by stockholders under a peremptory writ of mandamus, awarded by the circuit court of Florida, for Duval County, a copy whereof is hereto attached, marked Exhibit D, the following persons were elected directors, viz: M. S. Littlefield, E. M. L'Engle, J. C. L'Engle, W. J. Lawton, N. K. Sawyer, G. R. Foster, J. M. Baker, J. B. Stewart, and C. B. Fenwick.

By these directors E. M. L'Engle was elected president, and Charles B. Fenwick secretary and treasurer of the Florida Central Railroad Company, and the said directors, president, and secretary and treasurer continued to hold and exercise their said offices by virtue of said election until the 28th day of May, 1877, when, as has been already stated, another election was had of directors for said company.

Your orator further shows that during the year 1875 one Robert Walker, he being receiver of the United States Supreme Court, in charge of the Florida Central Railroad, and a few persons claiming to be stockholders in said corporation, assembled in Tallahassee, and pretending to represent a majority of stock, proceeded to the election of directors, as follows: Robert Walker, Edward Lewis, P. Williams, Patrick Houstoun, R. H. Gamble, C. E. Dyke, sr., E. M. L'Engle, C. A. Cowgill, and G. W. Betten.

That said election was illegal and invalid; that in fact a majority of the stock was not represented at said election. That about four-fifths of said stock stood on the books of said company in the name of Edward Houstoun, deceased. That the executors of said Houstoun, who lived in Savannah, Georgia, assumed the right to authorize one James L. 832 Taylor to vote the stock standing in the name of their testator, although they had not taken up said stock as assets of said testator, and claimed no right, or title, or interest therein. That the said Taylor thereupon undertook to represent said stock, and was allowed by those participating in said meeting to represent and vote the said 4,370 shares of stock standing in the name of said Houstoun, deceased, illegally, and with no right to do so.

This complainant further states, on information and belief, that the books and other records of said corporation had gone into said Robert Walker's possession as receiver aforesaid, and he retained possession of them after June, 1876, and still retains and withholds them on the false pretense that he is the legally authorized representative of the corporation, as this complainant is informed and believes.

This complainant further says, the said Edward Houstoun acquired and held the said 4,410 shares of capital stock, and they were situated and affected in this manner, viz: Milton S. Littlefield purchased from Edward Houstoun about 1,300 shares of the capital stock in the Florida Central Railroad Company, and about $103,000 of railroad bonds, and gave his obligation in writing, amounting to about $163,000, therefor; to secure payment of this obligation Houstoun retained possession of the bonds and of the 1,300 shares of stock, and Littlefield, for further security, deposited with him the certificates for about 3,110 other shares of stock in the Florida Central Railroad Company, owned by said Littlefild, which stock and bonds said Houstoun was to hold till he should be paid. Houstoun caused the registry of all the shares of Littlefield's stock to be changed to himself, and new certificates to be issued to him therefor. This contract is evidenced by a writing dated May 13th, 1870, of which a copy is hereto attached, marked Exhibit E.

About the 13th of April, 1871, said Littlefield caused the said obligations to be paid, and instructed said Houstoun to transfer said stock and deliver said certificates to S. W. Hopkins & Co., said Littlefield's agents.

But said Houstoun delivered the certificates to Marianno D. Papy instead, and constituted him, by indenture, a trustee to hold said stock for the purpose declared in the trust. A copy of said indenture is hereto attached, marked Exhibit F.

Said Houstoun, however, although he delivered the certificates of the
stock to said Papy, retained the registry thereof in his own name,
833 and assumed to control and vote the shares of stock embraced in
the certificates until his death, in the month of , A. D. 1875.

Said certificates of stock being in one of the banks of Savannah, from which said Papy had never removed them, and said Papy being in said city of Savannah in July, 1872, he was arrested under a writ of ne exeat, issued at the suit of Edward Houstoun, by the superior court of Chatham County, in Georgia, the ostensible purpose of said suit being to prevent the removal of said certificates and bonds from said State by said trustee, M. D. Papy; said Papy declining to give the required bond, the said court ordered that the certificates be delivered to one T. Mayhew Cunningham, of Savannah, Georgia, cashier of the bank in which they had been deposited, where, as this complainant is informed and believes, they still are.

But in January, 1876, one Robert J. Washington, a defendant to this bill, who claimed to have an interest in the 4,410 shares of stock embraced in said certificates, as purchaser at a sale of Milton S. Littlefield's interest therein, made under a decree of this court, filed his bill to have a trustee of said stock appointed in the place of said Papy, who had died, claiming that said court in Georgia could not acquire any jurisdiction over stock in a railroad in Florida, and claiming that no person was, after the death of said Houstoun, authorized to vote said stock, as said Papy declined to have it transferred to his name and to vote it.

On the 7th day of May, 1877, this honorable court made its decree in said cause, a copy of which is hereto attached, marked Exhibit G (for Exhibit G see Exhibit H), whereby the said shares of stock were set forth and particularly described, and the legal title thereof was vested in Aristides Doggett, esq., who was appointed trustee thereof in the place of M. D. Papy, which appointment the said Aristides Doggett accepted.

This complainant further says, that on the 11th day of April, 1877, which was the regular day appointed for the annual meeting of the stockholders of the Florida Central Railroad Company, the stockholders convened in the company's office, at Jacksonville, Florida, to which city the place for meeting of the stockholders had been regularly and duly changed since the last preceding meeting of stockholders. That said meeting was adjourned from day to day and from time to time till the 28th day of May, 1877, when they proceeded to transact the business for which they had convened, and took such action as is shown by 834 the record of the meeting, a certified copy whereof is hereto attached, marked Exhibit H, showing that Milton S. Littlefield, James M. Baker, Charles B. Fenwick, George R. Foster, John C. L'Engle, N. K. Sawyer, Joseph B. Stewart, W. J. Lawton, and E. M. L'Engle were elected directors of said Florida Central Railroad Company for the current year.

Afterwards the said directors convened and elected E. M. L'Engle president of said company, and Charles B. Fenwick secretary and treasurer thereof, as is shown by the record of said meeting, a certified copy whereof is hereto attached, and marked Exhibit K.

Your orator further shows, that the Florida Central Railroad Company is not liable or responsible for the payment of the one thousand bonds claimed to have been issued under the provisions of an act entitled "An act to perfect the public works of the State," approved January 28th, 1870, for $1,000 each; a copy of one of said bonds is herewith filed, marked Exhibit L, to which reference is prayed, which said bonds are now in the possession of Walter Gwynn, treasurer of the State of Florida.

That said bonds are not the bonds of the company. They were not executed by this company, nor by its authority, and are fraudulent and void.

Your orator charges, on information and belief, that said bonds were signed by George W. Swepson, as president of this company, and by one H. H. Thompson, as treasurer, whereas, in truth, the said Thompson was not at that time, and never was, treasurer of this company, and had no authority to act as such, or to sign said bonds. That F. H. Flagg was at that time the treasurer of this company, and the only person who had any right or authority to represent this company as such officer.

That he was the custodian of the seal of this company, which, as this complainant is informed, was secretly, and without his knowledge or consent, taken from his office by some person unknown, and fraudulently used to attest said bonds.

Your orator further shows, that the said act of January 28th, 1870, under which it is pretended that said bonds were issued, creates, or attempts to create, a statutory contract between the State of Florida and the Jacksonville, Pensacola and Mobile Railroad Company for the exchange of State for railroad bonds of this company, at the rate of $16,000 per mile, upon the certain conditions therein stated, but the 835 said statute was not intended to apply to this company, and did not affect its character.

Said act conferred no powers or privileges on this company, and imposed upon it no additional burdens, obligations or sacrifices. That this company had no authority in law under the said act or under its charter, or otherwise, to issue said bonds as claimed for the use and benefit of the Jacksonville, Pensacola and Mobile Railroad Company; such an act would have had no legal or binding force, and would have created no lien upon said railroad or the company's property.

That to issue bonds to the amount of $16,000 per mile, drawing interest at eight per cent., and to deliver the same to the said company without consideration or benefit, either given or promised, would have resulted in the utter ruin and bankruptcy of this company.

Your orator further shows that the said act was not a valid law, and would have had no binding force on this complainant if it had been applicable, and if it had been accepted and acted upon in the issue of bonds in accordance with its provisions.

That the agreement and undertaking to exchange bonds with the State for the purposes mentioned in said act have been declared to be unconstitutional by the supreme court of the State, and the said bonds, had they been free from all other objections, were null and void, and could constitute no lawful consideration for any agreement or undertaking whatever.

And had the said bonds been legally issued, their exchange for the bonds of the State, adjudged to be unconstitutional and void by the supreme court, would have been a transfer of said bonds without consideration, and hence a void contract.

But this complainant denies that any bonds or pretended bonds of the State ever were received by it in exchange for any bonds whatever; that any bonds, or pretended bonds, of this company were ever delivered by this company, or by its authority, to the Jacksonville, Pensacola and Mobile Railroad Company for the purpose of being exchanged for State bonds, or for any other purpose, and further, upon information, denies that the Jacksonville, Pensacola and Mobile Railroad Company ever received any bonds of the State, or any obligations purporting to be bonds of the State, in exchange for any bonds, or pretended bonds, of this company.

Your orator further shows that the said bonds, signed by Swepson, as president, and said Thompson, as treasurer, were not issued, 836 as pretended, under the said act of January 28th, 1870, for the use and benefit of the Jacksonville, Pensacola and Mobile Railroad Company, but were issued under an agreement made and entered into between Milton S. Littlefield and Edward Houstoun on the 30th day of May, 1870, for their benefit and that of George W. Swepson, who jointly claimed to be owners of the majority of the stock of this company.

That in said contract they mutually covenanted and agreed to issue "one million dollars of the first-mortgage bonds of this (the Florida Central Railroad) company of like denomination, and effect, and condition as the first-mortgage bonds of the Jacksonville, Pensacola and Mobile Railroad Company, to be placed in the hands of the said Edward Houstoun as additional security for the payment of the said draft of $163,026.70, to be held by the said Houstoun in addition to the securities aforesaid. That is to say, to be held in addition to 4,400 shares of the stock of this company, and $103,000 of the bonds of the Pensacola and Georgia Railroad Company. That the said Houstoun was fully authorized by said contract upon failure or default in the payment of said draft to offer said million dollars of bonds of the Florida Central Railroad Company, so agreed to be issued, for sale at public outcry, in the city of New York, upon giving ten days' notice of such sale, all which will appear by reference to said contract herewith filed, marked Exhibit M. to which reference is prayed, also to copies of contracts explanatory thereof, marked Exhibits E and N.

Your orator further shows that the said one million dollars of bonds, purporting to be the bonds of this company, were issued, signed and executed in the manner aforesaid, and were delivered to the said Houstoun (but not by this complainant, or by its authority), as covenated and agreed by the terms of the said contract.

That on the 11th day of January, 1871, the said Houstoun, with the approval and consent of the said Littlefield, delivered the said bonds over to T. B. Coddington, to be held and disposed of by him for the benefit of said Houstoun, in the payment of said draft, and for other purposes and trusts specified in the receipt of the said Coddington given for said bonds, a copy of which is herewith filed, marked Exhibit P, to which reference is prayed.

Your orator charges that said bonds were not intended to be given in aid of the Jacksonville, Pensacola and Mobile Railroad Company, to be exchanged for the bonds of the State, as fraudulently and
837 falsely expressed on the face or body of said bonds, but that they
were intended to be in accordance with the terms of the said contract and to be given to the said Houstoun to secure a personal debt of said Milton S. Littlefield.

That the said bonds, a specimen copy of which, under the certificate of George F. Drew, governor, is herewith filed as Exhibit L, were not issued and completed as required. That two blanks appear on the face thereof, one as to the place where they were issued, raising a strong presumption that they were not issued at the office of the company, then in Tallahassee, and that there was some motive for concealing the place of issue. The other blank, where the name of Harrison Reed, governor, should have been signed, certifying that said bonds were issued under the provisions of the act of January 28th, 1870. That the said certificate attached to said bonds, to be signed by the governor of the State, was necessary to give said bonds identity and credit, as having been lawfully issued under said act; and the fact that the said governor did not and could not certify to the legality of the issue of said bonds was sufficient to impart notice to all persons interested in or dealing with said bonds or bonds, exchanged therefor, that they were not the lawful bonds of this company.

Your orator further shows that subsequent to the fraudulent signing and sealing of said bonds, purporting to be the bonds of this company, by the said Swepson and Thompson, the same were placed in the hands of said Houstoun, pursuant to the contract between Houstoun and Littlefield aforesaid, dated May 30th, 1870.

That soon thereafter the parties interested in the making and carrying out said contract caused a meeting of the board of directors to be called for that purpose, and passed a resolution adopting the said Swepson and Thompson bonds, which had been illegally issued as aforesaid, as the bonds of this company, and directed the same to be applied to the payment of private debts, and not to be used in aid of the Jacksonville, Pensacola and Mobile Railroad Company.

That said meeting was irregular and unlawful, and was convened without the notice required in such cases. That subsequent thereto, when the fraudulent character of said bonds became known, at a meeting of the directors of this company on the 21st day of November, 1870, the said resolutions were rescinded and the said bonds ordered to be destroyed, as will more fully appear by a copy of said resolutions herewith filed, marked Exhibit R.

838 Your orator further shows that the bonds of the State of Florida, authorized to be issued under the said act of January 28th, 1870, to be exchanged for the bonds of the Jacksonville, Pensacola and Mobile Railroad Company, were executed, countersigned, and placed in the hands of Harrison Reed, then governor of the State of Florida, being 4,000 bonds of $1,000 each, and numbered from one to four thousand inclusive.

Your orator, upon information, shows that after the action had by this company, recalling said bonds and ordering them to be destroyed, the said Harrison Reed, governor, with full knowledge of the fact, did unlawfully and fraudulently exchange one million dollars of the bonds of this company so illegally issued and so revoked and ordered to be destroyed by this company, and did deliver said State bonds to the said T. B. Coddington, not as the agent or in any way representing or pretending to represent the Jacksonville, Pensacola and Mobile Railroad Company, but as the agent and trustee for said Houstoun under said contract, and the receipt of said Coddington so shows, and the said Coddington removed the said bonds secretly from the State of Florida.

Your orator further shows that George F. Drew, now governor of the State of Florida, claims the right and has threatened and attempted to seize the Florida Central Railroad and sell the same to satisfy and pay certain bonds of the State claimed to have been issued in exchange for the bonds of this company in manner aforesaid, amounting to 206 in number, of $1,000 each, alleged to have been sold in Europe and to be now in the possession of defendants to this cross-bill. But your orator denies that any of the bonds of the State so exchanged have been sold to bona-fide purchasers, and if sold, denies that this company is in any way responsible for or liable for payment thereof. That the bonds issued in exchange for said State bonds were not the bonds of this company, and were not executed by this company or by its authority. That the company had no legal power or authority to issue said bonds, either under the terms of its charter or under the provisions of the act of January 28th, 1870, to secure the completion of the public works of the State.

That the company's railroad was long before that time a completed railroad, and the issuing of said bonds was not within the legitimate power granted to this company, and was not for the interest or improvement of this company's railroad. That said bonds were not delivered to the Jacksonville, Pensacola and Mobile Railroad Company, and were not exchanged for State bonds either by or for them.

839 Your orator further shows that the said defendants, the pretended holders of said bonds, had due notice of the illegality of said bonds, and of the fraudulent means used to secure them. That they had notice by a suit then and still pending in the county of Leon, State of Florida, in which R. H. Gamble and J. D. Wescott, jr., were complainants, and Robert Houstoun et al. were defendants, in which the illegality of said bonds was charged and an injunctional order restraining the delivery of the said bonds to the State was granted.

That the defendants, the holders of said bonds, had notice by a dispatch sent to Europe in reply to enquiries made in relation to said bonds, by one Boissevain, a banker in Amsterdam, and one of the defendants, dated in December, 1870, as follows:

Bonds recently recalled by the company; no provision will be made for interest.

REED, *Governor*.

That they received further notice by a letter written to Boissevain, a banker in Amsterdam, and defendant to this suit, by E. M. L'Engle, and signed as counsel for this company, dated February 8th, 1871, a copy of which is hereto attached, marked Exhibit B, to which reference is prayed.

Your orator further shows, upon information, that none of the State bonds exchanged for said bonds of this company are claimed to have been sold prior to July, 1872, more than one year after said notices had been sent to the persons in Europe interested in like bonds. That, in consequence of such notices, complainant alleges that no bona fide sale was made of the State bonds exchanged for the said bonds of this company.

Your orator further shows that, in the suit of the State of Florida vs. the Florida Central Railroad Company et al., instituted in Duval County, for the collection of interest due on said bonds so held by the State, it became a material question whether any of the bonds of the State exchanged for said company's bonds had been sold, upon which issue was joined and trial and judgment had in the circuit court, and upon appeal to the Supreme Court it was adjudged and determined that there was no evidence that any of said State bonds had been sold, and the suit was thereupon, by order of said court, dismissed.

Your orator, therefore, says that the question of liability of this company to the State of Florida for the payment of said bonds has
840 been fairly put in issue before a court of competent jurisdiction,
and, after a fair trial, was decided in favor of your orator, and is now res adjudicata.

Your orator further shows that the act of January 28th, 1870, which authorized the governor of the State to seize and sell certain railroads, on failure to pay interest on bonds exchanged by them for State bonds, gave to the governor such extraordinary power only to protect the State, in its sovereign capacity, from loss on the bonds so exchanged.

But the State bonds having been declared unconstitutional and void, such right of seizure no longer exists, the State having incurred no liability by reason of such exchange of bonds. That no power of seizure has been given to the governor, or any State officer, for the protection of private rights, as trustee or otherwise, and no such power can be conferred by this court.

Your orator further states, upon information, that the said governor still claims the right to seize and sell the said Florida Central Railroad, and it has good reasons to believe that he would endeavor to do so unless restrained by an injunctional order of this court.

Your orator hereby tenders and offers to pay, or cause to be paid, to the said defendants, or to any holder of the said 206 bonds, the interest that may be due thereon whenever the same is adjudged to be the act, deed, bond, obligation, or debt of the Florida Central Railroad Company, in such manner as this court may direct.

Inasmuch as your orator is without remedy at law, and can only have adequate protection and relief in a court of chancery, your orator prays that the United States writ of subpœna may be issued from this court to J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J.

Brunnerkruff, J. H. Green, Willenmier Van Tyer, Van Taer C. Both, L. L. Wertheim, Wysman de Voogt, J. B. Roelopz, Jan Tichelaar, jr., Jacobus Wertheim, P. Van Reysen, Mey de Benedithy, Beer, Girard A. Heineken, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyen, N. J. Frankel, Johannes William Donk, Vander Stoop, and Berg, who are aliens and subjects of the King of the Netherlands; the Western Division of the Western North Carolina Railroad Company, a corporation created by and existing under the laws of the said State, and a citizen thereof; the Jacksonville, Pensacola and Mobile Railroad Company, a corporation created by and existing under the laws of the State of Florida, and a citizen thereof; Walter Gwynn, 841 treasurer of the State of Florida, George F. Drew, governor of the State of Florida, citizens of the State of Florida; and Robert J. Washington, a citizen of the State of Virginia.

Your orator further prays that the said bonds, purporting to be the bonds, of your orator, issued as aforesaid, and exchanged for the State bonds as alleged, may be deemed to be illegal and void, and ordered to be returned to the company and cancelled.

Your orator further prays that the holders of the State bonds, so exchanged, may be deemed to have no claim against your orator, and that the said bonds may be decreed to constitute no lien upon the said Florida Central Railroad.

Your orator further prays that an injunction may be issued by order of this court restraining the defendant George F. Drew, governor of the State of Florida, his officers and agents, from seizing, or attempting to seize, the said Florida Central Railroad, and from advertising the same for sale, and from interfering, in any way, with the use and possession of said railroad by the said company, or with any of said company's property.

Your orator further prays that the said J. Fred Schutte, Jan Prins, Adrianus Prins, and other defendants holding bonds of the State, exchanged as alleged, their agents and attorneys, may be enjoined perpetually from using or uttering said State bonds and from sueing your orator for payment thereof.

Your orator further prays that it may have such other relief in the premises as to this honorable court may seem meet and proper.

842 STATE OF FLORIDA,
County of Duval:

Personally appeared before me, Philip Walter, clerk of the United States circuit court, fifth judicial circuit, northern district of Florida, Charles B. Fenwick, who, being sworn, deposes and says that he has read the foregoing cross-bill, and is acquainted with the contents thereof; that the statements therein made are true to this affiant's knowledge, except as to those things which are stated on information and belief, and as to those things he believes them to be true.

CHARLES B. FENWICK.

Sworn to and subscribed before me the 28th day of July, A. D. 1877.

[SEAL.]
PHILIP WALTER, *Clerk,*
By SIMON BAER,
Deputy Clerk.

Filed July 30th, 1877.

CHAS. H. FOSTER, *Clerk,*
By F. T. MYERS, *D. C.*

Rec'd and filed Ap'l 20, 1878.

P. WALTER, *Clerk.*

REC. 667—28

843 **EXHIBIT A.**

Cross-bill of Florida Central Railroad Company.

In circuit court, Duval County, Florida.

EDWARD M. L'ENGLE, PLAINTIFF,
vs.
MILTON S. LITTLEFIELD, AARON BARNET, Edward Houstoun, Mariano D. Papy, George W. Swepson, The Florida Central Railroad Company, The Jacksonville, Pensacola and Mobile Railroad Company, Converse L. Chase, Francis H. Flagg, J. H. Gardiner, Harrison Reed, the governor of the State of Florida, J. P. C. Emmons, the attorney general of said State, Robert H. Gamble, the comptroller of said State, Simon B. Conover, the treasurer of said State, and John S. Adams, commissioner of lands and immigration of said State, who are, as such officers, trustees of the internal improvement fund of the State of Florida, The Gulf Steamship Company, and Sidney W. Hopkins, L. Lewis Spring, Charles Fouke, Frank H. Collins, and Robert J. Carpenter, merchants and copartners doing business in the city and State of New York under the firm name of S. W. Hopkins & Co., defendants.

The plaintiff, in behalf of himself and of all others who, being stockholders of the Jacksonville, Pensacola and Mobile Railroad Company, or of the Florida Central Railroad Company, shall, in due time, come in and seek relief by and contribute to the expense of this action, complaining, alleges as follows:

That, under and by virtue of the provisions of an act of the legislature of the State of Florida entitled "An act to incoporate the 844 Atlantic and Gulf Central Railroad Company, and for other purposes," approved January 24, 1851, and of the provisions of another act of the legislature of the State of Florida entitled "An act to amend an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company," approved January 7, 1853, the Florida, Atlantic and Gulf Central Railroad Company was incorporated, and by that name the stockholders and members of said company, their successors and assigns, were authorized to construct and operate a railroad from some tributary of the Atlantic Ocean, within the limits of the State of Florida, having a sufficient outlet to the ocean to admit of the passage of sea steamers; thence running through the State, in the most eligible direction, to some point, bay, arm, or tributary of the Gulf of Mexico, west of the Apalachicola River, in West Florida, having a sufficient outlet for sea steamers.

That, in accordance with the rights conferred by these acts, said company constructed a railroad from the town of Jacksonville, in Florida, to the town of Lake City, in said State, and operated the same for a number of years, and surrendered their right to build any portion of the line west of Lake City.

That, in accordance with the authority granted by an act of the legislature of Florida entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6, 1855, the said Florida, Atlantic and Gulf Central Railroad Company, for the purpose of constructing the railroad authorized by its charter, issued a large amount of bonds.

That, under the provisions of the said act, and the contract therein expressed, these bonds constituted a first lien or mortgage on the said roadbed, iron, equipments, workshops, depots, and franchise of the company.

That, by said act and contract, it was provided that on failure of the company to pay the sinking-fund of one per cent., the trustees named in the act should take possession of and sell the said road and all the property of said company.

That said company failed to comply with the requirements of the statute aforesaid, and the trustees took possession of the road and sold it, in conformity with the statute and contract aforesaid, at public auction, on the 4th of March, 1868.

That, at said sale, William E. Jackson and his associates became the purchasers of said road and other property of said company.

That the said purchasers, by an act of the legislature of the State of Florida, approved July 29, 1868, were vested with the powers and franchises granted to the Florida, Atlantic and Gulf Central Railroad Company, by the act aforesaid, entitled "An act to amend an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company," approved January 7, 1853, and they, and their successors and assigns, were authorized and empowered to exercise the said powers and franchises, so far, and only so far, as they appertained to the railroad constructed, as aforesaid, by the Florida, Atlantic and Gulf Central Railroad Company, from Jacksonville to Lake City, in Florida, and were made a body politic and corporate, under the name of the "Florida Central Railroad Company."

That the said road, if a public work at all, is, and has long been, a completed public work.

845 That the Florida Central Railroad Company, under its charter (which charter is a contract between the individual stockholders upon the one side, and the State and corporation on the other side), is invested with no functions, rights, or powers, except such as pertain to a completed road, and that, in point of fact, the sole purpose for which the corporation exists, and for which the charter was granted, is the operation, control, management, and maintenance of a completed line of railroad extending from Jacksonville to Lake City, aforesaid.

That the plaintiff is a stockholder in said Florida Central Railroad and a member of said corporation, and is also a stockholder in the Jacksonville, Pensacola and Mobile Railroad, hereafter mentioned, and a member of that corporation.

That, on the 20th of March, 1869, the Pensacola and Georgia Railroad Company was a corporation organized and existing under the laws of the State of Florida, with a line of railroad completed from Lake City, Florida, to Quincy, Florida, and engaged in the business of common carriers.

That, on the day aforesaid, the Tallahassee Railroad Company was a corporation, existing under the laws of the State of Florida, with a line of railway completed from Tallahassee, Florida, to St. Mark's, Florida, and engaged in the business of common carriers.

That both of said railroad companies accepted and issued bonds under the provisions of the act of the legislature of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6, 1855, and became subject to all the provisions of said act.

That, on the 20th of March, 1869, the trustees of the internal improvement fund of the State of Florida, under the authority vested in them by the third section of said act of the legislature of the State of Florida, upon and because of a failure on the part of said railroad companies to provide and pay the sinking fund as required in said act, on the bonds issued by the said companies, duly sold at public sale, the aforesaid railroads, and all the property of each of said companies of every kind, for the sum of $1,415,000, and, at that sum, one Franklin Dibble and his associates became the purchasers of the said railroads and of all the property of each of said companies.

And that, on the 8th day of April, 1869, the said trustees of the internal improvement fund of the State of Florida made and delivered to said purchasers deeds of conveyance of said railroads and property, which deeds were duly recorded in the office of the clerk of the circuit court of Leon County, Florida, on the 22d and 23d days of October, A. D. 1869.

That the purchasers aforesaid paid the said trustees $960,000 on account of the purchase money of said roads, in first-mortgage bonds of said companies (issued under the said act of January 6, 1855), at the par value thereof, and the said purchasers received credit therefor.

That the remainder of said purchase money never has been paid, nor the payment thereof in any manner secured, as the plaintiff is informed and believes.

That one George W. Swepson, in consideration of a large and controlling interest in the stock transferred and conveyed to him by the said Franklin Dibble, and the other persons associated with him
846 in said purchase, and by the consent of the trustees of the internal improvement fund of Florida, acting by their duly appointed agents, and for other considerations, promised to and received by him, undertook to pay the remainder of said purchase money, and to do other things for the benefit of said purchasers (and of the corporation which they, in conjunction with other persons acting with them, intended to be created into by act of the legislature). And the said trustees, acting by their duly appointed agents, accepted said Swepson as their debtor the place of the said purchasers.

That, on the 24th of June, 1869, the legislature of Florida passed an act entitled "An act for the relief of Franklin Dibble, E. M. Cheney, and their associates," purchasers of the railroad from Tallahassee to St. Mark's, and of the railroad from Quincy to Lake City, and incorporating the Tallahassee Railroad Company, by which the said purchasers and their associates were created a body corporate, under the name of the "Tallahassee Railroad Company," and were vested with like powers, franchises, and privileges as were granted to the Pensacola and Georgia Railroad Company, and the Tallahassee Railroad Company by the acts incorporating said companies.

That, on the 24th June, 1869, by an act of the legislature of Florida, approved on that day, entitled "An act to perfect the public works of this State," and by an act amendatory thereof, approved January 28th, 1870, a corporation called the Jacksonville, Pensacola and Mobile Railroad Company was created, empowered to build and operate a railroad from Quincy to Pensacola in said State, and to consolidate its road or line of intended road with those of the beforementioned Tallahassee

Railroad Company, and of the said Florida Central Railroad Company, and to exercise other powers and privileges.

That the Tallahassee Railroad Company already mentioned, and the said Jacksonville, Pensacola and Mobile Railroad Company, as this plaintiff is informed and believes, did, in the manner provided for by said last-mentioned act, consolidate their said roads, under the name of the latter company, and redistributed the stock.

The plaintiff further says, on information and belief, that, before said consolidation, or afterwards, the said George W. Swepson, in consideration that the defendant, Milton S. Littlefield, would pay to the trustees of the internal improvement fund of Florida the remainder of said purchase money of the said railroad, which remainder, or any part thereof, the said Swepson had not paid as he undertook to do, and for other considerations undertaken by said Littlefield to be performed, he, the said Swepson, transferred and conveyed to said Littlefield, all of his, said Swepson's property and interest in the said Tallahassee Railroad Company, or in the said Jacksonville, Pensacola and Mobile Railroad Company, and in the Florida Central Railroad Company (one of these defendants), in which last mentioned company, as in the Tallahassee Railroad Company, or the Jacksonville, Pensacola and Mobile Railroad Company, he, the said Swepson, had a majority of the stock interest.

And the property so transferred and conveyed was of value much greater than the unpaid purchase money due to the said trustees.

That, as the plaintiff is informed and believes, said Littlefield received said transfer of interest with and upon the distinct 847 promise made by him that he would out of his own resources, pay such unpaid purchase money. And the plaintiff avers, on his own knowledge, that when the said Littlefield received the said transfer and conveyance, and always before that time, he knew that the said Swepson had not paid said remainder of the purchase money of the said railroad, or any part thereof.

That the said Milton S. Littlefield was elected president of the Jacksonville, Pensacola and Mobile Railroad Company at the time of its organization, and has continued to be president ever since. And that afterwards he was elected president of the Florida Central Railroad Company; and that defendant, Aaron Barnett, claims now to be the president thereof, and to have been elected as such on the 9th or 10th of April, 1872.

That the Jacksonville, Pensacola and Mobile Railroad Company was granted, by the acts incorporating it, the right to build a railroad from Quincy, Florida, westward to the Alabama State line, and that to aid it in doing so the governor of the State of Florida was, by said acts, directed to deliver to the president of said company coupon bonds of the State to an amount equal to $16,000 per mile for the whole length of railroad owned by said company, in exchange for first mortgage bonds of said company; and said acts provided that the State should have a statutory lien on said road as security against loss.

That said acts also provide that the governor, for the purpose of further aiding said Jacksonville, Pensacola and Mobile Railroad Company to speedily construct its road, shall deliver to the president of said company other coupon bonds of the State of Florida, to the amount of $16,000 per mile, upon receiving from the president of said company first-mortgage bonds of like amount on any portion of the line of railroad between Quincy and Jacksonville, not exceeding one hundred miles of any part of railroad between those points, which provision is contained in the 4th section of the act approved January 4th, 1870.

That, as president of the Jacksonville, Pensacola and Mobile Railroad Company, the said Littlefield received from the governor of Florida four millions of said bonds of said State, of which one million were issued in exchange for a like amount of bonds of the Florida Central Railroad Company, delivered to said governor by said Milton S. Littlefield, which one million of State bonds were issued under section 4 of the act of 1870 above referred to.

That it is claimed by said Littlefield, and by the governor of the State of Florida, that the said million of dollars of bonds of the Florida Central Railroad Company, delivered to said governor and in exchange for which the million of State bonds were delivered to said Littlefield, constitute a lien upon the line of said road and the property owned by the said Florida Central Railroad Company, or are valid, legal, and subsisting obligations of said company to the State of Florida.

Plaintiff says further, on information and belief, that the said million of dollars of bonds of the said Florida Central Railroad Company were deposited with the State about the 4th of January, 1871, without the knowledge or consent of the stockholders or directors, generally, of said company, or of its president, and against the wishes of them, or some of them; and that it was done with the knowledge and consent, and secretly, and by the contrivance of the defendant Milton S. Littlefield, and in fraud of said company and of the stockholders and creditors thereof, and in violation of its charter and of the powers and 848 privileges thereof, which never contemplated that said company should engage in the building of any other than its own line of road, or incur any obligation, or pledge its credit, for any other than the purposes mentioned in the charter.

And the plaintiff says that the State of Florida, acting through its officers, was a party to the fraud, and cannot allege ignorance of the facts, or of the law governing said corporation.

That the said Milton S. Littlefield, through himself and his agents, sold most of the said four million dollars of bonds, and, as the plaintiff is informed and believes, received a very large amount of money therefor, the plaintiff cannot say with positiveness or certainty how much, but to the best of his information and belief, more than $1,000,000.

That said bonds were issued by the State and received by the said Littlefield, as president of the said railroad company, for the purposes stated in said act of the legislature, which were to aid the Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road westward from Quincy to the Alabama line. And the stockholders and creditors of said company confided in him to receive the said funds and apply them to the purposes for which they were intended. But, instead of carrying out that trust and confidence, the said Milton S. Littlefield has received the said money, or a large proportion of it, and has diverted it from the legitimate uses of the corporation, and has misapplied it to his own personal and private uses and purposes, and has applied only a small proportion thereof to the purposes for which said bonds were issued.

That said Milton S. Littlefield has not given, and fails to give, any sufficient account of the application of said funds; that he has made no report of his receipts and disbursements, or of his administration of said roads, and of the affairs of said companies, since he has been president of them respectively. And holding, as he does, the majority of the stock in both companies, he exercises an arbitrary and absolute control over their affairs, and by his votes shapes the directory of each company as he pleases.

That he makes, or permits to be made, nominal transfers of small amounts of stock in each company, to such persons owning no stock, or insufficient thereof, as he wants elected directors thereof, in order to give them an apparent qualification as such, and causes them by his votes, to be elected directors, when, in fact, they do not in good faith own any, or, if any, a sufficiency of stock in said companies, and are not really qualified to act as directors in the respective companies, under the respective charters thereof; and causes himself, or such person as he may select, thus to be elected president, and thus he shuns and escapes all investigation into his, or such other person's conduct, as president of said companies respectively.

That the said Milton S. Littlefield has purchased, and claims as his own property, a large amount of the capital stock of the Jacksonville, Pensacola and Mobile Railroad Company, and of the Florida Central Railroad Company, and a large number of the first-mortgage bonds of the Pensacola and Georgia Railroad Company, or of the Tallahassee Railroad Company, or of both (for the non-payment of the sinking fund of
which bonds the said roads were, as has been herein stated, sold
349 by the trustees of the internal improvement fund of the State of
Florida), which stock in the Jacksonville, Pensacola and Mobile Railroad Company, or a large amount of which, he obtained by purchase with money realized and obtained from the assets and earnings of said Jacksonville, Pensacola and Mobile Railroad Company and Florida Central Railroad Company, and not with his individual private funds, all of which purchases so paid for belong to the said corporations.

That the following are some of the purchases of stocks of said railroad made by said Littlefield with funds belonging to the Jacksonville, Pensacola and Mobile Railroad Company or to the Florida Central Railroad Company, or to both, and claimed now by said Littlefield to be his own property, viz:

From James M. Baker, Silas L. Niblack, and Wilkinson Call he purchased 3,750 shares of stock in the Jacksonville, Pensacola and Mobile Railroad Company, being 1,250 shares from each of them.

On information and belief plaintiff further says that said Littlefield also in the same manner purchased stock in the Jacksonville, Pensacola and Mobile Railroad Company from Alonzo Huling, F. Dibble, Calvin Dibble, and other persons, paying for the same, directly or indirectly, with funds belonging to the said corporation.

The plaintiff further says, on information and belief, that the stock so purchased by Milton S. Littlefield and paid for or contracted to be paid for, directly or indirectly, out of the funds belonging to the Jacksonville, Pensacola and Mobile Railroad Company, and to the Florida Central Railroad Company, constitute, with that which he has otherwise acquired, a majority of the stock of said companies, respectively, claimed by the said Littlefield as his property, and by voting which, directly or indirectly, he controls the organization and management of said companies, respectively, and upon which he claims and assumes the right to receive the dividends, if any there be.

All of which stock so purchased belongs to the corporations, respectively, to be divided among the several stockholders pro rata, or has become extinct as stock, thereby increasing by so much the value of each of the remaining shares of stock.

Plaintiff further says that said Milton S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, in the latter part of the year 1869, or early in the year 1870, made a contract in writing with certain commissioners representing the Western Division

That, as president of the Jacksonville, Pensacola and Mobile Railroad Company, the said Littlefield received from the governor of Florida four millions of said bonds of said State, of which one million were issued in exchange for a like amount of bonds of the Florida Central Railroad Company, delivered to said governor by said Milton S. Littlefield, which one million of State bonds were issued under section 4 of the act of 1870 above referred to.

That it is claimed by said Littlefield, and by the governor of the State of Florida, that the said million of dollars of bonds of the Florida Central Railroad Company, delivered to said governor and in exchange for which the million of State bonds were delivered to said Littlefield, constitute a lien upon the line of said road and the property owned by the said Florida Central Railroad Company, or are valid, legal, and subsisting obligations of said company to the State of Florida.

Plaintiff says further, on information and belief, that the said million of dollars of bonds of the said Florida Central Railroad Company were deposited with the State about the 4th of January, 1871, without the knowledge or consent of the stockholders or directors, generally, of said company, or of its president, and against the wishes of them, or some of them; and that it was done with the knowledge and consent, and secretly, and by the contrivance of the defendant Milton S. Littlefield, and in fraud of said company and of the stockholders and creditors thereof, and in violation of its charter and of the powers and 848 privileges thereof, which never contemplated that said company should engage in the building of any other than its own line of road, or incur any obligation, or pledge its credit, for any other than the purposes mentioned in the charter.

And the plaintiff says that the State of Florida, acting through its officers, was a party to the fraud, and cannot allege ignorance of the facts, or of the law governing said corporation.

That the said Milton S. Littlefield, through himself and his agents, sold most of the said four million dollars of bonds, and, as the plaintiff is informed and believes, received a very large amount of money therefor, the plaintiff cannot say with positiveness or certainty how much, but to the best of his information and belief, more than $1,000,000.

That said bonds were issued by the State and received by the said Littlefield, as president of the said railroad company, for the purposes stated in said act of the legislature, which were to aid the Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road westward from Quincy to the Alabama line. And the stockholders and creditors of said company confided in him to receive the said funds and apply them to the purposes for which they were intended. But, instead of carrying out that trust and confidence, the said Milton S. Littlefield has received the said money, or a large proportion of it, and has diverted it from the legitimate uses of the corporation, and has misapplied it to his own personal and private uses and purposes, and has applied only a small proportion thereof to the purposes for which said bonds were issued.

That said Milton S. Littlefield has not given, and fails to give, any sufficient account of the application of said funds; that he has made no report of his receipts and disbursements, or of his administration of said roads, and of the affairs of said companies, since he has been president of them respectively. And holding, as he does, the majority of the stock in both companies, he exercises an arbitrary and absolute control over their affairs, and by his votes shapes the directory of each company as he pleases.

That he makes, or permits to be made, nominal transfers of small amounts of stock in each company, to such persons owning no stock, or insufficient thereof, as he wants elected directors thereof, in order to give them an apparent qualification as such, and causes them by his votes, to be elected directors, when, in fact, they do not in good faith own any, or, if any, a sufficiency of stock in said companies, and are not really qualified to act as directors in the respective companies, under the respective charters thereof; and causes himself, or such person as he may select, thus to be elected president, and thus he shuns and escapes all investigation into his, or such other person's conduct, as president of said companies respectively.

That the said Milton S. Littlefield has purchased, and claims as his own property, a large amount of the capital stock of the Jacksonville, Pensacola and Mobile Railroad Company, and of the Florida Central Railroad Company, and a large number of the first-mortgage bonds of the Pensacola and Georgia Railroad Company, or of the Tallahassee Railroad Company, or of both (for the non-payment of the sinking fund of which bonds the said roads were, as has been herein stated, sold 849 by the trustees of the internal improvement fund of the State of Florida), which stock in the Jacksonville, Pensacola and Mobile Railroad Company, or a large amount of which, he obtained by purchase with money realized and obtained from the assets and earnings of said Jacksonville, Pensacola and Mobile Railroad Company and Florida Central Railroad Company, and not with his individual private funds, all of which purchases so paid for belong to the said corporations.

That the following are some of the purchases of stocks of said railroad made by said Littlefield with funds belonging to the Jacksonville, Pensacola and Mobile Railroad Company or to the Florida Central Railroad Company, or to both, and claimed now by said Littlefield to be his own property, viz:

From James M. Baker, Silas L. Niblack, and Wilkinson Call he purchased 3,750 shares of stock in the Jacksonville, Pensacola and Mobile Railroad Company, being 1,250 shares from each of them.

On information and belief plaintiff further says that said Littlefield also in the same manner purchased stock in the Jacksonville, Pensacola and Mobile Railroad Company from Alonzo Huling, F. Dibble, Calvin Dibble, and other persons, paying for the same, directly or indirectly, with funds belonging to the said corporation.

The plaintiff further says, on information and belief, that the stock so purchased by Milton S. Littlefield and paid for or contracted to be paid for, directly or indirectly, out of the funds belonging to the Jacksonville, Pensacola and Mobile Railroad Company, and to the Florida Central Railroad Company, constitute, with that which he has otherwise acquired, a majority of the stock of said companies, respectively, claimed by the said Littlefield as his property, and by voting which, directly or indirectly, he controls the organization and management of said companies, respectively, and upon which he claims and assumes the right to receive the dividends, if any there be.

All of which stock so purchased belongs to the corporations, respectively, to be divided among the several stockholders pro rata, or has become extinct as stock, thereby increasing by so much the value of each of the remaining shares of stock.

Plaintiff further says that said Milton S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, in the latter part of the year 1869, or early in the year 1870, made a contract in writing with certain commissioners representing the Western Division of the Western North Carolina Railroad Company, whereby more than one million dollars of the funds of the said Jacksonville, Pensacola and Mobile Railroad Company were contracted by said Littlefield, as president, to be paid to said commissioners in satisfaction of a debt due by said Littlefield personally and individually, or which was contracted by said Swepson and assumed by said Littlefield, and for which the said railroad company was in no wise responsible.

On information and belief plaintiff says that a part of said money has been paid out of proceeds of the bonds of the State of Florida, issued to said Jacksonville, Pensacola and Mobile Railroad Company under the act aforesaid, approved June 24, 1869, and that said contract is still subsisting.

Plaintiff further says that among the many other misappropriations and diversions by the said Milton S. Littlefield of the funds
850 belonging to the Jacksonville, Pensacola and Mobile Railroad
Company and the Florida Central Railroad Company, he recites, on information and belief, the following, viz:

He caused to be paid out of said funds the following amounts to the following persons, viz: To Jennie Hunter, $300; Alonzo Huling, $5,000; F. A. Dockray, $5,000; J. L. KeQua, $5,000; A. G. Cattel, $735.60; J. B. Clark, $75,000; to some persons unknown, "for balance of judgment vs. Pensacola and Georgia Railroad, with interest," $30,000; to J. S. Meech, $12,600; to R. R. Swepson, $50,000; to First National Bank of Knoxville, $19,684.36; to C. F. Bruton, $10,000; John Rankin, $9,225.17; J. R. Campbell, $1,976.87; W. W. Hubbard, $500; W. Cummings & Co., $466; Drew & Davis, $377.53; to some unknown person for "Grocers' Bank Judgment vs. Road," $5,790; Mrs. E. Holland, $300; John T. Deweese, $20,000; to some unknown person, "balance due on Jacksonville property," $2,590.04; to Governor Reed, "on account," $3,500; D. P. Holland, "on account," $4,630; T. B. Coddington, $57,895.33; S. W. Hopkins, T. B. Coddington, R. Stewart, and others, "for traveling expenses to and from Florida, hotel fares, ocean cables, and other expenses while there," $6,216.38; J. B. Clark, for expenses to Florida, $100; G. B. Carse, do. do., $60; R. Stewart, Washington, $100; to divers unknown persons for "legal expenses defending suits by N. W. Woodfin and L. P. Bayne," $17,850; to a person unknown having a "draft from Florida," £4,433.19.3 (in English currency); to Baring Brothers & Co., for A. Barnett's claim, £19,349.14.1 (in English currency); to Clewes, Habrecht & Co., for G. W. Swepson, £3,717.18.7 (in English currency); to the commissioners of the Western Division of the Western North Carolina Railroad Company, £10,000.00.0 (English currency).

Plaintiff further says, on information and belief, that said Littlefield has, as president aforesaid, pledged the proceeds of said State bonds for the payment of the following additional amounts to or on account of the following persons, viz: R. H. Gamble, $15,000; F. H. Flagg, $4,000; T. B. Coddington, $25,000; L. P. Bayne & Co., $200,000; J. H. Porter, $10,000; D. P. Holland, $17,365; Western Division of the Western North Carolina Railroad Company, $350,000; Governor Harrison Reed, $223,750; and that all of said additional amounts are gross and fraudulent misapplications sought to be made of said proceeds.

Plaintiff further says, on information and belief, that said Milton S. Littlefield has drawn for himself upon the proceeds of said bonds at one time $1,178.50, and at various other times £4,981.10.5 (English currency); and the plaintiff says, on information and belief, that nearly all, if not the entire amount of the last stated sums were misapplied and squandered by said Littlefield for his own purposes.

The plaintiff further says, on the information of S. W. Hopkins & Co., of New York and London, that the said Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, offered to them and sold to them the said four million of State bonds, being four thousand bonds, at the price of £100 sterling for each bond, when, at that very time, said Littlefield knew that said bonds were contracted to be sold, or were sold by his agents, for the price of £138.1.10 sterling.

851 That on or about the 2d of October, 1871, the said Milton S. Littlefield, without authority of the stockholders first had and obtained, as this plaintiff is informed and believes, executed, as president of the Jacksonville, Pensacola and Mobile Railroad Company, a lease of said company's road for the term of two years to the defendants, Converse L. Chase and F. H. Flagg, for the purposes specified in said lease; among which were that they should receive the income and profits of said road and apply the same to the payment of certain specified indebtedness thereof, and to the extension of said road westward.

That under said lease one J. H. Gardiner was appointed superintendent of said road, and that under color of said lease the said C. L. Chase, F. H. Flagg, and J. H. Gardiner assumed, with the consent of said Littlefield, its president, the exclusive management and control of the Florida Central Railroad, and received its income; and applied it, as this plaintiff is informed and believes, to the payment of the debts of the Jacksonville, Pensacola and Mobile Railroad Company, and to the extension of said railroad westward, and to other purposes of said last-mentioned corporation.

That said lease provides that the proceeds, when realized, of the one million dollars of bonds, before mentioned, issued by the State of Florida and received by said Littlefield, as president aforesaid, in exchange for a like amount of bonds of the Florida Central Railroad Company deposited with the governor of said State, should be applied to the extension of the said Jacksonville, Pensacola and Mobile Railroad westward, and not to legitimate purposes of the Florida Central Railroad Company.

That, as plaintiff is informed and believes, said million, or thereabouts, of said bonds are deposited with or under the control of John Collinson, of London, in the kingdom of England, and have not yet been sold.

Plaintiff states, on information and belief, that the said C. L. Chase F. H. Flagg, and J. H. Gardiner have not accounted to the respective companies for the receipts of said roads, respectively.

The plaintiff further says, on information and belief, that on or about the 30th of November, 1871, the said Milton S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, and the said C. L. Chase and F. H. Flagg, as trustees, under the lease or deed of trust heretofore mentioned, dated October 2d, 1871, did, by their attorneys duly authorized thereto, and in fraud of the rights of the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company, and of said Florida Central Railroad Company, enter into a written agreement with one L. P. Bayne, and L. P. Bayne & Co., and one S. W. Hopkins & Co., of New York, and with one N. W. Woodfin, of North Carolina, representing the Western Division of the Western North Carolina Railroad Company, whereby it was provided, among other things, that out of the proceeds accrued and to accrue of $1,200,000 of bonds of the State of Florida, issued to the said Jacksonville, Pensacola and

Mobile Railroad Company, by said State, under and for the purposes specified in the act of the legislature of said State, already mentioned, approved June 24, 1869, which bonds were then in the hands or under the control of said John Collinson, and of which the million of bonds issued upon the security of a like amount of bonds of the 852 Florida Central Railroad Company, as already stated, were a portion, there should be paid to the said L P. Bayne, for himself, and L. P. Bayne & Co., $200,000; and to said Western Division of the Western North Carolina Railroad Company, $300,000; and by the same contract it was agreed that the Jacksonville, Pensacola and Mobile Railroad Company undertook to secure to the said Western Division of the Western North Carolina Railroad Company the payment of the further sum of $300,000, and to the said L. P. Bayne and L. P. Bayne & Co. the further sum of $140,000.

The plaintiff further says that all of the money above mentioned provided by said contract to be paid was for the payment of debts of said Milton S. Littlefield, as an individual, and not of debts of said Jacksonville, Pensacola and Mobile Railroad Company, or of the Florida Central Railroad Company; and that, in entering into said contract, the said Milton S. Littlefield and the said C. L. Chase and F. H. Flagg committed a fraud upon the rights of stockholders in said companies, respectively.

Plaintiff further says, on information and belief, that the performance of the terms of said contract has, thus far, been prevented by the intervention of other parties having interests in said fund, but that the same may, unless prevented by this court, be still carried out.

The plaintiff further states, on information and belief, that said Milton S. Littlefield, as president of said Jacksonville, Pensacola and Mobile Railroad Company, and of the said Florida Central Railroad Company, without the advice or consent of the stockholders or directors of said companies (and in violation of section four of the act of the legislature of Florida, already mentioned, approved June 24, 1869, for the incorporation of the Tallahassee Railroad Company), and the said Aaron Barnett, claiming to be a large stockholder and the president of the Florida Central Railroad Company, and one John Scriven and other persons unknown to the plaintiff, are negotiating together to effect a lease of the said Jacksonville, Pensacola and Mobile Railroad, and of the said Florida Central Railroad, to said John Scriven, who is a citizen of the State of Georgia, and owns a large interest in a railroad out of the State of Florida, or to the Atlantic and Gulf Railroad Company, a corporation created by and existing under the laws of the State of Georgia; among the terms whereof, as the plaintiff is informed and believes, it is designed that the said Milton S. Littlefield shall surrender and assign to such lessee, or to some one else for him, a moiety or a majority of the stock claimed by the said Littlefield as belonging to him in the said Jacksonville, Pensacola and Mobile Railroad Company, and in the said Florida Central Railroad Company, and that all the assets of said companies, including unexpended proceeds of bonds of the State of Florida issued to said Jacksonville, Pensacola and Mobile Railroad Company, as herein stated, and such of said bonds as may still be unsold shall be delivered to said lessee for the purpose of paying to the trustees of the internal improvement fund of the State of Florida the remainder of the purchase money, still unpaid, of the Pensacola and Georgia and the said Tallahassee Railroads, and for which, not the said corporations, but the individual purchasers of the said last-mentioned roads, especially said George W. Swepson and Milton S. Littlefield, who took their stock, as herein stated, with the charge that they should pay the said debt, are liable to the said trustees.

853 Plaintiff further says, on information and belief, that another proposition which the said persons who are negotiating together are considering, in violation of said section of said act of the legislature, is that the said John Scriven, or the said Atlantic and Gulf Railroad Company shall lease, for a long term of years, the said Jacksonville, Pensacola and Mobile Railroad, and the said Florida Central Railroad, paying yearly a stipulated rental, all of the funds and assets of said companies now in hand being left with said companies to be applied, by said Littlefield, to the payment of the unpaid purchase money of the Pensacola and Georgia Railroad, and of said Tallahasse Railroad, and to other debts, for which, as the plaintiff claims, neither the said Jacksonville, Pensacola and Mobile Railroad Company, nor the said Florida Central Railroad Company, is liable.

On information and belief, plaintiff also says, that said Littlefield or said Barnett, or both of them, are negotiating with C. L. Chase and others to make another lease of said railroads to him and those acting with him, the terms of which are similar to those already stated.

And the plaintiff says, that unless the relief hereby prayed is granted, or a portion of it, one of the said propositions, or some other equally injurious to the stockholders of said road, and in violation of said act, and which may work a forfeiture of the charter of the company created by said act, may be adopted and carried into effect to the great damage of the plaintiff as a stockholder in the said Jacksonville, Pensacola and Mobile Railway Company, and in said Florida Central Railroad Company.

The plaintiff further says, that under the management of the said Jacksonville, Pensacola and Mobile Railroad, and of the said Florida Central Railroad, as it now is, and for twelve or more months has been, the incomes thereof are improvidently used and applied. The said Milton S. Littlefield, as president, is receiving an extravagant salary of, as the plaintiff is informed, ten thousand dollars per year, and has clerks and servants in his employ at an expense to the said companies, as the plaintiff is informed, of several thousand dollars a year; that, as plaintiff is informed, said Littlefield employs in England, New York, Florida and elsewhere, at the expense of said companies, but for the advancement of his own individual purposes, and not for the advantage of the companies, one or more attorneys-at-law in each of said counties and places, and that said president, clerks, servants and attorneys are of no use or benefit to said companies.

That, on or about the 19th of May, 1871, said Littlefield transferred and assigned to defendant, Aaron Barnett, by indenture, recorded in Leon County, Florida, in the clerk's office thereof, 41,963 shares of the stock of the Jacksonville, Pensacola and Mobile Railroad Company (which he, the said Littlefield, claimed and claims to own), and all other shares which he then owned, or thereafter might acquire, in the stock of said road, and 4,410 shares of stock in the Florida Central Railroad Company, which he, the said Littlefield, claimed and claims to own, and all other shares in the said company's capital stock which he then owned, or thereafter might acquire; which transfer and assignment was in trust to secure a certain company, known as the Gulf Steamship Company (a corporation created by the laws of Florida, but whose charter, as plaintiff is informed, has been repealed), in the payment by
854 the Jacksonville, Pensacola and Mobile Railroad Company of all moneys which might come due thereafter by said railroad com-

pany to said Gulf Steamship Company, for work done by said company, in extending the railway of the Jacksonville, Pensacola and Mobile Railroad Company westward from the Chattahoochee River.

That by the terms of said assignment and transfer said Milton S. Littlefield reserved the right to vote said stock so assigned at all proper times and places.

That said stock of both companies, so assigned, is made up, in large part, of the stock purchased and paid for, or contracted to be paid for, by said Littlefield, with money belonging to the said companies, as herein stated; and plaintiff says, on information, as to a large portion of said stock so acquired, that the said Barnett knew when he received said stock that said Littlefield had purchased it with money belonging to the said corporations.

That said Gulf Steamship Company has not done any work in extending the said railway westward from Chattahoochee River, and has in no wise become entitled to receive any compensation therefor, or upon any other consideration, from said railroad company. That said Aaron Barnett was a member of said Gulf Steamship Company, and, as its agent, received said stock in trust, and, at the time of receiving it, had notice that the said unpaid purchase money of the said Pensacola and Georgia Railroad Company, and of the said Tallahassee Railroad Company, had not been paid to the trustees of the internal improvement fund of the State of Florida.

Plaintiff states, on information and belief, that the defendants, M. D. Papy or Edward Houston, or both of them, also claim to hold, or in some way have control over, a portion of the stock in the Florida Central Railroad Company, which said Milton S. Littlefield claims to own, which, as herein stated, has been assigned and transferred to said A. Barnett, in trust, and that said Papy or Houston, or both of them, claim the right to vote, and do vote, the said stock, or some of it.

That, as plaintiff is informed, said Papy, or Edward Houstoun, or both of them, claim to hold or control said stock, or a portion of it, and also a number of the first-mortgage bonds of the said Pensacola and Georgia Railroad Company, or of the said Tallahassee Railroad Company, which are claimed to be the property of said Littlefield, or in which he has some legal or equitable interest by virtue of, and for the performance of, some trust, unknown to plaintiff, and which plaintiff calls on them to set forth and substantiate.

And he says further, that, if the said stock and bonds belong to the said Littlefield, they and all stock owned by him, as well as all of his other property, should be held subject to payment of demands of the said corporations and of the stockholders whose money and assets he has misapplied and converted to his own use.

Plaintiff further says, on information, that the defendants herein named, as constituting the mercantile firm of S. W. Hopkins & Co., claim or are alleged to have an interest in the last mentioned trusts, and in the bonds and stocks affected, or claimed to be affected, by these trusts, and also in the bonds of the State of Florida, herein mentioned, and that therefore they are made parties defendant to this suit.

Plaintiff further says, that the trustees of the internal improve-
855 ment fund of the State of Florida have commenced suit against
the Jacksonville, Pensacola and Mobile Railroad Company and other defendants to recover the sum of $472,000 unpaid purchase money, due as herein stated, and interest thereon from the day of the sale of said roads, and have prayed for and obtained the appointment of a receiver of the said roads and of the other property of said company, and

have prayed for and obtained an order that said receiver take the absolute and exclusive control of not only the Jacksonville, Pensacola and Mobile Railroad, but also of the Florida Central Railroad, and the receiver, who is Jonathan C. Greeley, has so taken possession and control of said railroads, and the said trustees seek to have the net earnings, not only of the Jacksonville, Pensacola and Mobile Railroad, but also of the Florida Central Railroad, go into the hands of said Greeley and be applied, under the order of the court, to the payment of the purchase money still unpaid, and have obtained an order to that effect.

Plaintiff further says that said Milton S. Littlefield and said Aaron Barnett, in violation of their duty as president of said Florida Central Railroad Company, and in disregard of the interests of said company and of stockholders therein, have permitted and still permit said receiver to take and hold possession of said railroad, and have made no attempt to recover it nor to defend said suit.

That said Littlefield, as president of said Jacksonville, Pensacola and Mobile Railroad Company, has made no attempt to recover possession of said road, nor, as plaintiff is informed, does he intend to defend said action, but will allow judgment to be had by default against said corporation.

Plaintiff further says, on information and belief, that Aaron Barnett, one of these defendants, has received from Milton S. Littlefield, individually or as president of one of said railroad corporations, a large sum of money, amounting to about $100,000, for the purchase from him, the said Barnett, of steamboats, and for other considerations, uses, and purposes which were not intended in and by the act of the legislature of Florida, entitled "An act to perfect the public works of the State," approved June 24th, 1869, and the amendments thereto.

That the payments and advances so made to said Aaron Barnett were made out of the proceeds of the bonds of the State of Florida issued to the Jacksonville, Pensacola and Mobile Railroad Company as herein stated under said act, and that said Barnett at the time he sold said steamboats and received said money therefor, and for other considerations, uses, and purposes not contemplated by said act, knew that said money was the proceeds of the said bonds, and was affected and charged with the trust imposed by said act, and that said trust was violated by the payments made to him.

Plaintiff further says, on information and belief, that said Aaron Barnett received from said Littlefield, individually or as president of said railroad company, a large number of the said bonds of the State issued to the Jacksonville, Pensacola and Mobile Railroad Company for the purposes specified in said act of June 24th, 1869. That said bonds were not delivered to said Barnett for any legitimate lawful purpose or use of said Jacksonville, Pensacola and Mobile Railroad Company under the authority of the said act, but for speculative purposes outside of said act, and for uses and upon considerations foreign thereto, all of which was well known to said Littlefield and to said Barnett.

856 And the plaintiff says that said Barnett has not applied either said money or said bonds or the proceeds of said bonds to the legitimate uses of said Jacksonville, Pensacola and Mobile Railroad Company as intended and prescribed by the act aforesaid.

Wherefore the plaintiff demands judgment—

1st. That the delivery of one million dollars of bonds of the Florida Central Railroad Company to the governor of the State of Florida, in exchange for one million dollars of the State bonds, be declared to be a fraud perpetrated upon said company and the stockholders, and that said bonds be declared to have no binding legal validity as obligations of said company.

2d. That the defendant, Milton S. Littlefield, be required to render a full, true, and accurate statement in detail of his receipts and expenditures, and of those of his agents from the proceeds of the State bonds and from the income and assets of said Jacksonville, Pensacola and Mobile Railroad Company and said Florida Central Railroad Company, respectively, and a statement of the considerations upon which such expenditures were made, and that a reference be had to ascertain and report such receipts and expenditures and the sources thereof and considerations therefor.

3d. That the defendant, Milton S. Littlefield, be required to surrender all stock in either of said railroads and all railroad bonds and other property purchased or paid for, in whole or in part, directly or indirectly, with the receipts or assets of said railroad companies or either of them, and that such purchases be declared to inure to the benefit of said railroad companies, respectively, with whose funds, wholly or partly, the purchase may have been made, and that such stocks, bonds, and other property be delivered for safe keeping to the receiver who may be appointed in this suit, and be held subject to the order of this court.

4th. That the defendants, Papy and Houstoun, be required by the final decree of this court to deliver to a receiver all stock and evidences of title thereto in the Florida Central Railroad Company and all bonds of the Pensacola and Georgia Railroad Company and of the Tallahassee Railroad Company, held or controlled by them, or either of them, wherein the said Milton S. Littlefield, or the said Jacksonville, Pensacola and Mobile Railroad Company, or the said Florida Central Railroad Company has a legal or equitable interest. That the said Barnett be required to deliver to a receiver all stocks and evidences of title thereto in the Jacksonville, Pensacola and Mobile Railroad Company, and in the Florida Central Railroad Company; and all bonds of the Pensacola and Georgia Railroad Company and of the Tallahassee Railroad Company; and all other property held or controlled by him wherein the said M. S. Littlefield, or the said Jacksonville, Pensacola and Mobile Railroad Company, or the Florida Central Railroad Company has a legal or equitable interest, and all bonds of the State of Florida issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company received by him from that company, or from its president, or its or his agents or attorneys, or from Milton S. Littlefield, or George W. Swepson, or their agents, or the agent of either of them; and all proceeds of such bonds of the State of Florida so received by him, the consideration for the reception of which by him was different from the purposes for which said bonds were issued.

857 5th. That the lease of the Jacksonville, Pensacola and Mobile Railroad, made on the 2d October, 1871, by defendant, Milton S. Littlefield, be annulled and set aside. That said C. L. Chase, F. H. Flagg and J. H. Gardener be required to render a full and accurate statement of the receipts from, and the expenditures on account of the Jacksonville, Pensacola and Mobile Railroad, and of the Florida Central Railroad, severally and respectively, and a statement of the sources of such receipts, and of the considerations and purposes of such expenditures; and to pay to a receiver or other person, under the order of this court, all moneys received from the income or assets of said roads, respectively, and not expended legitimately and legally for the sole and exclusive use, benefit and advantage of said corporations, re-

spectively, from which moneys may have been received, and that a reference be had to ascertain these facts.

6th. That the defendants, F. H. Flagg and C. L. Chase, be enjoined from receiving any of the proceeds of State bonds of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, and from expending any of such proceeds in their hands.

7th. That the said M. S. Littlefield, president, as aforesaid, and his successors, and the said F. H. Flagg and C. L. Chase, their agents and attorneys, be enjoined from carrying out, or attempting to carry out, any part of the agreement, made by them through themselves or their attorneys on the 30th day of November, 1871, or about that time, with L. P. Bayne, L. P. Bayne & Co., and S. W. Hopkins & Co., of New York, and N. W. Woodfin, of North Carolina, representing the Western Division of the Western North Carolina Railroad Company, which provided for the payment to the parties above mentioned, or any of them, of any portion of the unexpended proceeds of the bonds of the State of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, under the act of the legislature of Florida, approved June 24th, 1869, and the amendments thereto; or for the payment to any of said parties of any other moneys by said Jacksonville, Pensacola and Mobile Railroad Company, from any other source which said agreement may provide for the payment of.

8th. That the president of the Jacksonville, Pensacola and Mobile Railroad Company, and of the Florida Central Railroad Company, and the successors of each of them, and the said corporations, be enjoined from leasing said roads, or either of them, or any part thereof, to John Scriven or his associates, or to the Atlantic and Gulf Railroad Company, or any other person or corporation, until the ownership of the stock of said companies be determined by the court, and until duly qualified directors and other officers of said companies have been elected by the votes of holders of a legal and bona fide majority of shares of stock, to be ascertained and determined by the court; and that under all circumstances the said corporations, and their officers, respectively, be enjoined from leasing said railroads on terms violative of the rights or interests of any stockholder or creditor, or violative of the law governing said corporations, and that if any lease has already been made that it be vacated and set aside.

9th. That the defendants, Aaron Barnett, M. D. Papy, and Edward Houstoun, be enjoined from selling, transfer'ing, assigning, pledging, making advances upon, or charging, or otherwise disposing of, 858 or encumbering any of the stock of the Jacksonville, Pensacola and Mobile Railroad Company, or of the Florida Central Railroad Company, or any of the Pensacola and Georgia Railroad Company's bonds, or of the Tallahassee Railroad Company's bonds, or any of the bonds of the State of Florida, which they, or either of them, may hold or control in the manner hereinbefore set forth, and especially that the said Barnett may be enjoined from selling, assigning, transferring, hypothecating, charging, making advances upon, or otherwise disposing of, or encumbering any of the stock of the Jacksonville, Pensacola and Mobile Railroad Company, or of the Florida Central Railroad Company, which he holds, or held, in trust, by indenture to him by M. S. Littlefield, executed on or about the 19th of May, 1871, to secure the Gulf Steamship Company, in certain undertakings then had by and between said Littlefield and said Gulf Steamship Company. And that said Papy, Houstoun, and Barnett be enjoined from voting any of said Jacksonville, Pensacola and Mobile Railroad Company's, or Florida Central

Railroad Company's stock, in any meeting of stockholders of said companies, or either of them.

10th. That said Milton S. Littlefield be enjoined, until further order of the court, from selling, transferring, assigning, pledging, or otherwise disposing of, or encumbering any of the stock in the Jacksonville, Pensacola and Mobile Railroad Company, or in the Florida Central Railroad Company, owned or claimed by him, or in which he has, or claims to have, an interest, legal or equitable.

That he be enjoined from voting, in any stockholder's meeting, any stock in either of said companies, which was purchased or paid for, in part or in whole, directly or indirectly, with any money or assets of said railroad corporations, or either of them. And that he be required to deliver to a receiver, to be appointed by the court, all such stocks and bonds, to be held subject to the judgment in this suit.

11th. That the said Jacksonville, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company, and the president of each of said companies, and the said Milton S. Littlefield, and said Aaron Barnett, be enjoined, until the further order of this court, from using, or in any wise disturbing the bonds of the State of Florida, if unsold, or their proceeds if sold, which were issued in exchange for bonds of the Florida Central Railroad Company.

12th. That the trustees of the internal improvement fund of the State of Florida be enjoined from proceeding in their said suit, or upon their alleged cause of action, against the Jacksonville, Pensacola and Mobile Railroad Company, till they have exhausted George W. Swepson and Milton S. Littlefield. And that they be enjoined from proceeding at all, and under any circumstances, against the Florida Central Railroad Company.

13th. That the said Jacksonville, Pensacola and Mobile Railroad and the said Florida Central Railroad be taken out of the hands of the receiver appointed in said suit of said trustees, and that they be put in the custody and control of a receiver to be appointed for the purposes of this suit; and that the order in said suit appointing a receiver be vacated; and that the earnings of said roads, and all property of said companies in the hands of the receiver, appointed at the instance of the said trustee, be delivered and paid to the receiver
859 herein prayed to be appointed.

14th. That Aaron Barnett be required to deliver and pay to the receiver herein prayed for, or to such other person as the court may name. the money received by him out of the proceeds of bonds of the State of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, or out of the funds or assets of the said Florida Central Railroad Company, with interest thereon from the time of his receiving the same.

15th. That a receiver or receivers be appointed for the purposes of this suit, with the necessary and usual powers, and that he or they be instructed and empowered as herein prayed.

16th. That the plaintiff may have such other relief as may be just and requisite for the protection or enforcement of his rights, and that he may recover his costs in this suit.

E. M. L'ENGLE,
In pro. per.

EDWARD M. L'ENGLE, being sworn, says that he has read the foregoing complaint, and knows the contents thereof. And that the state ments therein, when made on his own knowledge, are true, and that when made on information and belief he believes them to be true.

E. M. L'ENGLE.

Sworn to and subscribed before me the 11th day of May, A. D. 1872.

W. A. McLEAN,
County Judge.

860 **EXHIBIT B.**

Cross-bill of Florida Central Railroad Company.

JACKSONVILLE, FLA., *February 8th*, 1871.

Messrs. HOLJE BOISSEVAIN, *Bankers*,
Amsterdam Holland:

GENTLEMEN: On December 18th, 1870, Governor Harrison Reed, of Florida, received a telegraphic dispatch from you, substantially as follows:

"Being negotiating four million bonds issued by your State, the Jacksonville, Pensacola and Mobile Railroad, beg to know by telegraph from you whether provision made for payment interest, whatever result railroad traffic. Financial position of State really sound, and bonds undoubted security?"

To this dispatch Governor Reed replied as follows:

"Bonds recently recalled by the company; no provision will, therefore, be made for interest."

861 It was hoped that Governor Reed's telegram would have the effect of causing the bonds to be returned, as the railroad companies desired they should be. This has not been done, but on the contrary more bonds than were then out have been sent to Europe for negotiation, though no money I infer has yet been realized. I feel it to be my duty, therefore, to make a statement of facts to you, which I hope that you will lay before others who may be interested with you in the negotiations.

When the legislature of Florida enacted the laws under which the bonds your telegram inquired about were issued, it was believed by the two railroad companies, hereafter named, that the proceeds of the State bonds when sold would be honestly and legitimately applied to the extension, through the western portion of this State, of the lines of railroad already built from the eastern to the middle portion. That extension was so much desired by the two companies owning the completed railroads that they were willing to mortgage, and did mortgage, their roads to the State, in order to secure the issuing of State bonds upon which to raise money to enable the newly organized company to build said extension. The railroads which so pledged their mortgage bonds to the State were the Florida Central Railroad, sixty miles long, and the Tallahassee Railroad, one hundred and fifty miles long. The former gave its mortgage bonds to the amount of one million dollars; the latter to the amount of three million dollars; and this latter road consolidated its line with that proposed to be built westward from the completed road, and the two companies became one, under the name of the Jacksonville, Pensacola and Mobile Railroad Company. But the Florida Central Railroad, commencing at Jacksonville, and running westward sixty miles, was not included in the consolidation. Subsequently, and after three million' of the State bonds had been sent to

Europe, it was discovered that the president of the Jacksonville, Pensacola and Mobile Railroad, who had been active in procuring the legislation, and inducing the completed roads to give to the State their bonds in exchange for the State's bonds which were issued to him, had made, even before he got the bonds, secret contracts with some of his creditors, by which the larger portion of the proceeds were to be diverted from the purposes for which the bonds were issued, and were to be applied in payment of individual debts. This produced such dissatisfaction, and caused such investigations by the companies which had mortgaged their roads to the State, as resulted in both of the companies, through their several directories, rescinding the action by which their roads were mortgaged, and recalling the bonds. The million of bonds issued by the State, on the security of a like amount pledged to the State by the Florida Central Railroad, had not then gone into the hands of the president of the Jacksonville, Pensacola and Mobile Railroad, but were held by a party till certain conditions precedent were performed, before delivery to the president of the Jacksonville, Pensacola and Mobile Railroad; that million of bonds then were returned to the State, and the bonds of the company, upon the security of which the others were issued, were withdrawn from deposit with the State, and were in the hands of the party already referred to, to be returned to the company for cancellation, when they were by that party without 862 the authority or knowledge of the railroad company, or of any of its officers, and in violation of the company's resolutions of recall and rescission, delivered to an agent of the president of the Jacksonville, Pensacola and Mobile Railroad, who by influences best known to himself effected with the governor of the State their re-exchange for the State bonds, which latter were hurriedly and secretly sent out of the State to Europe before any legal process could be obtained for their detention. This re-delivery to the governor of Florida of the Florida Central Railroad Company's million of bonds is a gross fraud on that company, and none who are advised of it, and buy or advance money on the State's bonds, for which they were exchanged, will have any legal or moral right to ask that they receive any benefit or advantage from the security so wrongfully obtained.

The same may be said of the three million of State's bonds issued on the pledge of the same amount of bonds of the Tallahassee or Jacksonville, Pensacola and Mobile Railroad. No one who, having notice of that company's rescission of its action and recall of its bonds, advances money on, or buys the State's bonds for which the others were pledged, will have legally, or morally, any locus standi in curia as against that railroad company. The creditors and stockholders of the railroad companies will assert their right, resist the wrongs that have been perpetrated and attempted, and seek, successfully, redress in the judicial tribunals. You have had the above mentioned action of the railroad companies brought to your notice by the telegram from Governor Reed, who sent it after consulting with the said companies, and at their instance, and you have incurred all the legal disqualifications to urge against the railroad companies any claim based on their supposed suretyship for any bonds of the State.

An examination of the law under which the State's bonds were issued discloses that the governor has caused half a million more of bonds to be issued than the law provides for. The law allows the issue of $16,000 per mile upon so much of said roads as may be completed and in running order; only 210 miles were, when the bonds were issued, completed, and only a mile and a half have been completed since, and no more is being completed. This would allow of an issue at the time it was made of only $3,360,000. Add the liberal allowance of ten miles for side tracks, &c., if such unreasonable construction of the law be claimed, and it legalizes only $3,520,000 of the bonds.

To secure the principal and interest of the Jacksonville, Pensacola and Mobile Railroad Company's bonds (but not of the bonds of the Florida Central Railroad), the law gives the State of Florida a statutory lien, valid as a first mortgage, on that company's road and property, and authorizes the governor, on failure of the company in any payment of principal or interest, to seize and sell the road at auction, and authorizes the State to purchase and to pay for it with any evidence of indebtedness the State may hold against the road, while every other bidder would, in case of purchase, have to pay cash. This summary process is not applicable to the Florida Central Railroad, but to the other road only. What would be the result in case of failure of the Jacksonville, Pensacola and Mobile Railroad to pay principal or interest on its bonds?
The State, if no resistance, or if unsuccessful resistance through
863 the courts were had, might seize, sell, and buy, paying for the
purchase with the road's obligations, while the State might not, perhaps could not, or would not, pay her own; nor is there any way known to our system of government by which a State can be compelled to pay its obligations. You will thus perceive the character of the securities offered you, and the taints of fraud that affected them from their first issue, and that still do, and will act advisedly. This communication is made in the interests of the stockholders of the companies whose bonds have, by misrepresentation and bad faith, been obtained and exchanged with the State of Florida for the State's bonds, which you have been, and may still be, negotiating for. The stockholders do not intend to submit to the fraud which has been attempted on them. They seek to have the State's bonds brought back, and a re-exchange effected, and it is to that end that this letter is written. Such a course will prevent litigation. Persistence in the wrong will insure it. Attempts may be made to give credit to the bonds by professional and perhaps by judicial opinions from this State, but the facts that I state are incontestable, and I can give you much more and more detailed information concerning the worthlessness of the securities that you are negotiating for, and I will do so if desired. But I have said enough to make discreet men repudiate the securities and abandon negotiations.

I will say further, that since the mortgage of the railroads to the State, 128 miles of the completed road, being all except twenty-two miles on which the State has any statutory lien, have been sold by the United States under a judicial process in their favor, issued from a United States court; thus divesting the company's title, and vesting it in the individual purchaser. That sale of course relieves that much of the road of the lien created in favor of the State of Florida by the mortgage before mentioned. You are at liberty to show this letter to whom you please, and to give it the widest publicity, and will oblige me by acknowledging its receipt. I will presume on a very slight acquaintance, to refer you, touching myself, to Hon. H. S. Sanford (late U. S. minister to Belgium), at Brussels.

Respectfully,

E. M. L'ENGLE,
Of Counsel for the Florida Central Railroad Company.

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EXHIBIT D.

Cross-bill of Florida Central Railroad Company.

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY
et al.

In the circuit court, fourth judicial circuit of Florida, Duval County.

THE WESTERN DIVISION OF THE WESTERN
NORTH CAROLINA RAILROAD COMPANY
vs.
MILTON S. LITTLEFIELD ET AL.

In the name of the State of Florida:

And now, at the session of the court, began and held at 10 o'clock a. m., on the 15th day of March, A. D. 1877, pursuant to adjournment, comes the petitioner, by its attorneys, Joseph B. Stewart and E. M. Thompson, and no further return or answer being made to the alternate writ of mandamus heretofore granted and argued and determined, on the demurrer interposed to the sufficiency thereof by Henry R. Jackson and H. Bisbee, jr., esq., on the part of Joseph H. Durkee, receiver, Frank R. Sherwin, as agent of G. M. Boissevain, Adrian J. Mildens, and Adrian Stoop, claiming to be bondholders, and Robert Walker and Patrick Houstoun and Edward Lewis, stockholders, the same having been overruled upon argument, and leave granted until Wednesday, the 14th instant, at 12 o'clock m., if the respondents, or any of them, should elect so to do, or have further answer to make; and the court having met pursuant to said adjournment, at 12 o'clock m., and the counsel for respondents not appearing, was further adjourned by the court until the session now held for the further hearing and final order in said alternate writ; and the court being advised in the premises, and in order that speedy justice may be done, doth now issue this, its further command and peremptory writ of mandamus, to you, Milton S. Littlefield, James M. Baker, William Red- 865 mond, George M. Merrill, Henry Gourdine, Julia B. Coffin, F. Porcher, T. B. Coddington, Lewis J. Dupre, Charles B. Fenwick, and Edward M. L'Engle, stockholders of the Florida Central Railroad Company, and thereupon do now command you, or such number of you as may be found to be owners or holders together of stock of the said Florida Central Railroad Company, amounting, in the aggregate, to more than one half of five thousand five hundred and fifty shares thereof, that you do meet and assemble together at the principal office of the said Florida Central Railroad Company, in the city of Jacksonville, aforesaid, in the manner heretofore commanded, pursuant to your adjournment for that purpose made, not to exceed one day from this date, to wit, on or before the expiration of this 16th day of March, A. D. 1877, and that you do then and there proceed to election of nine directors for the Florida Central Railroad Company, and that you do then and there choose and elect from among the said stockholders of said company the said nine directors, and that such of you as may then be chosen directors shall then and there choose and elect from among their number a president and such other officers as by the provisions of said charter they may be required to elect, said directors to be so elected to serve until the first Tuesday of May, A. D. 1877, or until their successors are elected and qualified, and that in all of this you observe the said charter of said company and the provisions thereof, and do you return and make answer to your proceedings in obedience to this writ, on or before Saturday, the 17th day of March, A. D. 1877, at 12 o'clock m. of that day. Herein fail not.

March 15, 1877.

(Signed) R. B. ARCHIBALD, *Judge.*

In testimony whereof, I, Thomas E. Buckman, clerk of said circuit court for the fourth judicial circuit of Florida, in and for Duval County, have hereunto set my hand and affixed the seal of said court on the 15th day of March, A. D. 1877.

[L. S.] T. E. BUCKMAN, *Clerk.*

I hereby certify that the foregoing is a full and correct copy from the original now on file in my office.

In witness whereof I have hereunto set my hand and seal of said court this 10th day of May, A. D. 1877.

T. E. BUCKMAN, *Clerk.*

866 EXHIBIT E.

In the U. S. circuit court, northern district of Florida.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Cross-bill of the Florida Central Railroad Company.

This memorandum of contract and agreement, made and entered into this day between Edward Houstoun, party of the first part, and Milton S. Littlefield, party of the second part, witnesseth: That Edward Houstoun has this day sold to Milton S. Littlefield four drafts drawn by George W. Swepson on Milton S. Littlefield, dated August 2, 1869, and accepted by said Littlefield, one for twenty-six thousand five hundred and twenty dollars ($26,520), due at six months; one for twenty-seven thousand and thirty dollars ($27,030), due at nine months; one for twenty seven thousand five hundred and forty dollars ($27,540),
867 due at fifteen months, and that said Houstoun has this day sold
to said Littlefield one thousand three hundred shares of stock in the Florida Central Railroad Company. In payment for said drafts and said stocks, said Littlefield has paid said Houstoun ten thousand dollars in cash and the drafts of said Littlefield of this date, on S. W. Hopkins & Co., of 71 Broadway, N. Y., for one hundred and sixty-three thousand and seventy and twenty-hundredths dollars, due sixty days from date. To secure the payment of said draft of $163,070 20-100, it is agreed that said Houstoun shall retain possession of said four drafts by George W. Swepson on said Littlefield, and also the one hundred and ten bonds of the Pensacola and Georgia Railroad Company, and the Tallahassee Railroad Company, now in his possession as collateral, and in addition thereto, said Littlefield hereby obligates himself immediately to deposit with F. H. Porter, of the banking house of Soutter & Co., 53 William street, New York, certificate of stock for 3,110 shares of the stock of the Florida Central Railroad Company, with directions to said Porter to hold said certificates till said draft of $163,070 20-100 shall fall due, and then if said draft is not promptly paid within ten days after it falls due, to deliver said certificate to said Houstoun, or his order, and in the event said certificate shall be so delivered to said

Houstoun, he is hereby authorized to sell the said three thousand one hundred and ten shares of the stock of the Florida Central Railroad Company at public auction to the highest bidder, on mailing to the address of M. S. Littlefield, Tallahassee, Florida, and to the address of George W. Swepson, Haw River, North Carolina, and to the address of S. W. Hopkins & Co., No. 71 Broadway, New York, notice of the time and place of such sale in the city of New York, ten days previously to day of sale, and said Houstoun may become a purchaser at said sale.

On the payment of said drafts, said Houstoun hereby obligates himself to transfer the said shares of stock hereby sold, to deliver to said Littlefield the said 1,300 shares of stock sold, and also the one hundred and ten bonds of the Tallahassee Railroad Company, which Houstoun now holds as collateral security for the payment of said four drafts, together with all the coupons on said bonds falling due from and after the 20th of March, 1869.

This is understood and intended to be a full, complete and final settlement of all matters between either George W. Swepson or M. S. Littlefield and Edward Houstoun.

In testimony of all which, the parties aforesaid have hereunto set their hands and seals, at Tallahassee, Florida, the thirteenth day of May, A. D. 1870.

E. HOUSTOUN. [SEAL.]
M. S. LITTLEFIELD. [SEAL.]

Signed, sealed and delivered in presence of—
ROLLIN STEWARD.
D. S. WALKER.

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EXHIBIT G.

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Cross-bill of the Florida Central Railroad Company.

In the circuit court, fifth circuit of the United States, northern district of Florida. In equity.

ROBERT J. WASHINGTON
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY, the Western Division of the Western North Carolina Railroad Company, Lawrence P. Bayne, Henry J. Rogers, Thomas L. Clingman, Fanny S. Papy, as executrix of the last will and testament of Mariano D. Papy, deceased, Raymond M. Demere, James H. Johnson, and James P. S. Houstoun, as executors of the last will and testament of Edward Houstoun, deceased, and T. Mayhew Cunningham.

Now comes the complainant, by E. M. L'Engle, his counsel, and moves

869 the court for the appointment of a trustee or trustees in the place of Mariano D. Papy, deceased, to hold the shares of capital stock in the Florida Central Railroad Company, mentioned in the bill. And came also the defendants, the Western Division of the Western North Carolina Railroad Company, Thomas L. Clingman, Lawrence P. Bayne, and Henry J. Rogers, by Joseph B. Stewart, their attorney, and consented to the granting of the said motion. And came also the defendants, Fanny S. Papy, as executrix of the last will and testament of Mariano D. Papy, deceased, and the Florida Central Railroad Company, and made no objection to the granting of the said motion. And came also the defendants Raymond M. Demere, James H. Johnson, and James P. S. Houstoun, as executors of the last will and testament of Edward Houstoun, deceased, and James P. S. Houstoun, in his own right, and T. Mayhew Cunningham, who had made defaults, and after argument of counsel and consideration by the court, it is decreed and adjudged that Mariano D. Papy was, in his life-time, the trustee of the four thousand three hundred and seventy shares of capital stock in the Florida Central Railroad Company, described as follows, that is to say:

100 shares of said stock, embraced in certificate No. 40, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 41, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 42, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 43, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 44, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 45, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 47, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 48, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 49, standing in the name of Edward Houstoun.
100 shares of said stock, embraced in certificate No. 50, standing in the name of Edward Houstoun.
70 shares of said stock, embraced in certificate No. 51, standing in the name of Edward Houstoun.
70 shares of said stock, embraced in certificate No. 57, standing in the name of Edward Houstoun, guardian of Eliza Houstoun.
70 shares of said stock, embraced in certificate numbered 58, standing in the name of Edward Houstoun, guardian of Claudia Houstoun.
20 shares of said stock, embraced in certificate numbered 59, standing in the name of James P. S. Houstoun.
30 shares of said stock, embraced in certificate numbered 79, standing in the name of Edward Houstoun.
3,110 shares of said stock, embraced in certificate numbered 80, standing in the name of Edward Houstoun.

Four thousand three hundred and seventy shares of said stock.

870 It is further decreed that said trust still subsists for the purposes set forth in the indenture creating it, and for the further purposes of this suit, and that the office of trustee has been made vacant by the death of said Mariano D. Papy.

It is, therefore, further ordered and decreed that A. Doggett, esquire, of the city of Jacksonville, in Duval County, State of Florida, be and he is hereby appointed trustee of the said four thousand three hundred and seventy shares of the capital stock of the Florida Central Railroad Company in the place and stead of the said Mariano D. Papy, to hold the same upon the trusts declared in the indenture mentioned in the bill of complaint in this cause, whereby the said trust was created and the said Mariano D. Papy appointed trustee; and further to hold the same for the purposes of this suit and until the further order of this court, and subject to the orders and decrees of Judge Woods in this behalf.

It is further ordered, that the decrees pro confesso heretofore taken against the defendants James P. S. Houstoun, Raymond M. Demere, and James H. Johnson, as executors of the last will and testament of Edward Houstoun, deceased, and against James P. S. Houstoun, in his own right, and against T. Mayhew Cunningham, be opened, and that the said defendant be allowed to answer the said bill by the rule day of June, 1877, on the following terms and not otherwise, that is to say, that the said defendants file in this cause, with the clerk of this court, the above mentioned certificates of shares of said capital stock which were taken from the possession of the trustee, Mariano D. Papy, at the suit of Edward Houstoun, deceased, as set forth in the bill filed in this cause.

THOMAS SETTLE, *Judge.*

Filed May 7th, 1877.

P. WALTER, *Clerk.*

I, Philip Walter, clerk of the United States circuit court, fifth judicial circuit, northern district of Florida, do hereby certify that the foregoing is a true copy of the original on file and of record in my office.

In witness whereof, I have hereunto set my hand and official seal this 28th day of May, A. D. 1877, and of the Independence of the United States the 101st year.

PHILIP WALTER, *Clerk.*

871 EXHIBIT H.

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Cross-bill of the Florida Central Railroad Company.

Stockholders' meeting.

OFFICE FLORIDA CENTRAL RAILROAD COMPANY,
Jacksonville, Fla., May 12, 1877.

Meeting convened pursuant to adjournment, a majority of the stock being represented.

On motion, the meeting adjourned to Monday, May 28th, at 12 M.

CHAS. B. FENWICK,
Secretary.

Stockholders' meeting.

OFFICE FLORIDA CENTRAL RAILROAD COMPANY,
Jacksonville, Fla., May 28, 1877.

The meeting of stockholders convened pursuant to adjournment. E. M. L'Engle was called to the chair and C. B. Fenwick acted as secretary.

872 The chairman appointed W. J. Lawton, esq., and N. K. Sawyer, esq., a committee to examine the certificates and report the number of shares represented, and by whom represented, in the meeting.

The chairman informed the meeting that Aristides Doggett, esq., had been appointed by a decree of the circuit court of the United States trustee of four thousand three hundred and seventy shares of the capital stock of this company, and Mr. Doggett presented a certified copy of such decree, under the seal of the court, which the secretary was directed to spread upon the minutes, and it is done as follows:

(The decree is omitted, it appearing elsewhere as an exhibit.)

The committee on stock reported as follows: The whole number of shares represented in the meeting are—

That is to say, forty-three hundred and seventy shares embraced in the decree of the circuit court of the United States for the northern district of Florida, appointing A. Doggett, esq., trustee thereof, are represented by A. Doggett, esq., as such trustee.

Seventy shares embraced in certificate number , issued A. D. 1868, are represented by E. M. L'Engle, agent.

Forty shares, embraced in certificate number sixty-four, for sixty shares, issued , 1868, under seal of the company to , are represented by E. M. L'Engle, assignee.

Ten shares of said stock, embraced in said certificate number sixty-four, for sixty shares, are represented by J. C. L'Engle as assignee of such ten shares under an assignment, in writing thereof, from E. M. L'Engle, dated March 15, 1877.

Ten shares of said stock, embraced in said certificate number sixty-four, for sixty shares, are represented by George R. Foster, as assignee of such ten shares under an assignment, in writing thereof, from E. M. L'Engle, dated March 15, 1877.

Fifty shares of said stock, embraced in certificate numbered seventy, for one hundred shares, issued November 7, 1868, to Jacob Barrett, are represented by C. B. Fenwick, assignee.

Ten shares of said stock, embraced in certificate number seventy, for one hundred shares, are represented by J. M. Baker, as assignee of such ten shares, under an assignment, in writing thereof, from C. B. Fenwick, dated March 15, 1877.

Ten shares of said stock, embraced in certificate number seventy, for one hundred shares, are represented by W. J. Lawton, as assignee of such ten shares under an assignment, in writing thereof, from C. B. Fenwick, dated March 15, 1877.

Ten shares of said stock, embraced in certificate number seventy, for one hundred shares, are represented by N. K. Sawyer, as assignee of such ten shares under an assignment, in writing thereof, from C. B. Fenwick, dated March 15, 1877.

Ten shares of said stock, embraced in certificate number seventy, for one hundred shares, are represented by M. S. Littlefield, as assignee of such ten shares under an assignment, in writing thereof, from C. B. Fenwick, dated March 15, 1877.

Ten shares of said stock, embraced in certificate number seventy, for one hundred shares, are represented by J. B. Stewart, as assignee of such ten shares under an assignment, in writing thereof, from C. B. Fenwick, dated March 15, 1877.

873 Forty shares of said stock, embraced in certificate number thirty-nine, issued to A. D. are represented by C. B. Fenwick, agent.

Ten shares of said stock, embraced in certificate number twenty-one, issued to W. L. Hambruch, October 7, 1868, and endorsed by him in blank, are represented by C. B. Fenwick, agent.

Forty shares of said stock, embraced in certificate number seventy-five, issued March 11, 1869, to George W. Swepson, are represented by C. B. Fenwick, agent.

Thirty shares of said stock, embraced in certificate number twenty-three, issued 7th of October, 1868, to Johnson Hagood, are represented by C. B. Fenwick, agent.

Seventy shares of said stock, embraced in certificate number eighty-three, issued the 10th of February, 1871, to E. Hopkins, are represented by C. B. Fenwick, agent.

Seventy shares of said stock, embraced in certificate number fifty-three, issued 16th of October, 1868, to M. D. Papy, are represented by C. B. Fenwick, agent.

Ten shares of said stock, embraced in certificate number seventy-four, issued , 1868, to , are represented by C. B. Fenwick, agent.

One hundred shares of said stock, embraced in certificate number sixty-two, issued under the corporate seal of the company October 21, A. D. 1868, are represented by E. M. L'Engle as agent and attorney.

Twenty shares of said stock, embraced in certificate number , issued under the corporate seal , A. D. 1868, to F. P. Porcher, are represented by E. M. L'Engle as proxy.

Sixty-two shares of said stock, embraced in certificate number , issued to under the corporate seal, A. D. 1868, to J. R. Coffin, are represented by E. M. L'Engle as proxy.

All of these certificates were produced before the committee, and are stamped with the seal of the company, and signed by the presidents in office, at their dates respectively. The committee reported as follows the number of shares present or by proxy: five thousand and forty-two shares of stock.

On motion, the report was adopted.

On motion of J. M. Baker, the meeting now proceeded to elect nine directors for the current year.

A. Doggett and J. B. Stewart were appointed tellers.

A canvass being had, the following persons received the number of votes set opposite their names:

E. M. L'Engle	5,042 votes.
J. M. Baker	" "
M. S. Littlefield	" "
J. C. L'Engle	" "
G. R. Foster	" "
J. B. Stewart	" "
W. J. Lawton	" "
N. K. Sawyer	" "
C. B. Fenwick	" "

874 And they were declared the duly elected directors of said company.

On motion of W. J. Lawton, the meeting adjourned.

CHAS. B. FENWICK,
Secretary.

I certify that the above is a true copy, and forms a part of the record of this company.

[SEAL OF THE FLA. C. R. R.] CHAS. B. FENWICK,
Sec'ty & Treas'r.

875 **EXHIBIT K.**

In the U. S. circuit court.

J. FRED. SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Cross-bill of the Florida Central Railroad Company.

Directors' meeting.

OFFICE OF THE FLORIDA CENTRAL RAILROAD COMPANY,
Jacksonville, Florida, May 28, 1877.

The board of directors elected by the stockholders (at their meeting this day) convened at the office of the company at 2 p. m.; were present, E. M. L'Engle, J. M. Baker, M. S. Littlefield, J. B. Stewart, N. K. Sawyer, W. J. Lawton, and C. B. Fenwick, the same being a business quorum.

Hon. J. M. Baker was called to the chair, and C. B. Fenwick, esq., acted as secretary.

The election of president being now in order, W. J. Lawton was appointed teller. A ballot being had, E. M. L'Engle, esq., was declared to have received six votes; thereupon it was

Resolved, That E. M. L'Engle, esq., was duly elected, and is the president of this company.

On motion, it was ordered that the board do now proceed to the election of a secretary and treasurer, and that W. J. Lawton, 876 esq., act as teller. A ballot being had, C. B. Fenwick was declared to have received six votes; whereupon it was

Resolved, That C. B. Fenwick, esq., was duly elected and is the secretary and treasurer of this company.

* * * * * * *

CHAS. B. FENWICK,
Secretary.

I certify that the above is a true copy and forms a part of the record of this company.

[SEAL FLA. C. R. R. CO.] CHAS. B. FENWICK,
Sec'ty & Treas'r.

877 **EXHIBIT L.**

In the U. S. circuit court.

J. FRED. SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY
et al.

Cross-bill of the Florida Central Railroad Company.

No. 501.] UNITED STATES OF AMERICA. [$1,000.

STATE OF (Florida coat of arms) FLORIDA.

Bond of the Florida Central Railroad Company.

Cut of train of cars.] [Cut of steamship.

Know all men by these presents that the Florida Central Railroad Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars, for value received, which sum the said Florida Central Railroad Company promises and agrees to pay to the State of Florida, on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the first days of July and January in each year, on the presentation and delivery of the proper coupons hereto attached.

This bond is one of a series of like tenor, limited to sixteen thousand dollars per mile, issued in accordance with an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine, and given in exchange for bonds issued
878 by the State of Florida to aid the Jacksonville, Pensacola & Mobile Railroad Company to complete, equip, and maintain its road for an equal amount, in accordance with said act.

In witness whereof the said company has caused this bond to be signed and attested in its behalf by its president, and its common seal affixed at its office in   this first day of January, in the year 1870.

[FLORIDA CENTRAL RAILROAD CO. 1868.] GEO. W. SWEPSON,
President.

H. H. THOMPSON, *Treasurer.*

Issued in accordance with the provisions of an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine.

January 1st, 1870.

Governor's certificate.

EXECUTIVE OFFICE,
Tallahassee, January 31, 1877.

I, George F. Drew, governor of Florida, hereby certify that the within is a true and correct copy of original bond No. 501 now on file in the office of the State treasurer.

GEO. F. DREW,
Governor.

879 **EXHIBIT M.**

In the U. S. circuit court, forthern district of Florida.

J. FRED. SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY
et al.

Cross bill of the Florida Central Railroad Company.

STATE OF FLORIDA,
Leon County:

This agreement, made and entered into at the city of Tallahassee, in the county and State aforesaid, between Milton S. Littlefield, party of the first part, and Edward Houstoun, party of the second part, witnesseth: That whereas the said Edward Houstoun owns and holds a certain draft, which is in the words and figures following, to wit:

$163,026 70-100.] TALLAHASSEE, *May* 13, 1870.

Sixty days after date pay to the order of Edward Houstoun one hundred and sixty-three thousand and twenty-six 70-100 dollars, value received, and charge the same to account of—

M. S. LITTLEFIELD,
President J., P. & M. R. R. Co.

Acceptance waived.

For the payment of which the said Edward Houstoun has and holds as security the following securities: 104 first-mortgage bonds of the Pensacola and Georgia Railroad Company, and of the Tallahassee Railroad Company, amounting to one hundred and three thousand dollars of said bonds; one thousand three hundred shares of the capital stock of the Florida Central Railroad; four (4) drafts of George W. Swepson on M. S. Littlefield, accepted by said Littlefield; one draft for $26,520, due at six months; one draft for $27,030, due at nine
880 months; one draft for $27,540, due at twelve months; one draft
for $28,050, due at fifteen months; all of said drafts being dated August 2, 1869, and amounting, in the aggregate, to the sum of one hundred and nine thousand one hundred and forty dollars, exclusive of interest thereon; and whereas the said draft of $163,026 70-100 was given to the said Houstoun for value received in the various transactions between the parties, relative to the Jacksonville, Pensacola and Mobile Railroad Company and the Florida Central Railroad Company, growing out of the late Pensacola and Georgia Railroad Company, and said Florida Central Railroad Company, and the Tallahassee Railroad Company; and whereas it is to the great interest of said parties of the first and second parts that moneys should be raised to promote the interests of said Florida Central Railroad Company, to extend and provide for the business of said company, and to pay said draft when due; and whereas the said parties of the first and second parts are owners

and proprietors of more than a majority of the capital stock of said Florida Central Railroad:

Therefore, know all men by these presents that the said parties of the first and second parts do hereby covenant and mutually agree, each with the other, that they do cause to be issued one million dollars of the first-mortgage bonds of the Florida Central Railroad Company of like denomination and effect and condition as the first-mortgage bonds of the Jacksonville, Pensacola and Mobile Railroad Company, which said one million of dollars of said bonds are to be placed in the hands of the said Edward Houstoun as additional security for the payment of said draft for one hundred and sixty-three thousand and twenty-six dollars and seventy cents, to be held by the said Houstoun, in addition to the securities aforesaid, for the faithful payment of said draft at maturity. And it is further agreed that if the said draft is not paid at maturity, then and in that event the said Edward Houstoun is hereby authorized and fully empowered to cause said one million of dollars of the bonds of said Florida Central Railroad Company, placed in his hands as security for said draft, as aforesaid, to be sold at public outcry in the city of New York, after default of payment of said draft, upon giving ten days notice of said sale of said bonds and of the time and place of said sale to Milton S. Littlefield, by mail, to his residence, at Tallahassee, Florida, and by giving like notice to Messrs. S. W. Hopkins & Co., No. 71 Broadway, New York City, by delivering said notice at their office, and by giving ten days notice of said sale in the New York Herald, by advertisement, at which sale of said bonds the said Edward Houstoun may become the purchaser. And in the event of the sale being made as aforesaid, the said Edward Houston, after first paying said draft and the expenses of said sale of bonds, shall pay over all the other moneys arising from said sale and all the securities now in the hands and heretofore set forth and enumerated to the said Milton S. Littlefield, and the said Houstoun shall only retain of or from said sale of bonds and securities aforesaid sufficient to pay said draft and expenses of selling said bonds.

In witness whereof the said parties have hereunto interchangeably set their hands and seals this 30th day of May, A. D. 1870.

MILTON S. LITTLEFIELD.
EDWARD HOUSTOUN.

881 **EXHIBIT N.**

In the U. S. circuit court, northern district of Florida.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Cross-bill of the Florida Central Railroad Company.

The agreement made between Milton S. Littlefield and Edward Houstoun, dated 30th May, 1870, is hereby modified, changed, and altered as follows, to wit:

First. In lieu of one million dollars of first mortgage bonds of the Florida Central Railroad Company, which by said agreement were to be placed in the hands of said Houstoun, as security for the payment of the draft in the said agreement mentioned, there shall be placed in the hands of said Houstoun, as security for the payment of the draft in said agreement mentioned, the same amount of bonds of the State of Florida, to be exchanged for the said bonds of the Florida Central Railroad Company.

Second. If said draft be not paid at maturity, the said Houstoun is authorized and empowered to sell said bonds of the State of Florida at public outcry, giving the notice of sale as provided for in said agreement, and said Houstoun may become a purchaser at said sale.

Third. After first paying said draft and expenses of sale, said Houstoun shall, out of the balance of the proceeds arising from the sale of said bonds, if sufficient for this purpose, pay to John P. Sanderson the sum of fifty seven thousand five hundred and sixty dollars; to M. D. Papy, sixteen thousand dollars; to T. W. Brevard, attorney of certain holders of bonds of the Pensacola and Georgia Railroad Company, if certain negotiations now pending for their purchase be consummated, the sum of fifty thousand dollars; to John P. Sanderson, president of the Florida Central Railroad Company, three hundred and forty thousand dollars; after these payments the balance, if any, to be paid to said Littlefield.

882 Fourth. When said drafts shall mature said Houstoun, instead of selling said bonds of the State, shall have the option and choice of returning the same to the State, and receiving in lieu thereof the one million dollars of first-mortgage bonds of the Florida Central Railroad exchanged for the State bonds aforesaid.

Fifth. If, under the option and choice given the said Houstoun, he returns the bonds of the State of Florida, aforesaid, to said State, and receives in lieu thereof the bonds of the Florida Central Railroad Company, as aforesaid, provided said Houstoun, upon dilivering said bonds of the Florida Central Railroad Company, received from the State, as aforesaid, to the president of said company, shall receive and have executed and delivered to him in lieu thereof other first-mortgage bonds of said company, which said bonds shall be made payable to bearer, and shall be good, effectual, and first lien on said road.

Sixth. Upon receiving said first-mortgage bonds of the Florida Central Railroad Company from the president thereof, as above provided for, the said Houstoun shall hold the same as security for the payment of said draft, and is authorized and has the power at any time after giving thirty days previous notice to the president of said company, to sell the said bonds so received from the president of said company at public outcry in the city of New York, at which said Houston may become a purchaser; and said Houstoun, after paying said draft and the expenses of said sale, dispose of and pay over the rest and residue of the proceeds of the sale of said bonds, if any, to the persons named and for the amounts named as provided in the third clause hereof.

Seventh. If said Littlefield shall pay said draft at or before its maturity, said Houstoun shall deposit said bonds of the State of Florida placed in his hands under the first clause hereof with S. W. Hopkins & Company, No. 71 Broadway, New York, with the stipulation and agreement that they, the said Hopkins & Company, shall, in disposing of said bonds, hold the proceeds of said sale subject to the claims and for the amounts mentioned in the third clause hereof, to wit: John P. Sanderson, the sum of fifty-seven thousand five hundred and sixty dollars; M. D. Papy, sixteen thousand dollars; T. W. Brevard, attorney for certain holders of Pensacola and Georgia Railroad bonds, if negotiations now pending for their purchase shall be consummated, the sum of forty thousand dollars; John P. Sanderson, president of the Florida Central Railroad Company, the sum of three hundred and forty thousand dollars; said Hopkins & Company, after first paying the amounts above named to the parties above named out of the proceeds of the sale of said bonds, shall pay the rest and residue, if any, of the proceeds of the sale of said bonds to said Littlefield.

Witness our hand and seal this the seventh day of June, A. D. 1870, at Tallahassee, Florida.

M. S. LITTLEFIELD. [L. S.]
E. HOUSTOUN. [L. S.]

Signed, sealed, and executed in our presence.
CHAS. H. COLLINS.
J. P. SANDERSON.

883 **EXHIBIT P.**

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY ET AL.

Cross-bill of Florida Central Railroad Company.

TALLAHASSEE, *January* 11, 1871.

Received from Edward Houstoun, esq., in trust and for his account, one thousand Florida Central Railroad Company first-mortgage bonds, payable to the State of Florida, for one thousand dollars each, which I hereby undertake to arrange with General M. S. Littlefield and other parties interested, and collect from him or them the amount which it is admitted is now due to said Houstoun, viz, one hundred and sixty-three thousand and twenty-six dollars and seventy cents, with interest thereon, at seven per cent., from the time M. S. Littlefield's draft on S. W. Hopkins & Co. for said amount fell due, and in addition thereto the sum of five thousand dollars for costs and expenses incurred by said Houstoun in suits brought by parties against said Houstoun in relation to those bonds or other bonds and the stock of the Florida Central Railroad Company, it being understood that all proceedings at law or otherwise are to be discontinued, or if that be possible he is to be indemnified by responsible parties against all damages or costs arising out of said proceedings; it being further understood that said Houstoun shall, when paid, transfer and assign to said Littlefield all the stock of the Florida Central Railroad Company, or other securities which he holds, or which were given him as collateral security, to secure the above amounts due to said Houstoun.

And it is further understood and agreed that said Coddington is to collect the further sums of money and pay to said Houstoun for account of the parties named below, which, it is understood, are a lien subsequent and inferior to said Houstoun's lien on these bonds, viz:

Colonel R. H. Gamble, the sum of fifteen thousand dollars, who is to surrender to said Littlefield three hundred shares of stock in the
884 Florida Central Railroad Company, and seventeen hundred dollars in the bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, at par.

J. P. Sanderson, esq., the sum of fifty thousand five hundred and sixty dollars, and said J. P. Sanderson is to surrender to said Littlefield seventy shares of stock in the Florida Central Railroad Company and comply with his agreements with said Littlefield, for which a part of said sum is in consideration.

F. H. Flagg, esq., the sum of four thousand dollars, for which he is to surrender the Central Railroad Company stock and the Pensacola and Georgia Railroad bonds which he holds to said Littlefield, and also to pay for seventy shares of stock now or lately held by J. D. Westcott, jr., esq., the sum of thirty-eight hundred and forty five dollars and thirty-three cents, when said stock is to be delivered to said Littlefield.

This arrangement is based on the assumption that the money will be paid from the proceeds of bonds negotiated by S. W. Hopkins & Co., of New York. The remainder of said proceeds is to be disposed of as directed by the parties interested.

T. B. CODDINGTON.

I approve and assent to the same.

M. S. LITTLEFIELD,
President Jacksonville, Pensacola,
and Mobile Railroad Company.

885 EXHIBIT R.

In the U. S. circuit court.

J. FRED SCHUTTE, ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY ET AL.

Cross-bill of the Florida Central Railroad Company.

At a meeting of the directors of the Florida Central Railroad Company, held November 21, 1870, upon motion of Mr. Papy, a committee was appointed to take in consideration the past issue of bonds, and also to report upon the policy of issuing bonds of the company and the amount.

The president appointed Messrs. Papy, Baker, and Huling said committee.

The board then adjourned to 4 p. m.

4 p. m.—The directors convened pursuant to adjournment, Colonel Sanderson, president, in the chair.

Mr. Papy presented the following report:

The committee finding that the bonds signed by G. W. Swepson, president, and countersigned by H. H. Thompson, treasurer, are in such form as that they cannot be used to carry out the intention of their
886 issue when they were adopted, report the following resolution in respect thereto:

Resolved, That the resolution adopting the bonds to be issued by this company, signed by George W. Swepson, president, and H. H. Thompson, treasurer, at a meeting of the board of directors, held on the 2d of June, A. D. 1870, be, and the same is hereby, rescinded, and that said bonds be destroyed.

M. D. PAPY,
Chairman.

On motion, the report was received and adopted.

On motion of Mr. Foster, the resolution was unanimously adopted.

Mr. Papy made the following report:

The committee report the following resolutions in reference to the issue of bonds of the company, and the securing the same:

Resolved, That the president cause bonds, payable to bearer, to be prepared, signed and executed in due form, which shall be issued for purposes of the company, not exceeding seven hundred thousand dollars in amount, with interest at seven per centum per annum, not having more than thirty years to run, with coupons, for interest, attached, payable in New York semi-annually.

Resolved, That said bonds and the interest thereon shall be a first lien or mortgage on the Florida Central Railroad, its equipments, workshops, depots, franchises, and property of every kind; and that the president cause to be prepared and executed such deed of trust or other necessary instrument of writing, under the seal of this company, as may be needful to make the first-lien or mortgage in favor of said bonds, and the interest thereon, effectual to all intents.

M. P. PAPY,
Chairman.

On motion, the report was received and adopted.

On motion of Mr. Huling, the resolutions were unanimously adopted.

Adjourned to 4 o'clock next day, at which time the following resolution was adopted:

Resolved, That this board approve of the form of the trust deed read to the directors to secure the first lien or mortgage of the bonds, and interest thereon, authorized to be issued, and that the president of this company is authoized to select the trustees to whom said deed is to be made, not to exceed three in number.

Adopted.

I hereby certify that the foregoing is a true and correct copy from the records of the board of directors.

[SEAL.] F. H. FLAGG,
Secretary.

STATE OF FLORIDA,
County of Duval:

I, Thos. E. Buckman, clerk of the circuit court for this 4th judicial circuit, do hereby certify that the foregoing is a true copy of an original paper as offered in evidence and proved in certain judicial proceedings lately pending in this court, and as filed in my office.

Witness my hand and seal of office, this 8th day of February, 1877.

[SEAL.] T. E. BUCKMAN, *Clerk.*

887 (Indorsed:) In the United States circuit court, northern district of Florida. J. Fred Schutte, Jans Prins et al., vs. The Western Division of the Western North Carolina Railroad Company, The Jacksonville, Pensacola & Mobile Railroad Company et al. Exhibits to cross-bill of the Florida Central Railroad Company.

Received and filed April 20, 1878.

P. WALTER, *Clerk.*

Filed July 30th, 1877.

CHAS. H. FOSTER, *Clerk,*
By F. T. MEYERS, *D. C.*

888 J. FRED SCHUTTE, JANS PRINS, ADRIANUS PRINS, et al.,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Jacksonville, Pensacola & Mobile Railroad Company, & others.
} In equity.

In the circuit court of the United States for the northern district of Florida.

The answer of Jno. M. Guerrard, who is the holder of three bonds of the Pensacola and Georgia Railroad Company of the denomination of one thousand dollars each, and five bonds of the Tallahassee Railroad Company of the value of two hundred dollars each; Lewis F. Nicoll, who is the owner of six bonds of the said Pensacola & Georgia Railroad Company, of the value of one thousand dollars each; Geo. Robertson, who is the owner of five bonds of the Pensacola & Georgia Railroad Company, of the denomination of one thousand dollars each; G. N. Hunnicutt, who is the owner of seven bonds of the said Pensacola & Georgia Railroad Company, of the value of one thousand dollars each; J. G. Falligant, who is the owner of five bonds of
889 the said last-mentioned railroad company, of the value of one thousand dollars each; Jane R. Anderson, as administratrix of Edward C. Anderson, jr., who is the owner of twenty-four bonds of the said last-mentioned company, of the denomination of one thousand dollars each; James Hunter, who is the owner of eighty-eight bonds of the said last-mentioned company, eighty two of the denomination of one thousand dollars each, three of the denomination of five hundred dollars each, one of the denomination of two hundred and fifty dollars, one of two hundred dollars, and one of one hundred dollars, and one bond of the Tallahassee Railroad Company, of the denomination of one hundred dollars; The Peoples' Bank, which is the owner of twenty-seven bonds of the Pensacola & Georgia Railroad Company, of the denomination of one thousand dollars each; William McBurney, who is the owaer of six of the bonds of the said Pensacola & Georgia Railroad Company, for the sum of one thousand dollars each; Winthrop B. Williams, who is the owner of six of the bonds of the said Pensacola & Georgia Railroad Company,
890 of the denomination of one thousand dollars each; Gourdin Matherson & Co., who are the owners of eighteen bonds of the said Tallahassee Railroad Company, of the denomination of five hundred dollars each; The Planters and Mechanics' Bank, which is the owner of nine of the bonds of the said Pensacola & Georgia Railroad Company, of the value of one thousand dollars each; John Hanckle, who is the owner of nine of the bonds of the said Tallahassee Railroad Company, of the denomination of five hundred dollars each; James S. Gibbes, who is the owner of seven of the bonds of the said Pensacola & Georgia Railroad Company, of the denomination of one thousand dollars each; Simonton & Barker, who are the owners of one bond of the said Pensacola & Georgia Railroad Company, of the value of one thousand dollars; Kirksey & Scott, who are the owners of four bonds of the said last mentioned company, two of the denomination of
891 one thousand each, one of the denomination of two hundred and fifty dollars and one of the denomination of one hundred dollars; E. Brown, who is the owner of two bonds of the said last-mentioned

company, of the denomination of one thousand dollars each; J. S. Baynard, who is the owner of one bond of the said last-mentioned company, for one thousand dollars, & two bonds of the said Tallahassee Railroad Company, for two hundred dollars each; administratrix of W. Cumming, who is the owner of one bond of said Pensacola & Georgia Railroad Company, for one thousand dollars; Valentine Grest, who is the owner of one bond of said last-mentioned railroad company, for one thousand dollars; George Nicall, who is the owner of one bond of said last-mentioned company, for one thousand dollars; T. J. McNish, who is the owner of one bond of said Pensacola & Georgia Railroad Company, for one thousand dollars, and three bonds of said Tallahassee Railroad Company, for two hundred dollars each; G. Bartlett,
892 who is the owner of twenty bonds of the said Tallahassee Railroad Company, three of the denomination of five hundred dollars each, sixteen of the denomination of two hundred dollars each, and one of the denomination of one hundred dollars; J. G. Sturtevant, who is the owner of one bond of the said Pensacola & Georgia Railroad Company, for one thousand dollars; E. Lofton, who is the owner of one bond of the said Pensacola & Georgia Railroad Company, for two hundred and fifty dollars, and one bond of the said Tallahassee Railroad Company, for two hundred dollars; H. Gardner, who is the owner of eleven bonds of the said Tallahassee Railroad Company, five for *five for* five hundred dollars each & *and* six for two hundred dollars each; William Q. Warring, trustee for his children, who is the owner of two bonds of the said Pensacola & Georgia Railroad Company, for one thousand dollars each.

The defendants, with the reservations usual in equity pleading, make answer to the bill of complaint filed by the plaintiffs in the
893 above entitled cause, as follows:

First. They admit it to be true that a plan of settlement was agreed upon between an agent authorized to act for the said plaintiffs, holders of bonds of the State of Florida issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company of the first part, & a majority of the holders of the first mortgage bonds of the Pensacola & Georgia & Tallahassee Railroad Companies, through their authorized attorneys & representatives, of the second part, as is alleged in the 16th paragraph of the said bill of complaint, and that the document appended thereto & marked Schedule D, is a copy of said plan.

Second. These defendants, not admitting but denying all allegations of the said plaintiffs in their said bill of complaint contained, to the effect that as holders of the said the bonds of the State of Florida, they can successfully assert a lien upon the line of railroad formerly known as the Pensacola and Georgia & Tallahassee Railroads superior to the vendors' lien for unpaid purchase-money held by the trustees of the internal improvement fund of the State of Florida for the pro-
894 tection of these defendants in securing the payment of the said bonds held by them, nevertheless being also averse to litigation and being well advised of the great injury which must result to said railroad property by the protraction of it, now express their co'sent that a decree be made and entered in this cause, providing for the sale of the said railroads and property upon the basis of said plan, to be in no wise departed from except in so far as may be necessary to carry out the objects contemplated therein through such decree to be rendered as

aforesaid, and not by seizure and sale by the governor of the State of Florida.

And these defendants pray to be hence dismissed, etc.

JACKSON, LAWTON & BASSINGER,
Solicitors for Deft's.

UNITED STATES OF AMERICA,
Southern District of Georgia :

Before me personally appeared Jno. M. Guerrard, who, being duly sworn, says that what is contained in his answer so far as concerns 895 his own act and deed is true of his own knowledge, and that what relates to the act or deed of any other person he believes to be true.

JNO. M. GEURRARD.

Sworn to and subscribed before me this 4th day of February, 1879.

WILLARD P. WARD,
U. S. C. C. Commissioner So. Dist of Georgia.

Filed Feb'y 4th 1879.

P. WALTER, *Clerk.*

896 *Answer of the trustees of the internal improvement fund of Florida.*

U. S. circuit court, fifth circuit, n. dist. Fla. In equity.

J. FRED SCHUTTE ET AL.
versus
WESTERN DIVISION WEST. N. C. R. R. CO. ET als.

897 In the circuit court of the United States, fifth circuit, northern district of Florida. In equity.

The answer of George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer of said State; Columbus Drew, comptroller of said State; Hugh A. Corley, commissioner of lands and immigration of said State; and George P. Raney, attorney-general of said State, who are trustees of the internal improvement fund of Florida, to the bill of complaint filed in the above stated court by J. Fred. Schutte, Jan Prins, Adrianus Prins and others, who are aliens and subjects of the King of the Netherlands, sueing in their own behalf and in behalf of other persons having like claims, who may come in and be made parties and contribute to the expenses, against the Western Division of the Western North Carolina Railroad Company, the Jacksonville, Pensacola and Mobile Railroad Company, said trustees of the internal improvement fund, et als.

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said complainants' said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised is material or necessary for them to make answer unto, these defendants, answering, say :

That on the 20th day of March, A. D. 1869, the trustees of the internal improvement fund of Florida sold at public aution the Pensacola and Georgia Railroad, including the road-bed, iron, equipments, workshops, depots and franchise, and all its property of every kind, and the Tallahassee Railroad, including the road-bed, iron, equipments, workshops, depots, and franchise, and all its property of every kind, they acting under and making said sales under the provisions of the act of the general assembly of the said State, approved January 6, 898 A. D. 1855, referred to in the first paragraph of complainant's bill of complaint, which act will hereafter be designated as the "internal improvement act," and that such sale was made because of non-compliance with the provisions of said act; but these defendants deny that any property but that in this paragraph above stated. was sold by said trustees of the internal improvement fund.

That the sum or amount for which said Pensacola and Georgia Railroad and its property was sold was one million two hundred and twenty thousand dollars, and the sum or amount for which the said Tallahassee Railroad and its property was sold was one hundred and ninety-five thousand dollars.

These defendants admit that the said sum for which the said Pensacola and Georgia Railroad and its properties was sold exceeded the total amount of the principal of all the bonds then outstanding which the Pensacola and Georgia Railroad Company issued under the provisions of said "internal improvement act," but these defendants say that the said sum or amount for which the said Tallahassee Railroad and its properties sold did not equal the amount of the principal of all the bonds then outstanding, which the said Tallahassee Railroad Company had issued under the provisions of the said "internal improvement act," nor did it equal more than ninety five per cent. of the amount of the principal of said outstanding bonds, if it equaled that amount or per cent. thereof; and these defendants deny each and every allegation in the bill of complaint to the contrary of this allegation.

These defendants say that said outstanding Pensacola and Georgia Railroad bonds were, before and at the time of such sale, the first lien upon said Pensacola and Georgia Railroad, its road bed, iron, equipments, workshops, depots and franchise, and all its property of every kind; and the said outstanding Tallahassee Railroad bonds were, before and at the time of such sale, the first lien upon the said Tallahassee Railroad, its road-bed, iron, equipments, workshops, depots, franchise, and all its property of every kind.

These defendants further say that F. Dibble and associates, who consisted of Franklin Dibble, Calvin B. Dibble, Alonzo Huling, 899 John L. Requa, Edward M. Cheney and others, as they are informed and believe, were the highest bidders for said roads and property at said sale, they bidding the amounts aforesaid, and the same being knocked off to them at the prices or sums aforesaid; but these defendants deny that the said Dibble and associates, or any one else, has paid the purchase money for said roads and property, or for either of them. These defendants say they are informed and believe, and they thereupon allege, that the terms of the sale of said railroads, their franchise and properties aforesaid, was cash; that possession of the same which was then held by the then trustees of the internal improvement fund, and deeds of conveyance of the same, were not to be delivered until the purchase money should be paid; and that the said purchasers of said roads paid, or caused or procured to be paid, on account of their said purchase, only about nine hundred and sixty thousand dollars, which sum was paid in first-mortgage bonds of the said Pensacola and Georgia and Tallahassee Railroad Companies, which had been issued under the provisions of said "internal improvement act," to wit, bonds of the said Pensacola and Georgia Railroad Company to the amount of eight hundred and six thousand dollars, which were received at par, and bonds of the said Tallahassee Railroad Company to the amount of one hundred and fifty-three thousand and seven hundred dollars, which were received at ninety-five cents on the dollar; and these defendants say that no other or different payments have ever been made on said purchases, and they deny each and every allegation to the contrary made in complainants' bill.

These defendants, further answering, say they are informed and believe, and they thereupon allege, that after the bidding at said sale was over, no cash payment was, in fact, required by the then trustees of the internal improvement fund from the purchasers; that this was on account of the alleged and pretended inconvenience of paying over and receiving so large an amount of money at that immediate time, and payment was thereupon deferred until such time as the trustees should demand it; and the possession of the railroad and properties so sold
was delivered to one Robert Walker, who was instructed by the
900 said trustees to hold the same as their agent, until payment of
the purchase money should be completed and title deeds delivered to the purchasers.

These defendants further say they are informed and believe, and they thereupon allege, that after the sales were made, as aforesaid, and before any payment had been made by the said purchasers, one George W. Swepson, who was the holder of all the first-mortgage Pensacola and Georgia and Tallahassee Railroad bonds, paid on such purchases aforesaid, and if not all of them, nearly all of them, entered into negotiations with the said Franklin Dibble and associates, and the result of these negotiations was that the said Swepson agreed to become one of said association of purchasers, and to turn over to them or said association, the said bonds held by him, to be used in making payment on the purchase price bid for said railroads; that on the twenty-second day of March, A. D. 1869, the said Swepson and said Dibble and his associates, and Almon R. Meek, the then attorney general of Florida, the said Meek being one of said trustees, held a conference in the city of Jacksonville, Florida, in relation to the payment of the purchase money or bids for said railroads and properties, and the delivery thereof, and of the titles thereto to the purchasers; that at said conference, as these defendants are informed and believe, it was, among other things, resolved and determined by said Dibble and associates as follows:

That Swepson should receive the amount actually paid out by him for bonds, and in addition thereto the sum of one hundred and fifty thousand dollars, and such other amount as might be necessary for the purchase of outstanding bonds, said amounts to be realized from the sale of new bonds, to be placed for that purpose in the hands of Swepson and Calvin B. Dibble, and should alone receive one-third of the stock as his proprietary interest in the roads; that Swepson should turn over to C. B. Dibble the bonds then in his hands, amounting to about nine hundred thousand dollars, for the purpose of paying the same over to the trustees, and should furnish funds for the purchase of outstanding bonds as they might be obtained.

These defendants further say they are informed and believe, and
thereupon allege, that after these arrangements and agree-
901 ments had been thus perfected between the said Dibble and as-
sociates and the said Swepson, it was announced to the board of trustees of the internal improvement fund of Florida by the said Meek, in the following language substantially:

To the board of trustees of the internal improvement fund of Florida:

GENTLEMEN: By an understanding between the members, I proceeded, on Monday last, to Jacksonville with the purchasers of the Pensacola and Georgia and Tallahassee Railroads, and have to state that I have been requested by the purchasers of the Pensacola and Georgia and Tallahassee Railroads, F. Dibble, for himself and his associates, to say that an arrangement has been by them made with George W. Swepson, who owns over a million of dollars of bonds of the said roads, by which, for them, he agrees to turn over to the internal improvement fund of this State all of his said bonds. Of said agreement I am personally cognizant. The said purchasers further request me to ask the trustees to execute to them, or to Mr. F. Dibble for his associates, a deed of conveyance of said road.

They further ask that this board authorize one of its members to proceed, as soon as said deed is executed, with the same to New York city, agreeing upon their part upon presentation of said deed in New York city they will settle with such member for the full amount or balance of purchase price of said roads, as bid by them at sale on Saturday, 20th of March, 1869.

These defendants further say that the then trustees of the internal improvement fund, aforesaid, did, on the twenty-ninth day of March, A. D. 1869, at the same meeting at which said report of the said Meek, then attorney-general of said State, was made and received, adopt a resolution requesting and directing the said attorney-general to prepare a deed of conveyance of the said Pensacola and Georgia and Tallahassee Railroads, to the purchasers, and to submit the same, when prepared, to the consideration of the board, which resolution directed that when such conveyance should receive the approbation of said board, and be executed by them, the attorney-general and comptroller 902 should be appointed special agents of the board to proceed with such deed to the city of New York, there to consummate the purchase and sale of the roads; and when they should have received the amount payable by the purchasers that they deliver to the said purchasers such deed of conveyance, a copy of which resolution is hereto annexed, marked B, and prayed to be taken as a part hereof; that afterwards, on the seventh day of April, A. D. 1869, a resolution was adopted by said board directing that the deeds prepared by the attorney-general be executed by the members of the board, a copy of which is hereto annexed, marked C, and prayed to be taken as a part hereof; and afterwards and on the next day, as these defendants are informed and believe, said deeds were executed, a copy of each of which is hereto annexed, marked D, and prayed to be taken as a part hereof; that on the said last-named day a resolution was adopted by said board appointing Calvin B. Dibble (who was the brother of said F. Dibble) and said George W. Swepson confidential agents of said board of trustees, with authority in each to take up the outstanding first-mortgage bonds of the said Railroad Companies, and directing the attorney-general and comptroller to turn over to said C. B. Dibble and Swepson, or either of them, all the moneys that might be received by them for said trustees for said roads, a copy of which resolution is hereto annexed, marked E, and prayed to be taken as a part hereof.

The defendants are informed and believe, and so allege, that the said comptroller, Robert H. Gamble, and attorney general, Almon R. Meek, thereupon proceeded to the city of New York, and there delivered the title deeds aforesaid for said railroads and properties to said Swepson, representing the purchasers, upon delivery by said Swepson to them of first-mortgage bonds of the said Pensacola and Georgia Railroad Company to the amount of $806,600, and of the Tallahassee Railroad Company to the amount of $153,700, the Pensacola and Georgia Railroad Company's bonds being received at par, and the others at between ninety-four and ninety-five cents on the dollar; that beyond these bonds the said Gamble and Meek received nothing except a check or draft drawn by said Calvin B. Dibble, on Dibble, Worth & Co., of New York, a firm or partnership of 903 which said C. B. Dibble was then a member, and which firm is and has long since been insolvent, and this check or order, after its delivery, was immediately, as these defendants are informed and believe, delivered by said Meek to said Swepson in exchange for his receipt, said receipt acknowledging that said Swepson had received the sum of four hundred and seventy-two thousand and sixty-five dollars ($472,065), to be applied to the retirement of the outstanding bonds of the raid railroad companies, no funds or cash passing between the parties, and no security being demanded of said Swepson in the premises; and these defendants further say they are informed and believe, and they so allege and charge, that the said check or order was immediately handed over by said Swepson to said Dibble, Worth & Co., without consideration; and they are informed, and believe and charge, that while these negotiations were pending in New York the said Almon R. Meek, who was the legal adviser of said board of trustees, and was relied upon as the legal adviser of said board, and said Gamble, as a member of said board, and took the principal charge and management of said business of the settlement for and receiving the payment of the balance of said purchase money, received from, and was paid by said Swepson, and for his, said Meek's, own benefit the sum of five thousand dollars, or other large sum of money.

And, further answering, these defendants say they are informed and believe, and so allege, that immediately after they had received said check or order they reported and represented to the trustees of the internal improvement fund in Florida, or their agent aforesaid, that the purchase money had been fully paid, and the said Robert Walker, agent aforesaid, under the direction of said trustees, and upon their representing to him that said purchase money had been paid, delivered said railroads and properties to said Dibble and associates; and that after the said transactions in New York were over, and said railroads and properties had been delivered, and said Meek and Gamble had returned to Florida, they reported to the board of trustees in writing aforesaid that they had performed the duties devolving upon them by the resolution of March 29th, A. D. 1869, aforesaid, and that they received the 904 Pensacola and Georgia and Tallahassee Railroad bonds aforesaid at the rate and value aforesaid, and that the difference between the sum represented by these bonds and the sum bid for said roads was turned over by them, as required by the resolution of the board, to George W. Swepson, as confidential agent of said board, to take up the outstanding bonds of said companies, they in said report representing that they had turned over to the treasurer of said board the receipt of Swepson for $472,065, a copy of which report is hereto annexed, marked F, and prayed to be taken as a part hereof.

And these defendants, further answering, say that they are informed and believe, and therefore charge and aver, that such check or order never was or has been paid, and never was intended to be paid, and that such pretended payment of the balance of said purchase money over and above the sum paid in Pensacola and Georgia and Tallahassee Railroad bonds, was a sham payment and a preconcerted fraud and scheme devised and entered into between said Dibble and associates and said Swepson, without authority of said trustees, to acquire possession of said railroad property without payment of the purchase money, and to cheat and defraud the trustees of the internal improvement fund and all persons beneficially interested in the payment of said purchase money; and that the said Meek assented to and favored and aided said fraud and scheme.

And these defendants charge that it never was intended by the said Calvin B. or Franklin Dibble, or Swepson, or any of their associates who had any part in the making or getting up of the said check, that the same should be paid.

And these defendants, further answering, say that they are informed, and they believe and allege, that it is not true that any balance of said purchase money of said roads over and above said Pensacola and Georgia and Tallahassee Railroad bonds was placed by said trustees in the hands of said Swepson, as agent of said trustees, or otherwise, with directions to purchase and deliver to them for cancellation the outstanding of said bonds of said companies which were entitled to payment out of said fund, or with any directions at all; but they charge that no such balance was placed in his hands at all.

905 These defendants, further answering, say they have no knowledge, nor have they sufficient information to enable them to say or determine whether the said Swepson was a man in good credit, as charged in the bill of complaint, or reputed to be worth at least a half million of dollars, or that he had that amount in Florida; and these defendants deny each and all the allegations in complainants' bill to the above effect, and pray that complainants may be held to strict proof of all and singular their allegations to such effect.

And these defendants, further answering, say they are informed, and believe and allege, that the said Almon R. Meek, in the matter of receiving said draft or order, and delivering said deed and consummating said pretended payment and advising the trustees that such purchase-money had been paid, did not act in good faith nor in the scope of his authority, but that he acted in corrupt and fraudulent faithlessness to a high trust, and lent himself knowingly and corruptly to a scheme to defraud and cheat the trustees of the internal improvement fund and all persons interested in the purchase money of said railroads, and to enable said F. Dibble and associates to get possession of said railroads and property without paying for the same; and these defendants say that he and the said Gamble did not act within the scope of their power in delivering the said deeds (although said Gamble believed he was acting within the scope thereof), but delivered the same without authority to do so, and under circumstances in which their authority did not permit them to deliver them; that they were to deliver them only upon being paid the purchase money for said roads and property, which has never been paid to them or to the trustees of the internal improvement fund aforesaid, or any one for said trustees or either of them; and these defendants further say that the trustees of the internal improvement fund did not act within the scope of their power or authority in delivering said railroads to said Dibble and associates, although said delivery was made upon representation from said Meek and Gamble, or one of them, that the purchase-money had been paid as aforesaid.

Further answering, these defendants say they are informed and be-

lieve, and thereupon allege, that after the title-deeds had been delivered as aforesaid, the said Franklin Dibble, on behalf of himself
906 and his associates, executed and delivered to the said Swepson a certain deed of conveyance, in which, after reciting that the said Swepson had paid the trustees of the internal improvement fund aforesaid for and on account of the said purchase of said Dibble and associates' bonds of the said railroad companies, amounting, on their face, to nine hundred and sixty thousand and three hundred dollars, and the sum of four hundred and seventy two thousand and sixty-five dollars ($472,065.00), the full amount due to said trustees for said railroads, conveyed to said Swepson all the property of whatever name, nature, and description conveyed to said F. Dibble and associates by said trustees, to hold the same in trust for the purpose of enabling the said Swepson to convey the same to an incorporation to consist of said F. Dibble and his associates, as soon as the same should be created by legislative authority, and also for the further purpose of securing said Swepson in the advances made, as aforesaid, until such time as the incorporation should be created, and should issue and place, in accordance with an agreement of March 26th then last, therein referred to, its bonds to an amount sufficient to reimburse said Swepson for all advances made by him, including said sum of four hundred and seventy-two thousand and sixty dollars, all of which will more fully appear by reference to a copy of said deed of conveyance, which is hereto annexed, marked G, and prayed to be taken as a part hereof, the same as if fully incorporated herein; and these defendants charge, upon information and belief, that said deed of conveyance was drawn up by said Almon R. Meek and its execution directed by him.

These defendants, further answering, say that by virtue of an act of the legislature of Florida, approved June 24th, A. D., 1869, being chapter 1718 of the Laws of Florida, the said Franklin Dibble and associates, their successors and assigns, were made and constituted a body corporate, under the name of "the Tallahassee Railroad Company," for the purpose of operating said railroads, to which they had acquired the title as aforesaid, and with the right to enjoy all the powers, privileges, and franchises as were originally granted to said corporations (the Pensacola and Georgia and Tallahassee Railroad Companies) aforesaid.

907 These defendants, further answering, say that by another act of the legislature of Florida, approved June 24th, 1869, being chapter 1716 of the Laws of Florida, and an act amendatory thereof, approved January 28th, 1870, being chapter 1731 of the Laws of Florida, said George W. Swepson, Milton S. Littlefield, J. P. Sanderson, J. L. Requa, W. H. Hunt, their associates, successors, and assigns, were constituted the body corporate named the Jacksonville, Pensacola and Mobile Railroad Company, mentioned in complainants' bill, and were empowered by said acts to construct a railroad from Quincy, Florida, to the dividing line between the States of Florida and Alabama, in the direction of the city of Mobile, in Alabama; and these defendants pray the right and privilege to refer to said several acts of said legislature, and that the same may be taken as a part of this answer the same as if fully incorporated herein.

These defendants further say that by and under the last-named acts of the legislature of Florida, the Jacksonville, Pensacola and Mobile Railroad Company, and said Tallahassee Railroad Company, incorporated in the year 1869, were authorized to consolidate under the name of the Jacksonville, Pensacola and Mobile Railroad Company, and that they did so consolidate under said last-named acts a short time after the organization of said Jacksonville, Pensacola and Mobile Railroad Company, and by such consolidation the said Jacksonville, Pensacola and Mobile Railroad Company, as constituted after such consolidation, came into the possession and management of said original Pensacola and Georgia and Tallahassee Railroads and their properties, which had been sold as aforesaid; and these defendants say they are informed and believe that at the time of such consolidation the stockholders of the said companies so consolidating had full knowledge and notice of the fraudulent manner in which the deed and possession of said railroads and their properties so sold were acquired without payment of the aforesaid balance of purchase-money, and that the same had not been paid; and these defendants adopt that part of complainants' bill which alleges that G. W. Swepson and M. S. Littlefield owned nearly all the stock of the Jacksonville, Pensacola and Mobile Railroad Company, and admit the same to be true; and these defendants say they 908 are informed and believe, and so allege that the said Swepson and Littlefield, and other stockholders of the said Jacksonville, Pensacola and Mobile Railroad Company acquired their stock with full notice of the fraudulent manner in which the possession and deed of said Pensacola and Georgia and Tallahassee Railroad property was acquired by Dibble and associates without payment of the aforesaid balance of purchase-money, and that the same was unpaid.

And these defendants, further answering, say that the bonds numbered in the sixth paragraph of complainants' bill were not, as they are informed and believe, issued by the governor of Florida in accordance with the laws incorporating the Jacksonville, Pensacola and Mobile Railroad Company, as will be hereafter more fully shown.

These defendants, further answering, say that the said four thousand bonds which were obtained from the governor of Florida, Harrison Reed, by the said Jacksonville, Pensacola and Mobile Railroad Company, and purported to obligate the State of Florida, as stated in the bill of complaint, were issued under the provisions of the statutes of the State of Florida aforesaid, approved June 24, 1869, being chapter 1716 of Laws of Florida, and January 28, 1870, being chapter 1731 of Laws of Florida, and that the said statutes and each of them were, in so far as they pretended to authorize the issue of said bonds and the delivery thereof to the Jacksonville, Pensacola and Mobile Railroad Company, and are unconstitutional, null, and void, and the said bonds are null and void, and are neither binding upon the State of Florida nor do they create nor are they a lien or claim upon said railroad and properties nor any part of the same, nor do they entitle the holders thereof to any lien or claim upon the same.

And these defendants, further answering, say that even if said statutes had not been unconstitutional as aforesaid, the governor of said State would have been authorized to issue to said company State bonds only upon the conditions and restrictions stated in said act, in exchange for bonds of said company which were a first mortgage upon the railroad, for which State bonds were delivered, and on all the property of said company, real and personal, appertaining to that part of the 909 line which it, at the time of the exchange, had or might thereafter acquire.

And these defendants say they are informed and believe, and so allege, that the amount to which the said pretended bonds were issued were largely in excess of the amount which said acts of the legislature last named authorized, even had the same been constitutional and valid.

And these defendants further say they are informed and believe, and thereupon allege, that at the time of the passage of said last-mentioned acts of the legislature of Florida, and at the time the said pretended bonds were issued by the State of Florida, or its governor, and obtained by the said company, the State of Florida and the legislature thereof, and the governor thereof, and all the officers and agents of said State concerned in the issue of said pretended bonds, had full notice of all the facts and circumstances aforesaid connected with and growing out of the sale of said Pensacola and Georgia and Tallahassee Railroads and properties, and the delivery of the possession thereof and of the deed, and the non payment of said balance of purchase money, and said sham and fraudulent check arrangement aforesaid, and that said balance of purchase-money was still due and unpaid and constituted a first lien upon said railroads and properties so sold, and they recognized and admitted said lien to exist.

These defendants further say that they are informed and believe, and so allege, that the said act of June 24, 1869, as originally passed by said legislature, contained a provision to the effect that no bonds of the said State should be delivered by the governor to the president of said Jacksonville, Pensacola and Mobile Railroad Company until the property (including said railroad and properties so sold) to be pledged to the State as security for payment of the railroad bonds to be given in exchange for the State bonds should be free from the encumbrance of all prior liens; that is to say, until the said unpaid balance of purchase-money should have been paid up; that said act, after its passage and before it was filed in the office of the secretary of state, or approved by the governor, was fraudulently altered and changed and said provision left or taken out of the same; that because of said fraudulent
910 alteration of said act, a suit in chancery was begun in the circuit court of th esecond judicial circuit of Florida, in Leon County, by George W. Scott and Joseph John Williams, then citizens of said county, against Harrison Reed, governor of the State of Florida, Simon B. Conover, treasurer of said State, George W. Swepson, Milton S. Littlefield, John P. Sanderson, J. L. Requa, and William H. Hunt about the middle of July, A. D. 1869, to enjoin said governor, Harrison Reed, from signing or causing to be signed the bonds authorized by said act; that said injunction was prayed and applied for and based in the bill in said suit not only upon the ground of fraud and forgery aforesaid, but also upon the ground that the legislature, in passing said act, contemplated the taking by the State, in exchange for its own bonds and in equal amount, bonds of the said Jacksonville, Pensacola and Mobile Railroad Company, which were or constituted a first lien on said railroads and properties so sold, to secure the State against loss, and that inasmuch as a lien already existed upon the railroads and properties so sold for and on account of the unpaid balance of purchase money aforesaid, the said Jacksonville, Pensacola and Mobile Railroad Company could not give a first lien on said railroads and properties to secure its bonds, as required by said act.

And these defendants further say that after a hearing of an application for an injunction in said case, the Hon. P. W. White, judge of the circuit court of said circuit, sitting in chambers, did, on the 14th day of July, A. D. 1869, make an order, which was duly entered of record in said court and still remains of full force and effect, enjoining and restraining the said Harrison Reed, governor aforesaid, from issuing, signing and sealing, and from causing to be issued, signed, and sealed any State bonds of the State of Florida under the provisions of said altered

and pretended act of the legislature of Florida, and from delivering and causing to be delivered any such bonds to the president of the Jacksonville, Pensacola and Mobile Railroad Company, or to any other person, and restraining the defendant, Conover, from countersigning or causing to be countersigned such bonds, and restraining the president of the Jacksonville, Pensacola and Mobile Railroad Company from
911 receiving any of said bonds, or if received, from negotiating the same till the further order of said court; a copy of which order is hereto annexed, marked H, and prayed to be taken as a part hereof.

And these defendants, further answering, say, that the said act, approved June 24, 1869, aforesaid, entitled "An act to perfect the public works of the State," was by the eighth section of said act, approved January 28, A. D. 1870, notwithstanding said injunctional order, made to be an act and law of the State of Florida, except in so far as it is qualified or affected by the said last named act.

And these defendants allege and charge that the legislature of Florida, at the date of the passage of the said act, approved January 28, 1870, had notice of the said injunctional order and of the proceedings and the record aforesaid in said case of George W. Scott and Joseph John Williams vs. Harrison Reed, governor, et als., and of the claim and lien aforesaid of the trustees of the internal improvement fund for said balance of purchase money, and of the fact that the said balance of purchase money had not been paid, and that the said Jacksonville, Pensacola and Mobile Railroad Company could not give or create in favor of the State of Florida or to indemnify her a first mortgage lien on said railroads and properties sold as aforesaid, until the said balance of purchase money should be paid, or the lien thereof otherwise legally cancelled and destroyed.

These defendants, further answering, charge and show that the said legislature of the State of Florida never contemplated the issue of State bonds pretended to be authorized by said acts until after the said balance of purchase money should be paid and the lien for the same on said railroads and properties satisfied. They show that the State of Florida was herself a party to the contract out of which the right to make said sales of said railroads and properties sold on the 20th of March, A. D. 1869, grew; that the governor, treasurer, and other officers of the State were appointed by the provisions of the said "internal improvement act" to administer the trusts of said law, and have always been engaged in administering it, and that the State could not take a first
912 mortgage on that property which was already bound and under a lien for the balance due to said trust under a contract made under said internal improvement law. That under said acts of June, A. D. 1869, and January, A. D. 1870, the governor was charged with the duty of signing and delivering the pretended State bonds authorized thereby and receiving the company bonds to be given in exchange for the same; and the treasurer was charged with the duty of countersigning said State bonds, and the governor who did sign and deliver said State bonds and receive in exchange therefor the said company bonds, and the treasurer who countersigned said State bonds, were active trustees of said internal improvement fund from and before the sale of said railroads up to and long after the delivery and exchange of said pretended State bonds for said company bonds mentioned in the bill of complaint, and knew when they signed and delivered and countersigned said State bonds and received said railroad company bonds in exchange therefor that said balance of purchase money remained unpaid.

These defendants, further answering, say they are informed and believe, and so allege, that on or about February 21, 1870, after the passage of said act of January, A. D. 1870, and before the issue of any bonds thereunder, and application was made directly to the then governor of Florida, Harrison Reed, by and on behalf of holders of first mortgage bonds of the said Pensacola and Georgia Railroad Company and Tallahassee Railroad Company, issued under the provisions of said internal improvement law, for the purpose of ascertaining whether he intended to issue bonds of the State under the provisions of said acts of June, 1869, and January, A. D. 1870, aforesaid, until after the claim against said railroads and property sold as aforesaid for said balance of purchase money had been paid; that such application was made in the shape of a letter written by T. W. Brevard, jr., at Tallahassee, Florida, to said Governor Reed, a copy of which letter and the endorsement of said Reed thereon is hereto annexed, marked I, and prayed to be taken as a part hereof; that in said letter the following propositions were advanced: 1st. That the original first mortgage bonds of the Pensacola and Georgia Railroad and Tallahassee Railroad Companies 913 which remain outstanding and unpaid encumbered the said property with a lien prior to all others then existing or that might be created; and, 2d, that there could be properly no issue of first mortgage bonds upon said railroads and properties until the outstanding Pensacola and Georgia and Tallahassee Railroad bonds aforesaid should be paid at the pro rata valuation fixed by the sale and cancelled. And these defendants say that the said Governor Reed replied to said application on or about the same day by making substantially the following endorsement thereon, to wit:

I concur in the view of Col. Brevard, and shall issue no bonds under the new law until the lien upon the road is satisfied.

HARRISON REED, *Govenor.*

And these defendants say that in issuing and delivering the said State bonds, the said Harrison Reed perpetrated a fraud upon the State of Florida, the trustees of the internal improvement fund, the holders of the outstanding Pensacola and Georgia and Tallahassee Railroad bonds, and upon every and all persons concerned in said balance of purchase money and said railroads.

These defendants, further answering, say, that they have no knowledge, nor have they any information except from the statements made in the bill of complaint, as to what or how many of the bonds obtained by the Jacksonville, Pensacola and Mobile Railroad Company from the governor of Florida were sent to England, nor as to what number were or had been sold in the city of London or elsewhere, through an agent or *other* otherwise; and defendants demand that complainants be held to strict proof of all and singular the allegations as to the same in the bill of complaint.

These defendants, however, say, they are informed and believe, and thereupon allege, that of the said State bonds so obtained by the said Jacksonville, Pensacola and Mobile Railroad Company, two hundred and twenty-four have been cancelled, two were lost before being sold, and five hundred and seventy-six are deposited in a bank in London, England, the same being tied up in litigation, but they never have been sold by the Jacksonville, Pensacola and Mobile Railroad Company, or its authority, and should be surrendered to the State of Florida.

914 These defendants have no knowledge, nor any information, sufficient to enable them to form a belief as to what price the

State bonds sold, as stated in the bill of complaint, sold for, nor as to whether any buyer afterwards resold said bonds through bankers in Amsterdam, Holland, or that bankers in Amsterdam offered them for sale to the public in Amsterdam, or in other parts of the Netherlands, or that said bonds were dealt in on the Stock Exchange in Amsterdam, as other public securities, or were in full reliance by all purchasers upon representations which were made in respect thereto, nor as to what price said bonds bore so long as the interest was paid thereon; and these defendants deny each and all the allegations made and stated in the ninth paragraph of complainants' bill; and these defendants demand that the complainants be held to strict proof of all and singular the allegations in the bill of complaint upon the same subjects.

These defendants, further answering, say, that they have no knowledge, nor have they any information, sufficient to enable them to form a belief as to whether the said Jacksonville, Pensacola and Mobile Railroad Company, through its agents in London, or otherwise, represented to the people in England, Holland, Germany and France, or in either of said countries, that the said bonds were veritable and lawful obligations, or either, of the State of Florida, or that the interest thereon would be punctually paid by the State of Florida, or that there was provided by law of said State, as a security for the payment of said bonds, a lien on the whole line of railroad from Jacksonville west, or on any part thereof; or that said line was represented to be owned by the said Jacksonville, Pensacola and Mobile Railroad Company alone or that the bankers in London repeated the same representation to the bankers in Amsterdam, or the latter to the public in the Netherlands, or to complainants or to others, or any persons who purchased, sold, or dealt in said bonds; and these defendants deny all and singular the allegations aforesaid in complainants' bill, and demand that the complainants be required to make strict proof of all and singular the same; and these defendants charge that there never has been any lien on said line of railroad as a security for the payment of said bonds.

915 These defendants, further answering, say they have no knowledge as to whether complainants are owners of large numbers or any of said pretended bonds, or of those stated in the eleventh paragraph of complainants' bill, nor do they admit that they are such owners, but deny the same, and demand that complainants be required to produce and make full and strict proof of their ownership of any such pretended bonds, and that they are bona fide owners for a valuable consideration, and without notice.

These defendants have no knowledge, except from statements made in the bill, that interest has been paid at all on said bonds up to January 1st, 1873, semi-annually; nor have they any knowledge, nor any information, sufficient to enable them to form a belief as to such interest having been paid by a trust company in the city of New York, or that the governor of Florida appointed such trust company fiscal agents of said State, or that the governor gave notice to the holders of such bonds of such appointment, or that it was represented to the persons who dealt in said pretended bonds, or to complainants, that the money for the payment of said interest was provided by the State of Florida; or that owing to such an occurrence, or such information, the belief that such bonds were lawfully issued by the governor of Florida was greatly strengthened and full faith given to what may have been represented by said Jacksonville, Pensacola and Mobile Railroad Company, as to the extent of its line of railroads; and these defendants therefore deny each and all the allegations thereunto in said complainants' bill, and particularly all the allegations in the last paragraph of the eleventh subdivision of said bill of complaint, and demand that the complainants be held to strict and full proof of the same.

And these defendants, further answering, say they are informed and believe, and thereupon allege, that the State of Florida never did, in any manner, pay or cause to be paid, any interest on any of said pretended bonds, or provide or furnish any money for the payment of any such interest; nor has she represented or pretended, or caused it to be represented, that she had paid any such interest, or provided or caused to be provided any money for the payment thereof.

916 And these defendants say they are informed and believe that the greater part of said interest was secured to be paid by an arrangement made as a part of the original sale of said pretended bonds by the Jacksonville, Pensacola and Mobile Railroad Company, by which an amount sufficient to pay the interest on said pretended bonds, up to July 1st, 1872, was either retained by the purchasers out of the purchase money, or a sufficient amount of such purchase money deposited for the purpose, and so applied afterwards; and that the installment of interest for January, A. D. 1873, if it has been paid, was paid out of the proceeds of a sale of some of the said pretended bonds consummated in December, A. D. 1872, or January, A. D. 1873, or about that time; and the State of Florida had no part or concern in the payment of said interest, or providing money therefor.

These defendants, further answering, say they are informed and believe, and so allege, that the said Francis Vose, M. K. Jessup & Co., and the other persons named in the twelfth paragraph or subdivision of the complainants' bill, and other persons besides them, are owners and holders of large and different amounts of outstanding and unpaid bonds of the Pensacola and Georgia and Tallahassee Railroad Companies, issued under the said "internal improvement act" aforesaid, on which bonds of the Tallahassee Railroad Company, the principal and large amounts of interest accruing prior to and since said sale of March 20th, 1869, are still due and unpaid, and on which bonds of the Pensacola and Georgia Railroad Company, large amounts of interest, accruing before and since said sale, are still due and unpaid.

And these defendants further say that the said F. Dibble and associates did not, nor has any one for them, paid the full amount of purchase money aforesaid, but that the said balance of four hundred and seventy-two thousand and sixty five dollars, and interest thereon from the said 20th day of March, A. D. 1869, still remains due and unpaid; and these defendants have, as vendors, a lien on said railroads and property so sold for the same, and the holders of said bonds have demanded that the trustees of the internal improvement fund shall enforce it against said property so sold.

917 And these defendants say they are advised, and informed, and believe that the complainants herein have no paramount or other lien on said railroads or properties sold on said 20th day of March, nor of their pretended State bonds any lien on the same or any part thereof; and these defendants deny that they or their predecessors in said internal improvement fund trust ever intrusted the said George W. Swepson with said balance of purchase money or any part thereof.

And these defendants say that they are informed and believe, and so allege, that there was no obligation of said Swepson accepted by the trustees of the internal improvement fund to purchase for them said outstanding bonds except the aforesaid pretended receipt for said balance of purchase money, which pretended receipt was, as was the pretended payment of said balance of purchase money, a sham and a fraud; and these defendants deny that the complainants are bona-fide purchasers of any of said pretended State bonds without actual notice of any wrong or fraud upon the part of the said former trustees of the internal improvement fund of Florida, or of said Dibble and associates, or of said Swepson.

And these defendants further answering say that if the complainants have any lien, or equity, or claim against said railroads or properties sold, or any right to subject the same to the payment of their bonds, or any equity to payment out of said railroads and property, all of which they deny, and are advised and allege not to be true, it is through the exchange made by the State of Florida with the said Jacksonville, Pensacola and Mobile Railroad Company of said pretended State bonds for bonds of the said Jacksonville, Pensacola and Mobile Railroad Company, under said chapters 1716 and 1731 of the Laws of Florida, and a bona-fide ownership of said pretended State bonds, and is subordinate to the lien and claim of the trustees of the internal-improvement fund for said unpaid balance of purchase money, of which the State of Florida, and Dibble and associates, and Tallahassee Railroad Company, and said Jacksonville, Pensacola and Mobile Railroad Company, and its president, Milton S. Littlefield, and the governor, treasurer, comptroller, attorney-general, and the surveyor-general of said State had 918 notice at the time said exchange was made, which said State, and the Jacksonville, Pensacola and Mobile Railroad Company, Dibble and associates, and Tallahassee Railroad Company, president, governor, and other officers then had full notice of the said fraudulent acts, doings, and pretences as to the payment of said balance of purchase money and delivery of the deeds for and possession of said railroads, and defendants deny that complainants are such bona-fide owners.

And these defendants further say that the notice which the State of Florida, or the officers thereof, authorized or directed by said chapters 1716 and 1731 of the Laws of Florida to issue and exchange bonds of the said State for bonds of the said Jacksonville, Pensacola and Mobile Railroad Company or other company, had of the frauds aforesaid, and the non-payment of said balance of purchase money, and of the fact that large amounts of Pensacola and Georgia and Tallahassee bonds were outstanding and unpaid, and of the said lien for said balance of purchase money, is binding upon, and notice in law and equity to any and all holders and owners of the said pretended State bonds aforesaid; and that they are, by reason of notice to said State and officers, estopped and concluded from denying notice of such frauds and facts.

And these defendants further say they are informed and believe, and thereupon allege, that on the 23d day of June, A. D. 1870, before any of said pretended State bonds had been sold by the Jacksonville, Pensacola and Mobile Railroad Company, and long before the complainants had become owners of the same or any of them, certain owners and holders of the outstanding Pensacola and Georgia and Tallahassee Railroad bonds aforesaid filed, on behalf of themselves and others, in the circuit court of the United States, northern district of Florida, at Tallahassee, in said district, their bill in equity against the Jacksonville, Pensacola and Mobile Railroad Company and the trustees of the internal-improvement fund, and, as these defendants believe, others, in which all the facts and circumstances hereinbefore stated as to the sale of said railroads and properties, and as to said pretended payment of said balance of purchase money, and said fraudulent receipts and said

919 illegal delivery and conveyance of said railroad company, and as to the organization and incorporation of said Dibble and associates and the Jacksonville, Pensacola and Mobile Railroad Company, and the acquisition of said railroads and properties by said Tallahassee, and Jacksonville, Pensacola and Mobile Railroad Companies, and as to the issue of said pretended State bonds, and the notice of the State and its governor and other officers aforesaid, and said Jacksonville, Pensacola and Mobile Railroad Company, Dibble and associates, and Tallahassee Railroad Company, of the non-payment of said purchase money, and of the fraudulent acts and pretenses aforesaid were fully set up, and in which it was prayed that the said railroads and properties sold on the 20th of March, 1869, might be resold, under the order or decree of said court, for the purpose of paying the said balance of purchase money.

These defendants are informed and believe that said suit was pending up to the 24th day of July, A. D. 1872, when Edward C. Anderson et al., holders of some of said outstanding Pensacola and Georgia and Tallahassee Railroad bonds, filed in the same United States circuit court, at Jacksonville, in said northern district of Florida, against the said Jacksonville, Pensacola and Mobile Railroad Company, the trustees of the internal improvement fund, and others, a similar bill in equity, praying that said railroads and properties be sold to pay the outstanding Pensacola and Georgia and Tallahassee Railroad bonds, whereupon the said former bill, as defendants are informed and believe, was dismissed; and defendants further say, that in said last-stated cause, on or about the 19th day of December, A. D. 1872, a final decree was made and entered against the Jacksonville, Pensacola and Mobile Railroad Company, in favor of the complainants therein (the suit having been dismissed as to the trustees of the internal improvement fund), for the sale of said railroads and properties, on account of the non-payment of said balance of purchase money, and for the proceeds of sale to be applied to the payment of the outstanding Pensacola and Georgia and Tallahassee Railroad bonds; and defendants say that the said suits and decree have been, from the commencement of the same, and still are,
full notice to all the world of the paramount lien of said bal-
920 ance of purchase money on said railroads and properties for the
payment of the same.

And defendants further say that the said decree still remains in full force and effect, except that in a certain cause in the Supreme Court of the United States, wherein the State of Florida, sueing in its own behalf and in behalf of the trustees of the internal improvement fund of Florida, was complainant, and Edward C. Anderson and others, the complainants in said decree rendered in the United States circuit court aforesaid, holders and owners of Pensacola and Georgia and Tallahassee Railroad Company bonds, and others, were defendants, the complainants in said United States circuit court decree were enjoined from selling, or procuring to be sold, said railroads and property under, or by virtue of, said decree, or any decree supplementary thereto in the same cause, the said United States Supreme Court decree providing that nothing therein should hinder the right of said Anderson and others to demand and receive from the State of Florida, or the trustees of the internal improvement fund, out of the proceeds of said property, the principal and interest of their Pensacola and Georgia and Tallahassee Railroad bonds, which might be due, or as it might become due, or out of the sinking fund provided by said internal improvement fund, to be collected out of said roads, the principal of said bonds due and as it might become due, or out of the internal improvement fund, the interest on said bonds, as the same might become due; and providing that it, the said United States Supreme Court decree, should not affect the validity of said United States circuit court decree, except as above expressed; and these defendants pray full reference to the said decree of the United States Supreme Court, and the opinion of the court in said cause, as explaining fully the meaning and intent of said decree. And these defendants further say that in said cause in the United States Supreme Court, the same being a case of original jurisdiction, Gideon Maria Boissevain, Adrian Isaac Milders, Adrian Stoop, Joseph Zadocks, and Dr. Nicholas Jacob den Tex were defendants, and that they filed answer in said cause, and a copy of the judgment therein is filed herewith, marked K, and prayed to be taken as a part hereof.

921 These defendants, further answering, say, that in said cause referred to, in the eighteenth, nineteenth, and twentieth paragraphs of complainants' bill, the same having been commenced on the 20th of March, A. D. 1872, in the circuit court, fourth circuit of Florida, for Duval County, and the State of Florida, and the trustees of the internal improvement fund being plaintiffs therein, the said trustees sueing to recover the balance of said purchase money and interest, in which suits all the facts and circumstances of said fraudulent and pretended payment of the said balance of purchase money, and illegal delivery of the deeds for and the possession of said roads, and other matters and things aforesaid, are fully set forth, a judgment or decree was, on the 4th day of April, A. D, 1874, rendered and entered against the Jacksonville, Pensacola and Mobile Railroad Company in favor of the board of trustees of the internal improvement fund for the balance of said purchase money, the amount of said judgment being $661,845.55, with costs and disbursements; and in and by said judgment, which was rendered in the said suit, in Duval circuit court, the same being an action commenced under the "Code of Procedure," it was adjudged that the aforesaid sum of money should be held and deemed, as against the said Jacksonville, Pensacola and Mobile Railroad Company and all persons or bodies corporate claiming by, or through, or under said company, a lien upon the real, personal and mixed property owned by said company on the 20th day of March, A. D. 1872, the day of the commencement of this suit, and a lien upon all the railroads situate between Lake City, in Columbia County, and Quincy, in Gadsden County, and the branches to St. Marks and Monticello, and upon the iron, road-bed and depots thereon, or connected therewith, from the 20th day of March, A. D. 1869; and defendants say said decree is still of full force and effect.

These defendants, further answering, say, that a regular record has, since the issuance of the Pensacola and Georgia and Tallahassee Railroad bonds, been kept, according to law, in the office of the comptroller of said State of Florida, at the capital of said State, in the city of Tallahassee, which record indicates the number of bonds originally issued by said Pensacola and Georgia and Tallahassee Rail-
922 road Companies, the number which has been paid or cancelled from time to time, and the number still outstanding; and that the same, at the time of the passage of said chapter 1731 of the Laws of Florida, and of the issuance of said pretended State bonds, showed and has ever since shown that the aforesaid outstanding Pensacola and Georgia and Tallahassee Railroad bonds were still outstanding; and respondents say that the same was, and is, a public record, and full notice to all the world that said bonds were, and are, still outstanding and unpaid.

And these defendants, further answering, say, they are informed and believe, and so allege, that no advantage or precedence can be claimed by the complainants on account of the trustees of the internal improvement fund having failed to sue the said Swepson, on account of said receipt, or to recover of him an amount of money which he never received; and they further say, as they have before stated, that the only obligation of said Swepson ever held by them was the receipt aforesaid; and that he never received any of said balance of purchase money from said trustees, nor from any one, and the trustees never had said balance.

And these defendants say that the holders of the Pensacola and Georgia and Tallahassee Railroad bonds have not been guilty of any laches, negligence or neglect in attempting to prevent the issue of bonds by the State of Florida, or by the Jacksonville, Pensacola and Mobile Railroad Company in exchange for such pretended State bonds, under said laws of the State of Florida last referred to, to-wit, chapters 1716 and 1731, aforesaid; nor are they or the trustees of the internal improvement fund estopped by lapse of time or otherwise from asserting and maintaining in a court of equity any of the rights and remedies to which they would be entitled under all and singular the circumstances of the case had the same occurred or transpired within a short time.

These defendants are informed and believe, and so allege, that not only did the holders of said Pensacola and Georgia and Tallahassee bonds, through their attorney, Col. Theodore W. Brevard, address the governor of Florida, Harrison Reed, on the 21st day of February, A. D. 1870, before there had been any exchange of bonds
923 under said laws of Florida last-mentioned, the letter hereinbefore referred to and hereto annexed, marked I, and prayed to be taken with the reply thereto, or endorsement thereon by said governor, as a part of this answer, the same as if fully set forth herein, and obtain from him a concurrence in the views expressed in said letter and the promise that no bonds should be issued under said last-named laws, as indicated by said reply thereto or endorsement thereon of said governor; but, as is shown by said letter and as these defendants allege to be true, this course was pursued in order to avoid the expense and trouble and delays of a suit in equity, which the holders of said bonds, represented by said Colonel Brevard, had then determined to bring for the purpose of enjoining the issue of any bonds by the State under said acts; and these defendants further say they are informed and believe, and therefore allege that the holders of said Pensacola and Georgia and Tallahassee Railroad bonds were careful and active in causing it to be made known to the members of the senate and assembly constituting the legislature of Florida which passed said acts, that the said balance of purchase money had not been paid, and that there was still a lien on the said railroads and properties for the same, and that said Pensacola and Georgia and Tallahassee Railroad bonds were still outstanding and unpaid, and not only did the said bondholders thus endeavor to prevent the issue of said State bonds, and the consequent issue and exchange therefor of the bonds of the Jacksonville, Pensacola and Mobile Railroad Company; but they, as these defendants are informed and believe, and so allege, although they were in no wise bound or called upon to do so, also made efforts to put all persons who might contemplate the purchase of said State bonds from the Jacksonville, Pensacola and Mobile Railroad Company, or the negotiation thereof for said company, and even the public generally, upon notice and inquiry, and thus to prevent the consummation of fraud, and defendants annex hereto, marked M, a letter prepared and written by T. W. Brevard, aforesaid,

as counsel for holders of said Pensacola and Georgia and Tallahassee Railroad bonds, under date of June 21st, 1871, and pray to be taken as a part hereof, a copy of which was forwarded by the writer thereof 924 to the "chairman," to whom it is addressed, and to John Collinson, of London, England, a banker, and who was negotiating the sale of said bonds for said Jacksonville, Pensacola and Mobile Railroad Company, or a purchase of the same himself, copies of which were also distributed among and sent by mail and otherwise by said Brevard to different prominent bankers, including said S. W. Hopkins & Co., in this country, and in Europe to all persons who were at all likely or supposed to probably have anything to do with the sale or negotiation of said bonds.

And these defendants further say, that they are informed and believe, and so allege, that in the summer of 1871, the said John Collinson was in Florida, and the said Brevard, attorney aforesaid, as these defendants are informed and believe, notified him of the fact that said balance of purchase money still remained unpaid, and that the said Pensacola and Georgia and Tallahassee Railroad bonds were still outstanding and unpaid, and of the improper and illegal issue of State bonds to the Jacksonville, Pensacola and Mobile Railroad Company, and that there was a lien on said railroads and property superior to all others for the payment of said balance of purchase money, and in the winter of the year 1870, or about that time, and about the time the said last-named act of the legislature of Florida was passed, to wit, chapter 1731, said Brevard gave notice of the same facts to one Collins, and agent and representative of the firm of S. W. Hopkins & Co., of New York, who were prominent in the negotiation and sale of said bonds.

And these defendants further answering say, that on or about the 8th day of February, A. D. 1871, one E. M. L'Engle, of Jacksonville, Florida, addressed a letter, of which a copy is hereto annexed, marked N, and prayed to be taken as a part hereof, to the firm of Holje & Boissevain, bankers, at Amsterdam, Holland, they being the banking-house at which, as defendants are informed, and believe and allege, the whole, or nearly all, of the said State bonds owned or held by the subjects of the King of the Netherlands were sold or negotiated; and defendants are informed and believe that the contents thereof were known to said Holje, Boissevain and Collins before the negotiation of any of said bonds was ever completed.

These defendants, further answering, say, that they are ad- 925 vised and believe that the statements in complainants' bill to the effect that the Pensacola and Georgia and Tallahassee Railroad bonds never constituted a lien on the roads owned by said companies for any sum of money other than the principal of such bonds, is not true, and they deny the same; and allege, as they are advised and believe, that said bonds are a lien on said roads and properties for both principal and interest, and they deny that the complainants have any right in law or in equity to insist or require that the holders of such bonds should be made to resort to the Internal Improvement Fund for the payment of either principal or interest, or exhaust the same before resorting to said railroads for payment; but say that the said railroads and properties so sold are primarily liable for payment on said bonds before the said fund, which is not liable at all for the payment of any principal on said bonds.

These defendants further say that even if the trustees of the internal improvement fund have the power, or the Pensacola and Georgia and Tallahassee bondholders had the right, to have the sinking fund, which was provided for by the said internal improvement law, collected and invested in the manner specified in said act, or even, if in case of any loss of any part thereof by the acts of the trustees, that the bondholders had a remedy against the trustees and also a right to have the loss made good to them out of the proceeds of the sale of the land conveyed to the trustees by the State; that these are no reasons why the complainants should claim a first lien on said railroad or seek to defeat or delay these defendants in collecting the said balance of purchase money; and defendants deny that the complainants have any right in law or equity to have said Pensacola and Georgia and Tallahassee bondholders restricted to such sinking fund or any remedies which may exist for the collection and restoration thereof.

And these defendants, further answering, say that since the filing of the bill of complaint said railroads, from Lake City to Chattahooche River, and from Tallahassee to St. Mark's, and the branch road to Monticello, have been taken out of the possession of the governor of Florida and placed in the possession of a receiver appointed by an order made in this cause and are now in said receiver's possession and con-
926 trol; and that the advertisement of said railroads for sale by the governor has been discontinued. And that shortly prior to the filing of this bill, or soon thereafter, an injunction restraining the sale of said roads by the governor was granted by an order made in a certain cause in the circuit court of the United States, northern district of Florida, wherein the Western Division of the Western North Carolina Railroad Company was complainant, and the Jacksonville, Pensacola and Mobile Rail- Company, these defendants and others, are defendants, which injunction is still of full force and effect.

These defendants deny that there was any error in the governor's advertising said roads to be sold subject to the lien for said purchase money, but say that such lien exists and is superior to the lien of th complainants, if they have any, which these defendants deny.

These defendants, answering the sixteenth paragraph or subdivision of complainants' bill, say that it is for the owners of the Pensacola and Georgia and Tallahassee Railroad bonds and coupons thereon or thereto appertaining, to decide whether or not they will join in the plan and arrangement therein referred to and annexed to said bill, marked E, and upon their agreeing to the decree proposed therein and upon the outstanding Pensacola and Georgia and Tallahassee bonds and all coupons and claims for interest on said bonds and coupons being surrendered to this board for cancellation, these defendants will agree to the same; but until they do so or advise these defendants of their intention to do so, these defendants feel it their duty to defend this suit in the manner indicated by this answer, and will so defend and resist complainants' claim, all of which defendants believe to be untenable and without foundation in law.

And these defendants, further answering, say that the moneys in the hands of the treasurer of the State of Florida paid to the register of the U. S. Supreme Court by Robert Walker, the receiver in said cause of the State of Florida vs. E. C. Anderson et als., in the United States Supreme Court, are, as defendants are informed and believe, the earnings and fruits of the said railroad sold on the 20th day of March aforesaid, that the same were turned over to said treasurer under an order
927 of said court made in said cause; a copy of which, with explanatory opinion of said court annexed thereto, is filed herewith, marked O, and prayed to be taken as a part hereof. That the said order directs that the same shall be disposed of according to the trusts that

have been or may be declared of and concerning the same by the supreme or other courts of Florida having jurisdiction of the premises.

And these defendants, further answering, say that in February last one H. Bisbee, jr., who was attorney and solicitor for said State of Florida, filed a bill in chancery in the circuit court of the second judicial circuit of Florida, in and for the county of Leon, against Geo. F. Drew, the governor of Florida, and these defendants, the trustees of the internal improvement fund, and Walter Gwynn, treasurer of Florida, claiming that he has a lien on said funds and should be paid out of the same, for a claim of about twenty-four thousand dollars for fees as attorney and solicitor for the State, or the State and trustees of the internal improvement fund, for services rendered in said causes in the United States Supreme Court and circuit courts aforesaid, and in a case in the circuit court of the fourth judicial circuit of Florida, in and for Duval County, wherein the State and the trustees of the internal improvement fund were complainants, and the Jacksonville, Pensacola & Mobile Railroad Company et als., defendants, involving said railroads, and for services and advice, and expenses and disbursements rendered, given, incurred, and paid; that said cause is at issue and testimony is being taken therein; that on or about the 29th day of May, A. D. 1877, an order was made in said cause by the honorable P. W. White, judge, ordering and directing the said Gwynn, treasurer, not to pay out or part with said funds, or any of the same, until the further order of the said court; which order is still of full force and effect, except as modified by a subsequent order of said court permitting said Gwynn to pay out of said fund "the necessary costs" for procuring records for evidence in defending the same against the said suit, and the suit of one D. P. Holland, which is a suit in chancery commenced prior to this suit, in said Leon circuit court, against said governor and trustees of the internal improve- 928 ment fund and treasurer of Florida, in which said Holland claims that the said funds should be applied to the payment of a judgment, which he claims to have obtained about December, A. D. 1872, against the Jacksonville, Pensacola & Mobile Railroad Company, for sixty-odd thousand dollars, for professional services claimed by him to have been rendered said company. This suit brought by D. P. Holland is also at issue, and will very soon be ready for trial. And these defendants insist that, as said Leon circuit court thus first obtained jurisdiction of said fund, that this court should not make any orders as to or concerning the said fund, but that the complainants should be required to go into the said Leon circuit court and become parties to said suits.

And defendants further say that although they deny that said Bisbee and Holland have any claim on said funds, they insist that no orders shall be made as to said funds without or until said Holland and Bisbee have been made parties herein and brought into this suit by due process of law.

And defendants further say that if this honorable court should, under any circumstances, proceed to adjudicate and decide as to said fund, that as the same are the fruits of said railroads so sold, and as said railroads are now worth in value very much less than said balance of purchase money, principal and interest, and will when sold not sell for enough, by a larger amount than said funds, to pay said balance of purchase money and interest, and as there is a large amount of principal outstanding of said Tallahassee Railroad bonds now past due, all of which they charge to be true, the same should be paid to these defendants to be credited on said balance of purchase money, which is the first lien on said railroads and property, sold as aforesaid. Such, these defendants submit, was the purpose and intention of said United States Supreme Court, as will appear from said order and explanatory opinion aforesaid.

These defendants, further answering, say that they have no knowledge, nor have they any information, except such as is derived from the bill of complaint, whether or not said Vose, or any of said defendants, have purchased, within a short time, for purposes of speculation and litigation, any of said Pensacola and Georgia and Tallahassee Railroad bonds, or whether or not they had notice at the time of their
929 purchase of any of complainants' pretended rights or claims; and these defendants demand that complainants be required to make strict and full proof of their said allegation. And defendants say that even if said Vose and others have so purchased any of said bonds, that the lien of defendants on said railroads and properties is not thereby affected or impaired.

These defendants, further answering, say that they have no knowledge, nor have they sufficient information to enable them to form a belief as to what the agreement referred to in the twenty-fifth paragraph of complainants' bill as being made between M. S. Littlefield and George W. Swepson was, or the effect thereof; and these defendants pray that the complainants may be required to make full proof of its terms and effect. And these defendants say, that if there was any agreement between the said Swepson and Littlefield, whereby said Littlefield was to take up or purchase any Pensacola and Georgia and Tallahassee Railroad Companies' bonds, that the trustees of the internal improvement fund were and are not privy to the same. These defendants have no knowledge as to whether the one hundred and three bonds mentioned in said paragraph were paid for out of the money for which said State bonds were sold, but are informed and believe that some, at least, if not all, of them were paid for out of such money.

And these defendants, further answering, say that the decision of the supreme court of Florida referred to in the nineteenth paragraph of complainants' bill is not binding upon these defendants; nor are these defendants in any manner concluded by the same, neither these defendants nor their predecessors being parties thereto; nor do these defendants admit that the State of Florida, or the complainants, or any one else, has any lien on said railroads and property for the payment of said pretended State bonds, but they deny that there is any such lien, and say that these defendants have the first lien on said roads and properties; that in said decision it is expressly stated that no question of the priority of the lien claimed by the State of Florida in said cause, and that claimed by these defendants herein, is decided or passed upon.

These defendants further say, that neither the complainants in
930 this cause nor any one claiming to be a holder of any of said pretended State bonds was a party to said cause referred to in said XIXth paragraph of complainants' bill, nor have complainants any right in law to plead or rely upon the said judgment of said supreme court, nor do defendants admit that such judgment has the meaning or effect claimed for it by complainants, and defendants pray reference to the same for ascertaining the true meaning and effect of the same.

And these defendants, having fully answered, pray to be hence dismissed, with their reasonable costs.

GEO. P. RANEY,
D. S. WALKER,
Sols. & of Counsel for Trustees I. I. Fund, Fla.

Personally appeared Geo. F. Drew, governor, Columbus Drew, comptroller, Walter Gwynn, treasurer, Hugh A. Corley, commissioner of lands and immigration, and Geo. P. Raney, attorney-general of Florida, and they being duly sworn say that the above answer is true, except as to those matters stated on information and belief, and these they believe to be true.

GEO. P. RANEY,
Att'y Gen'l Fla.
WALTER GWYNN,
Treasurer.
C. DREW, *Comptroller.*
HUGH A. CORLEY,
Commissioner of Lands & Immigration.

Sworn to and subscribed before me this 22nd day of December, A. D. 1877.

SEAL U. S. CIRCUIT COURT, NORTHERN DIST. OF FLORIDA. }
CHAS. H. FOSTER,
Clerk U. S. Circuit Court,
Northern District of Florida.

931 EXHIBIT B.

TALLAHASSEE, FLA., *March 29th*, 1869.

The board met. Present, R. H. Gamble, comp.; A. R. Meek, att'y-general; S. B. Conover, treas.; A. S. Adams, com. im.; F. W. Webster, sur. gen'l.

The following resolution was adopted unanimously:

On motion, it was

Resolved, That *that* the attorney-general be requested and directed to prepare a deed of conveyance of the P. & G. Railroad and the Tallahassee Railroad to the purchasers at the public outcry of March 20th, 1869, and submit the same when prepared to the consideration of this board, and when such conveyance receives the approbation of this board and is executed by them that the attorney-general & comptroller be appointed special agents of this board to proceed with such deed to the city of New York then to consummate the purchase and sale of the roads, and when they have received the amount payable by the purchasers that they are to deliver to said purchasers such deed of conveyance, and in his discretion the attorney-general is authorized to act upon conference and in concurrence with Mr. Papy, the att'y for a portion of the purchasers in drawing said deed.

(Endorsed:) Resolution for prepa'tion, of deeds, &c., by att'y-general.
J. Fred. Shutte et al. vs. Western Div. Western N. C. R. Co. et als.
932 Exhibit B to answer of trustees of internal improvement fund.

EXHIBIT C.

TALLAHASSEE, FLA., *April* 7, 1869.

The board met. Present, Harrison Reed, governor; A. R. Meek, att'y-general.; J. S. Adams, com. im.; Frank W. Webster, sur. gen l.

The following resolution was offered and adopted:

Resolved, that the deeds of the Tallahassee & P. & G. Railroads prepared by the attorney-general be executed by the members of this board.

The board then adjourned.

FRANK W. WEBSTER, *S'c'y.*

(Endorsed:) Resolved, that the deeds to the P. & G. & Tallahassee

R. R. be executed. J. Fred. Schute et al. vs. West'n Div. West. N. C. R. R. Co. et als. Exhibit C to answer of trustees of internal imp. fund

933 **EXHIBIT D.**

Whereas, by an act of the legislative council of the Territory of Florida, approved February tenth, A. D. 1834, entitled "An act to incorporate the Tallahassee Railroad Company," the said railroad was duly incorporated;

And whereas, the said railroad company duly and fully accepted the provisions of an act of the general assembly of the State of Florida entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, A. D. 1855, and in writing presented December nineteenth, A. D. 1855, notified the trustees of the internal improvement fund, created by said last-mentioned act, of said acceptance;

And whereas, the third section of said act to provide for and encourage a liberal system of internal improvements, provides, among other things, "that all bonds issued by any railroad company, under the provisions of this act, shall be a first lien or mortgage on the road-bed, iron, equipments, workshops, depots and franchise, and upon a failure on the part of any railroad company, accepting the provisions of this act, to provide the interest, as herein provided, it shall be the duty of the trustees, after the expiration of thirty days from said default or refusal, to take possession of said railroad and all its property of every kind and advertise the same for sale at public auction to the highest bidder, either for cash or additional approved security, as they may deem most advantageous for the interest of the internal improvement fund and the bondholders;"

And whereas the said Tallahassee Railroad Company, on the sixth day of February, A. D. 1869, and for a long time previous thereto, to wit, more than thirty days, had failed to provide the interest on the bonds issued by said company, and the sum of one per cent. per annum, as a sinking fund, as provided by said act to provide for and encourage a liberal system of internal improvements, and had thereby incurred the liability of being sold by the trustees of said internal improvement fund, under the requirements of said act;

And whereas the trustees of said internal improvement fund, at *at* a meeting of said trustees, held at the capital of said State, at the city of Tallahassee, on the sixth day of February, A. D. 1869, at which meeting were present His Excellency Harrison Reed, governor; R. H. Gamble, comptroller; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general; and A. R. Meek, attorney-general of said State, did resolve that: Whereas, the Tallahassee Railroad Company has failed to provide the interest on the bonds issued by said company and the sum of one per cent. per annum, as a sinking fund, as required by said act to provide for and encourage a liberal system of internal improvements, that the said trustees, by virtue of and in compliance with the provisions of said act, take possession of said road and all its property of every kind, and advertise the same to be sold at public auction to the highest bidder, for cash, or additional approved security, at the office of said company, in Tallahassee, aforesaid, on Saturday, 934 the twentieth day of March, A. D. 1869, and that the notice of said sale be published forthwith until day of sale in the Journal of Commerce and the New York Herald, published in New York; the Savannah Republican, published in Savannah, Georgia; the Florida

Union, published in Jacksonville, in this State, and all the papers in Tallahassee, aforesaid;

And whereas, in compliance with said resolution, said trustees did take possession of said road and all its property of every kind, and immediately after the adoption of said resolution advertise the same for sale at public auction, to the highest bidder, for cash, at the time and place and in the newspapers named, and in accordance with the requirements of said act, and pursuant to their said resolution, did proceed and offer said Tallahassee Railroad and all its property of every kind, including road-bed, iron, equipments, workshops, depots and franchise, for sale at public auction to the highest bidder, for cash; subject, however, to the condition that the purchaser shall be bound to continue the payment of one-half of one per cent., semi-annually, to the sinking fund, until all the outstanding bonds are discharged, under the penalty of an amendment of the contract of purchase and the forfeiture of the purchase money paid in, and all other conditions of said act;

And whereas, at said sale, F. Dibble and associates were the highest and best bidders; having bid the sum of one hundred and ninety-five thousand dollars for the said Tallahassee Railroad and its property of every kind, including the road-bed, iron, equipments, workshops, depots and franchise, the said road was knocked off to said F. Dibble and associates, as the highest bidders therefor;

And whereas said F. Dibble and his associates requested same trustees to execute to said F. Dibble, on behalf of himself and his associates, a deed of said road and all its property as aforesaid, agreeing, upon the execution and delivery of said deed, to pay the purchase price bid:

Now, therefore, this indenture, made and entered into between Harrison Reed, governor of the State of Florida; R. H. Gamble, comptroller; S. B. Conover, State treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general of said State, constituting, ex-officio, the trustees of the internal improvement fund of the State of Florida, under and by virtue of said act to provide for and encourage a liberal system of internal improvement in this State, and subsequent acts of the general assembly of this State, in reference thereto, party of the first part, and F. Dibble, on behalf of himself and his associates, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the premises, as also of the said sum of one hundred and ninety-five thousand dollars, to them in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened and confirmed, and do by these presents, grant, bargain, sell, alien, confirm and deliver unto the said party of the second part, the said Tallahassee Railroad, its iron, equipments, workshops, depots and franchise, and all its property of every kind subject to sale under the provisions of this act, to have and to hold the same, with all the rights,
935 privileges and appurtenances thereto belonging or in any wise appertaining, to the said party of the second part, their successors or assigns, forever, in as full and ample a manner as the said trustees of said internal improvement fund can convey the same, subject, however, to the conditions and provisions stated and made known at said sale as above set forth; and the said party of the first part will, from time to time, and at all times hereafter, upon the reasonable request of the said party of the second part, their successors or assigns, make and execute all such further deeds, if any, necessary for the perfect and absolute assurance and confirmation of the said railroad and other property

hereby conveyed or intended to be conveyed unto said party of the second part, their successors or assigns.

In testimony whereof, the said trustees of the internal improvement fund of the State of Florida, party of the first part, have hereunto set their hands and seals, this eighth day of April, anno Domini one thousand eight hundred and sixty-nine.

HARRISON REED, *Governor*. [SEAL.]
R. H. GAMBLE, *Comptroller*. [SEAL.]
S. B. CONOVER, *Treasurer*. [SEAL.]
J. S. ADAMS, *Com. of Immigration*. [SEAL.]
FRANK W. WEBSTER, *Surv'r Gen*. [SEAL.]
A. R. MEEK, *Attorney-General*. [SEAL.]

Signed, sealed, and delivered in presence of—
GEO. W. DRIGGS.
W. M. MCINTOSH.

Be it remembered that on this eighth day of April, A. D. 1869, personally appeared before me Harrison Reed, governor; R. H. Gamble, comptroller; S. B. Conover, treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general; and A. R. Meek, attorney-general, who each being thereunto examined, acknowledged that they executed the foregoing deed of conveyance as and for their act and deed and for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and private seal the day and year last aforesaid.

[SEAL.] JAMES D. WESTCOTT, JR.,
Associate Justice Supreme Court of Florida.

STATE OF FLORIDA,
Leon County:

Be it remembered that on this 23d day of October, A. D. 1869, the foregoing instrument of writing was presented to the subscriber, clerk of the circuit court in and for the county and State aforesaid, for record, and the same being properly authenticated, I have admitted the same to record.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court the day and year last above written.

[SEAL.] C. H. EDWARDS, *Clerk*,
By EDW. M. WEST, *D. C.*

935½ STATE OF FLORIDA,
County of Duval, ss:

Be it remembered that on this 22d day of April, A. D. 1871, I, Chas. L. Mather, clerk of the circuit court in and for said county, have duly recorded the foregoing deed in the public records of said county.

In witness whereof, I have hereunto set my hand and the seal of said court this day and year above written.

[SEAL.] CHAS. L. MATHER, *Clerk*,
By F. B. KNAPP, *D. C.*

936 SCHEDULE 2.

Whereas, by an act of the general assembly of the State of Florida, entitled "An act to incorporate the Pensacola and Georgia Railroad

Company," approved January the eighth, A. D. 1853, the said railroad company was duly incorporated;

And whereas the said railroad company duly and fully accepted the provisions of an act of said general assembly, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January sixth, A. D. 1855, and in writing, dated January twelfth, A. D. 1855, notified the trustees of the internal improvement fund, created under said last mentioned act, of said acceptance;

And whereas the third section of said act to provide for and encourage a liberal system of internal improvements in this State provides, among other things, "that all bonds issued by any railroad company, under the provisions of this act, shall be the first lien or mortgage on the road-bed, iron, equipments, workshops, depots, and franchise, and upon the failure of any railroad company accepting the provisions of this act to provide the interest, as herein provided, on the bonds issued by said company, and the sum of one per cent. per annum as a sinking fund, as herein provided, it shall be the duties of the trustees, after the expiration of thirty days from said default or refusal, to take possession of said railroad and all its property of every kind and advertise the same for sale at public auction to the highest bidder, either for cash or additional security, as they may think most advantageous for the interest of the internal improvement fund and the bondholders;"

And whereas the said Pensacola & Georgia Railroad Company, on the sixth of February, A. D. 1869, and for a long time previous thereto, to wit, more than thirty days, had failed to provide the interest on the bonds issued by said company, and the sum of one per cent. per annum as a sinking fund, as provided by said act to provide for and encourage a liberal system of internal improvements in this State, and had thereby incurred the liability of being sold by the trustees of said internal improvement fund, under the requirements of said act;

And whereas the trustees of said internal improvement fund, at a meeting of said trustees, held at the capital of said State, at the city of Tallahassee, on the sixth day of February, A. D. 1869, at which meeting were present His Excellency Harrison Reed, governor; R. H. Gamble, comptroller; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general; and A. R. Meek, attorney-general of said State, did resolve that: Whereas, the Pensacola & Georgia Railroad Company had failed to provide the interest on the bonds issued by said company, and the sinking fund of one per cent. per annum, as required by said act, to provide for and encourage a liberal system of internal improvements in this State, that the said trustees, by virtue of and in compliance with the provisions of said act, take possession of said road and all its property of every kind, and advertise the same to be sold at public auction to the highest bidder, for cash or additional approved security, at the office of said company, in Tallahassee aforesaid, on
937 Saturday, the twentieth day of March, A. D. 1869, and that the notice of said sale be published forthwith until day of sale in the Journal of Commerce and the New York Herald, published in New York; the Savannah Republican, published in Savannah, Georgia; the Florida Union, published in this State, and all the papers in Tallahassee aforesaid;

And whereas, in compliance with said resolution, said trustees did take possession of said road and all its property of every kind, and immediately after the adoption of said resolution and until said day of sale, advertised the same for sale at public auction to the highest bidder for cash, at the time and place and in the newspapers named, and in compliance with the requirements of said act, and pursuant to said resolution, did proceed and offer said Pensacola & Georgia Railroad, its road-bed, iron, equipments, workshops, depots, and franchise, and all the property of said railroad, subject to said sale under said act, at public auction to the highest bidder therefor, for cash, subject, however, to the condition that the purchaser shall be bound to continue the payment of one-half of one per cent. semi-annually, to the sinking fund, until all the outstanding bonds of said company are discharged, under the penalty of an amendment of the contract of purchase and the forfeiture of the purchase money paid in, and all other conditions of said act to provide for and encourage a liberal system of internal improvements in this State; and whereas at said sale F. Dibble and associates were the highest and best bidders, having bid the sum of one million two hundred and twenty thousand dollars for the said Pensacola & Georgia Railroad, its road-bed, iron, equipment, workshops, depots, and franchise, and all the property of said railroad subject to said sale under said act were knocked off to said F. Dibble and his associates;

And whereas F. Dibble and his associates have requested said trustees to execute to said F. Dibble on behalf of himself and his associates a deed of said railroad and other property as aforesaid, agreeing, upon the execution and delivery of said deed, to pay the said purchase-money bid:

Now, therefore, this indenture, made and entered into between Harrison Reed, governor of the State of Florida; R. H. Gamble, comptroller; S. B. Conover, State treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general of said State, constituting, ex officio, the trustees of the internal improvement fund of the State of Florida, under and by virtue of said act to provide for and encourage a liberal system of internal improvement in this State, and subsequent acts of the general assembly in relation thereto, party of the first part, and F. Dibble, on behalf of himself and his associates, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the premises, as also of the said sum of one million two hundred and twenty thousand dollars to them in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, and confirmed, and do by these presents grant, bargain, sell, alien, confirm and deliver unto the said party of the second part, the said Pensacola & Georgia Railroad, its iron, equipments, workshops, depots, and franchise, and all its property of every kind subject
938 to sale under the provisions of said act; to have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, to said party of the second part, their successors or assigns forever, in as full and ample manner as the said trustees of said internal improvement fund can convey the same, and the said party of the first part will, from time to time, and at all times hereafter, upon the reasonable request of the said party of the second part, their successors or assigns, make and execute all such further deeds necessary, if any, for the perfect and absolute assurance and confirmation of the said railroad and other property hereby conveyed or intended to be conveyed unto said party of the second part, their successors or assigns.

In testimony whereof, the said trustees of the internal improvement fund of the State of Florida, party of the first part, have hereunto set their hands and seals, this eighth day of April, anno Domini one thousand eight hundred and sixty-nine. (The words "to wit, more than thirty days," interlined before signature in the .)

HARRISON REED, *Governor.* [SEAL.]
R. H. GAMBLE, *Comptroller.* [SEAL.]
S. B. CONOVER, *Treasurer.* [SEAL.]
J. S. ADAMS, *Com. of Immigration.* [SEAL.]
FRANK W. WEBSTER, *Surv. Gen.* [SEAL.]
A. R. MEEK, *Attorney-General.* [SEAL.]

Signed, sealed and delivered in presence of—
GEO. W. DRIGGS.
W. M. MCINTOSH.

Be it remembered, that on this eighth day of April, A. D. 1869, personally appeared before me Harrison Reed, governor; R. H. Gamble, comptroller; S. B. Conover, treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general, who each being thereunto examined, acknowledged that they executed the foregoing deed of conveyance as and for their deed and act for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and private seal the day and year last aforesaid.

JAMES D. WESTCOTT, JR.,
Associate Justice Supreme Court of Florida.

STATE OF FLORIDA,
County of Duval, ss:

Be it remembered, that on the 22d day of April, A. D. 1871, I, Chas. L. Mather, clerk of the circuit court and for said county, have duly recorded the foregoing deed in the public records of said county.

In witness, I have hereunto set my hand and the *of seal* court this day and year above written.

CHAS. L. MATHER, *Clerk,*
By F. B. KNAPP, *D. C.*

STATE OF FLORIDA,
Leon County, ss:

Be it remembered that on this 22d day of October, A. D. 1869, 939 the foregoing instrument of writing was presented to the subscriber, clerk of the circuit court in and for said county and State aforesaid, for record, the same being duly authenticated, I have admitted the same to record.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court the day and year last above written.

[SEAL.]
C. H. EDWARDS, *Clerk,*
By EDW. M. WEST, *D. C.*

940 EXHIBIT E.

TALLAHASSEE, *April 8th*, 1869.

The board met, all members present.

Resolved by the trustees of the internal improvement fund of the State of Florida, That Calvin B. Dibble, of the firm of Dibble, 941 Worth & Co., of New York City, and Geo. W. Swepson, of Raleigh, N. C., be, & they are hereby, appointed confidential agents of said trustees with authority in each to take up the outstanding 1st mortgage bonds of the Pensacola & Georgia and the Tallahassee Railroad Companies, and that the attorney-general and comptroller are hereby directed to turn over to said Dibble and Swepson, or either of them, all moneys that may be received by them in behalf of said trustees for said roads for the purposes above set forth. The board then adjourned.

FRANK W. WEBSTER,
Secretary.

(Endorsed:) Resolution appointing Dibble & Swepson confidential agents of the board of trustees. J. Fred Schutte et als. vs. West'n Div. West'n N. C. R. R. Co. et als. Exhibit E to answer of trustees of internal improvement fund.

EXHIBIT F.

TALLAHASSEE, *June 17th*, 1869.

The board met pursuant to call. Present, R. H. Gamble, comptroller; A. R. Meek, att'y-general; J. S. Adams, com. im'i.; Frank W. Webster, sur.-gen'l.

942 J. S. Adams was chosen chairman. The report of Mess. Gamble & Meek, as agents of the board (see resolution of March 29, 1869), was presented, and on motion unanimously accepted and their action approved. (See page 401.)

The report was as follows:

To the trustees of the internal improvement fund of the State of Florida:

By resolution of your board adopted March 29, 1869, we were directed and impowered to proceed to New York City with the deeds of the Pensacola & Georgia and Tallahassee Railroads executed by you to F. Dibble on behalf of himself and his associates, there present said deeds and receive payment for the roads conveyed by said deeds. We beg to report that the duty devolved upon us by said resolution was duly performed; that we received eight hundred and six thousand six hundred dollars first mortgage bonds of the Pensacola & Georgia Railroad Co. at par, and one hundred and fifty-three thousand and seven hundred dollars of first mortgage bonds of the Tallahassee Railroad Co. at between 94 & 95 (ninety-four and ninety-five) cents on the dollar, and that the difference between the *same* represented by these bonds and the sum bid for said roads was turned over by us as required by a resolution of your board to George W. Swepson, as confidential agent of said board, to take up the outstanding bonds of said companies. The receipt of Mr. Swepson for four hundred and seventy-two thousand
943 and sixty-five dollars we have passed over to the of this board.

We respectfully ask for approval of our action.

Tallahassee, Fla., May , 1869.

(S'g'd) A. R. MEEK,
Att'y-Gen'l.

(S'g'd) R. H. GAMBLE,
Comptroller.

(Endorsed:) Report of A. R. Meek, att'y-gen'l, & R. H. Gamble, comptroller, as to delivery of deeds to Dibble & associates. J. Fred. Schutte et al. vs. West'n Div. N. C. R. R. Co. et al. Exhibit F to answer of trustees of internal improvement fund.

*944

EXHIBIT G.

Whereas George W. Swepson has paid to the trustees of the internal improvement fund of the State of Florida, for and on account of F. Dibble and his associates, in payment for the Pensacola & Georgia and the Tallahassee Railroads, sold to said F. Dibble and his associates by said trustees on the 20th day of March last, bonds of said roads amounting at their face to nine hundred and sixty thousand and three hundred ($960,300) dollars, and has also paid to said trustees for the same parties the sum of four hundred and seventy-two thousand and sixty-five ($472,065) dollars, being the full amount due said trustees for said roads;

And whereas said F. Dibble, for and on behalf of himself and his associates, has obligated himself and them, and does hereby obligate himself and them, to cause bonds upon said roads as now completed, as soon as further legislative authority from said State of Florida shall be obtained therefor, to be issued, the same to be secured and in every respect to be as stated in an agreement executed and dated the twenty-sixth day of last March between said F. Dibble, on behalf of himself and his associates, and said George W. Swepson. which bonds, when executed, are to be and shall be placed as provided in said agreement, for the purposes therein set forth, and for the further purpose of enabling said Swepson to be reimbursed the said sum of four hundred and seventy-two thousand and sixty-five dollars:

Now, therefore, this indenture, made and entered into between F. Dibble, on behalf of himself and his associates, party of the first part, and George W. Swepson, party of the second part, witnesseth, that said party of the first part, for and in consideration of the premises, has granted, bargained, conveyed and confirmed unto said party of the second part all that property of whatever name, nature, and description, conveyed to said party of the first part by said trustees of the internal improvement fund of the State of Florida by two separate deeds of conveyance, each dated April 8th, A. D. 1869, which deeds for full description of property are hereby made part and portion of this instrument. The said property hereby conveyed to be held by said party of the second part in trust for the express purpose of enabling said party of the second part—which he hereby agrees and binds himself to do—to convey the same to that incorporation, consisting, or to consist as incorporators, of said F. Dibble and his associates, as soon as said Dibble and his associates shall have granted to them such a similar relief as the legislature of the said State of Florida granted to Wm. E. Jackson and his associates by act for relief of Wm. E. Jackson and his associates, approved July 29th, 1868, and also for the further purpose of securing said party of the second part in all advances made, as specified and agreed upon in the said agreement between these parties, executed and dated March 26th, 1869, and the advancement, as aforesaid, of said sum of four hundred and seventy-two thousand and sixty-five dollars, until such time as said relief shall have been granted, and said party of the second part shall have conveyed said property to said incorporation, as hereinbefore prescribed.

To have and to hold said property to said party of the second part for the purposes and trusts herein declared.

945 In testimony whereof said party of the first part has hereunto signed his name and affixed his seal, this 22d day of April, A. D. 1869.

F. DIBBLE, [s.]
For himself and associates.

Signed, sealed, and delivered in presence of us:
W. J. WOODWARD.
JESSE CARTER.

No stamp being present, Geo. W. Swepson is authorized to stamp.
F. D.

946 EXHIBIT H.

GEORGE W. SCOTT, AND JOSEPH JOHN WILLIAMS, complainants,
vs.
GEORGE W. SWEPSON, MILTON S. LITTLEFIELD, John P. Sanderson, J. L. Re Qua, William H. Hunt, Harrison Reed, governor, and S B. Conover, treasurer of Florida, defendants.
} In chancery.

On reading the bill and affidavit in this case, and on motion of counsel to the complainants, and it appearing that notice of said motion had been served on defendant Reed, a writ of injunction is awarded the complainants to enjoin the defendant Harrison Reed, governor of Florida, from issuing, signing, and sealing, and from causing to be issued, signed and sealed, any State bonds of the State of Florida, under the provision of a pretended act of the legislature, pretended to have been passed at the session begun and held on the 8th day of June, A. D. 1869, entitled "An act to perfect works of the State," and from delivering and from causing or permitting to be delivered any such bonds to the president of the Jacksonville, Pensacola and Mobile Railroad Company, or to any other person, and restraining the defendant Conover from 947 countersigning or causing to be countersigned such bonds, and restraining whoever is or may be president of the Jacksonville, Pensacola and Mobile Railroad Company from receiving any of said bonds, or if received from negotiating the same until the further order of this court.

P. W. WHITE,
Judge 2d Judicial Circuit of Florida.

(Endorsed:) Order in Scott case. J. Fred Schutte et als. vs. West'n Div. West'n N. C. R. R. Co. et als. Exhibit H to answer of trustees internal improvement fund.

948 EXHIBIT I.

TALLAHASSEE, *February* 21, 1870.

His Excellency HARRISON REED,
Governor of Florida:

DEAR SIR: On behalf of parties holding original first-mortgage bonds of the (late) Pensacola and Georgia and Tallahassee Railroad Companies, I have been authorized to institute legal proceedings by an application for an injunction to restrain the issue of the State bonds in exchange for first-mortgage bonds upon the railroad property under the provisions of the act of the legislature passed at its late session, entitled "An act to alter and amend an act to perfect the public works of the State"; the parties whom I represent, apprehending that by such issue of bonds as that proposed by the said law their rights of lien would be imperiled.

I am satisfied, however, that such proceedings will not be necessary if your excellency shall agree with me in the following propositions, viz: (1st) That the original first-mortgage bonds of the 949 Pensacola and Georgia Railroad and the Tallahassee Railroad Companies, which remain outstanding and unpaid, incumber the said property with a lien prior to all others now existing, or that may be created, and (2d), That there can be properly no issue of first-mortgage bonds upon the said property until the outstanding unpaid first-mortgage bonds of the original issue shall be paid up (at the pro rata valuation fixed by the sale) and cancelled.

I am sure that, should your excellency agree with me in these views, no bonds of the State will be signed and delivered to the parties who are the beneficiaries under the said act until after a redemption of the outstanding bonds referred to, in which event the right of the new company to rebond the property cannot be disputed.

Very respectfully, your obedient servant,

T. W. BREVARD, Jr.

(Reply endorsed:)

I concur in the view of Colonel Brevard, and shall issue no bonds under the new law until the lien upon the road is satisfied.

(Signed) HARRISON REED, *Governor.*

950

EXHIBIT K.

(United States Reports, vol. 91, Otto 1st, page 682.)

STATE OF FLORIDA
vs.
ANDERSON ET AL.

951

Decree.

This cause coming on for hearing upon the pleadings and proofs, and being argued by Mr. Bisbee for the complainant and by Messrs. Jackson, Carpenter, and Boyce for the defendants, and the court having considered of the same, it is now, on this thirteenth day of December, 1875, ordered, adjudged, and decreed that the defendants, and each of them, be perpetually enjoined from hindering or interferring with or disturbing the State of Florida, or any of its officers or agents (including the trustees of the internal improvement fund of said State), or any officer or receiver appointed or acting in its behalf in the possession, management or control of the railroad of the Jacksonville, Pensacola and Mobile Railroad Company, extending from Lake City westwardly to or beyond the Chattahoochee River, and from Tallahassee to St. Marks, with the appurtenances thereof and property belonging thereto. And that Edward C. Anderson, jr., and other defendants herein, holders of first mortgage bonds of the Pensacola and Georgia and Tallahassee Railroad Companies, in whose favor a decree was rendered in the circuit court of the United States for the northern district of Florida on the nineteenth day of December, 1872, directing, amongst other things, a sale of said railroad, be perpetually enjoined from selling, or procuring to be sold, said railroad and property under or by virtue of said 952 decree or any decree supplementary thereto in the same case; provided, however, that nothing herein is intended to preclude the right of the said Anderson and others to demand and receive from the State of Florida, or the said trustees, out of the proceeds of said property, or of said internal improvement fund, or the sinking fund provided in that behalf respectively, the principal and interest which may be or may become due on their said bonds, nor to affect the validity of the said decree, except as above expressed; and provided further, that this decree is not intended to prejudice the right of the defendant Daniel P. Holland to contest in any competent court or proceeding the validity of the bonds issued by the Jacksonville, Pensacola and Mobile Railroad Company in exchange for the bonds of the State of Florida under the act of the legislature of said State, passed Jan'y 28th, 1870, recited in the pleadings in this couse, nor to prejudice any right which said Holland may have to redeem said railroad by the payment of the unpaid purchase money mentioned in the said pleading, with all interest thereon and lawful charges on said road in case it should be adjudged that the said bonds were invalid.

It is further ordered and decreed that the legal costs and charges of the State of Florida in this cause, and the fees and costs due to the officers of this court therein be allowed and paid out of the moneys in the hands of the receiver.

953 It is further ordered that the receiver do pay out moneys in his hands the lawful fees and charges of the master who took the depositions and proofs in the cause, and that he settle his accounts before the clerk of this court, subject to the direction and approval of the chief justice; and all further equities and directions arising upon the decree are hereby reserved.

954 EXHIBIT M.

Florida State bonds.

TALLAHASSEE, FLORIDA, *June*, 1871.

To chairman States and corpor'tions arrears committee, 193, 194, 195,
Gresham House, London:

SIR: It is understood here that General M. S. Littlefield, the president of the Jacksonville, Pensacola and Mobile Railroad Company, a corporation existing under the laws of Florida, Messrs. S. W. Hopkins & Co., financial agents and representatives of the corporation, and perhaps others in the same interest, are endeavoring, with a prospect of success, to negotiate a sale of a very large number of bonds of the State of Florida, issued under the provisions of the act of the legislature of this State, entitled "An act to perfect the public works of the State," and subsequent acts amending the act named.

It is only fair that capitalists who have been induced to think favorably of these State bonds as an investment should be informed as to the character of the securities in which they are about to embark their means, and the purpose of this letter is to place you, and through you others concerned, in possession of such facts connected with the history of these bonds, and the law under which they were issued, as it may be to their interest to know.

955 The Pensacola and Georgia Railroad Company, and the Tallahassee Railroad Company, were railroad corporations existing under the laws of this State. These corporations having availed themselves of the benefits of the act of the legislature of this State, com-

monly called the internal improvement act, approved January 6th, 1855, and having failed afterwards to comply with its requirements, by payments of the semi-annual interest and sinking fund due upon the debt contracted on account of the first mortgage bonds issued by the companies under the provisions of the said act, these road-beds, property, and franchises were, in accordance with the requirements of the said act, taken possession of by the trustees of the internal improvement fund and sold, after due advertisement, to the highest bidder, on the day of , 1869. This sale was, in one essential feature, a fraud. The law permitted that the trustees sell either for cash or for additional approved security, as they might think of most advantage to the fund and the first mortgage bondholders, to satisfy whose claim the sale was made. In this case the trustees elected to sell for cash, and so advertised to the world up to the moment of sale. And the sale purported to be a cash sale. In point of fact, however, the purchasers did not pay cash, but only made partial payment by a surrender to the trustees of about $1,000,000 of the first mortgage bonds. The entire first-mortgage debt of the two companies was about $1,473,000, and this payment of $1,000,000 in the bonds left a balance due upon the price bid which was in amount equal to the entire bonded debt, of about $473,000, which amount on payment would have been at once applicable to take up and pay off the balance of bonds outstanding, about $473,000 in amount. The trustees, however, delivered possession of the railroad property to the purchasers upon this partial compliance by them with the terms (cash) of the sale. This indebtedness, which has never been paid except in small part (there being still about $300,000 of first mortgage bonds outstanding and unsatisfied), has a legal priority, and has been always so recognized by the parties now in possession, through this purchase, as a first lien, anterior to all others now existing, or that may be created upon the property and franchise of the Jacksonville, Pensacola and Mobile Railroad Company (formerly, as will appear hereafter, the Pensacola and Georgia and Tallahassee Railroad Companies). The parties in possession of the property have constantly promised payment, and doubtless have induced persons abroad to believe that they have already paid off this debt. After the sale of the Pensacola and Georgia and Tallahassee Railroads, referred to above, the parties in possession, through this incomplete sale, procured the passage by the legislature of several acts for their benefit, and first among them, of the "Act to perfect the public works of the State," approved June 24th, 1869. This act consolidated the Pensacola and Georgia and Tallahassee Railroad Companies, and incorporated the Jacksonville, Pensacola and Mobile Railroad Company, and authorized aid to be given by the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company, by the issue to the company of bonds of the State to the amount of $14,000 per mile. The act, however, provided that the State, as a condition precedent to the issue of its bonds, should be made secure by a lien to be taken by the State upon the property and franchise of the corporation for whose benefit this aid
956 was to be given. This was a condition fixed by the act, and with this provision it passed the legislature; and when, some time after the act had passed, it appeared that by its fraudulent enrollment the provisions securing the State had been omitted, and that a forged law had been filed in the office of the secretary of state, and officially published as a law of the State, certain citizens of the State, property-holders and tax payers, filed their bill on the chancery side of the circuit court of Leon County, second judicial circuit of Florida, praying for an

order of injunction against Harrison Reed, governor of Florida, and against S. B. Conover, treasurer of the State, and for an order of the court against these officers, to restrain and enjoin them from signing, countersigning, or delivering the bonds authorized by this fraudulent law, and from doing any acts whatever under the pretended act, upon the ground of the forgery and fraud practiced, in omitting from the enrolled bill the clause which required a security to the State, in the issue of its bonds by a mortgage upon the railroad property and franchise. You will readily perceive, in view of the fact that the balance of $473,000 first-mortgaged debt referred to was unpaid, that the purpose in this fraud was to relieve the railroad company of the necessity of paying off its existing incumbrances before getting the benefit of the funds to be raised on the State bonds.

The court acted favorably and at once upon this application, and granted without hesitation the injunction prayed for; and so patent was the fraud that no answer was ever made to the bill, and no effort was ever made to dissolve the injunction. So matters rested until the next convening of that great and good body of law-givers—the Florida legislature. This next legislature, which assembled on the day of , 1870, passed an act to alter and amend the aforesaid act, which last act validified and made of force the "act to perfect the public works of the State," which had been enjoined, except as amended and modified by the last law. Under these two acts Messrs. Littlefield and associates, parties in present possession of the railroad property, are now endeavoring to raise money upon State bonds. These acts authorized the aid to be given to the corporation, but required, as a condition precedent to the granting this aid, and the delivery of the State bonds, that the State be made secure by a lien, to be taken in the manner pointed out by the acts, on the Jacksonville, Pensacola and Mobile Railroad property and franchise, and of course that corporation could not be in a condition to comply with the requirement and give this lien until incumberances, already existing and resting on the property, should be removed, by payment of the outstanding first mortgaged bonds of the Pensacola and Georgia and Tallahassee Railroad Companies.

That the statement as to this liability is correct there is not the least doubt, and in order to show you that it is admitted to be correct I refer you to the annexed copy of a letter addressed by me to Harrison Reed, governor of the State of Florida, to whom it was entrusted under the law to see that the State was protected before the delivery of its bonds, and his reply endorsed. In both the letter and the pledge endorsed in reply, the position is taken that the unpaid first-mortgage bonds of the Pensacola and Georgia Railroad and Tallahassee Railroad Companies, outstanding, constitute a first lien upon the railroad property
957 and franchise, and that no issue of the State bonds could or would be made until these lien-incumberances resting upon the property should be removed, by payment and satisfaction of the first-mortgage bonds outstanding, after which the company would acquire the power to mortgage unincumbered property to the State. Notwithstanding these admitted opinions of Governor Reed, this solemn, written pledge, and his full knowledge that this first-mortgage bonded indebtedness, outstanding against the railroad, was unpaid, after quieting the apprehensions of the holders of the unpaid first-mortgage railroad bonds by this pledge, he signed, at a time when he had lulled suspicion, and delivered the State bonds, thus imposing upon the State a security which he knew to be imperfect. Can you suppose that a vast indebted-

ness, placed upon a people already insolvent, under these circumstances, will ever be paid?

The principal security, which those who may invest in the bonds of this State will have, must be that security which has been given to the State. The principal security for any investment to be made in railroad securities of this State must be the road-bed and franchise. In the light of the past and present history of this State, you cannot rely either upon its willingness or ability to pay a security of the character of these bonds when all the benefits result to stockholders in the corporation. In this case, the chief security being incumbered by prior mortgages, it is clearly the interest of the purchaser of the State bonds to see that such an amount of the money paid as may be necessary be applied to the discharge of this prior indebtedness. The bonds representing this prior incumbrance may be purchased at reasonable rates, but they will not be sacrificed by the holders. In the meantime suit has been instituted, and is now pending in the United States circuit court for the district of Florida, for the purpose of subjecting the railroad property to sale, unless the original first-mortgage debt outstanding be paid up. You may have been advised that the purchaser of the State bonds will have nothing to do with the corporation, and may look entirely to the State; but a very little reflection must show the error into which this view may lead those who may purchase the State bonds. It is true a bond of this character is a State bond, and imports a State liability; but the law makes no specific provisions by which the holder of the bond can collect either the principal or interest from the State, and in the absence of such a provision any intelligent lawyer will advise you that the bondholder has no remedy in the courts by which principal or interest can be collected by judicial process from the people or out of their property. And even if such provision existed as a part of the law, it could not be enforced in a case where the bonds have been issued by means of a fraud upon that requirement of it which stipulates that the State should have been made secure by a good lien on unincumbered property as a precedent condition.

The sole reliance, then, of a holder of State bonds must be the good faith of the State, and that good faith under all the circumstances connected with the issue of these bonds will not be measured by the letter of the contract, but will be fixed entirely by the value of the security which the corporation has placed in the hands of the State, to indemnify it against loss, and that security should be the road-bed and franchise of the road itself, unsaddled by anterior laws.

I especially direct attention, in connection with this considera-
958 of the State's security, to the provisions of section 13 of the "act
to perfect the public works of the State," which gives to the railroad company the privilege of paying off and discharging the lien taken by the State at any time before maturity of the debt, in the State's own paper, now immensely depreciated by reason of the great quantity issued during the past few years beyond its capacity to pay. It is very evident and ought to be patent to every one who will be at the pains to examine this provision, that it is to the interest of the railroad company to depreciate all the paper of the State—to depreciate the very bonds they are now selling, and the moment the bond shall be sold Littlefield and associates will become the enemies of the holders, for their interest will clearly be to buy up the paper of the State—these very bonds will answer as good a purpose as any other and thus relieve their mortgage to the State, and the result will be that the purchasers will be left looking to the State when the security of the State is gone. Littlefield to

day can force $500,000 of State bonds upon the market and buy them at 25 cents, and can with them destroy the State security to the extent of a half million. You may rest assured that to that extent the people will think your bonds should be retired also. You must perceive that it would be great folly to make any investment in the State bonds, unless those investing shall secure an application of a sufficient amount of the money paid to a settlement of the incumbrances existing on the railroad property on account of the original first-mortgage bonded debt now outstanding.

But even after this shall have been done, it concerns the interest of capitalists to reflect upon the following facts additional to those already set forth.

1. The people of Florida have not the ability to pay this debt.

2. The legislature which passed the act referred to did not, to any extent, represent the taxpayers and property-holders of the State, and the legislature which fixed this indebtedness upon the State was notoriously corrupt and in the interest of a few railroad speculators, not identified even by citizenship with the people of Florida; and these men manipulated the votes of the legislators by corruption so open and flagrant that there are at this time indictments pending in the circuit court of Leon County against several of the legislators for receiving, and against General Littlefield for paying bribes to secure the passage of the very acts under the provisions of which these State bonds were issued.

3. The whole series of acts both in and out of the legislature, including and beginning with the sale of railroads referred to in the first part of this communication, connected with the issue of these State bonds, has been dishonest, flagrantly corrupt, and going solely to aggrandize Littlefield, Hopkins, and a few others, their co-schemers and confederates; and it cannot be matter of surprise that the entire property-holding and taxpaying part of the people of Florida are not only adverse but hostile to the payment of a debt which they know to have been put upon the State by the combined fraud of their governor, their indigent legislators, and a set of sharks and financial free-lances under the leadership of Milton S. Littlefield, now president of the Jacksonville, Pensacola and Mobile Railroad Company. The people of this State, while
they earnestly desire the success of any railroad enterprise
959 which is legitimate and conducted with honesty, would greatly
regret if foreign capitalists should make so injudicious an investment as a purchase of these State bonds must be. The State bonds, without the road as a security available for the benefit of the bondholders (which now is not the case), amount to nothing. And if there be any truth in a report now current that certain persons abroad have been already induced to make advances upon the State bonds, they should require such legislation to be had as will enable them to get this security. As a matter of course they can, by refusing to advance further, force the corporation to make any just contract within its corporate powers or that the legislature will authorize. If the holders of the State bonds had the simple authority to exchange securities with the State it would be a great advantage to them. It is certainly advisable, at any rate, that they get all the security they can. One hundred and sixty miles of completed road, after being relieved of its existing incumbrances, can certainly be made a good security for the cost of constructing a road of same distance, and this, with a mortgage also upon the

newly constructed road, will be safe security. I ask that these suggestions may be considered.

Respectfully,

T. W. BREVARD, Jr.,
Counsel for Holders of First Mortgage Bonds of P. & G. & T. R. R. Cos.

P. S.--I enclose herewith copies of the acts of the legislature referred to in the above communication, as officially published; also majority report of a committee of the assembly of the legislature of Florida, appointed under resolutions of that body to examine and take evidence concerning the conduct of Harrison Reed, governor, pending proceedings then inaugurated to impeach the governor upon charges of corruption in office, certain portions of which will be of some interest to you in connection with the history of the railroad manipulations to which reference is made in the above.

TALLAHASSEE, *February* 21, 1870.

His Excellency HARRISON REED,
Governor of Florida:

DEAR SIR: On behalf of parties holding original first-mortgage bonds of the (late) Pensacola and Georgia and Tallahassee Railroad Companies, I have been authorized to institute legal proceedings by an application for an injunction to restrain the issue of the State bonds in exchange for first mortgage bonds upon the railroad property under the provisions of the act of the legislature passed at its late session, entitled "An act to alter and amend an act to perfect the public works of the State;" the parties whom I represent, apprehending that by such issue of bonds as that proposed by the said law, their rights of lien would be be imperiled.

I am satisfied, however, that such proceedings will not be necessary if your excellency shall agree with me in the following propositions, 960 viz: (1st.) That the original first-mortgage bonds of the Pensacola and Georgia Railroad and the Tallahassee Railroad Companies, which remain outstanding and unpaid, incumber the said property with a lien prior to all others now existing, or that may be created; and (2d), That there can be properly no issue of first-mortgage bonds upon the said property until the outstanding unpaid first-mortgage bonds of the original issue shall be paid up (at the pro rata valuation fixed by the sale) and cancelled.

I am sure that should your excellency agree with me in these views, no bonds of the State will be signed and delivered to the parties, who are the beneficiaries under the said act until after a redemption of the outstanding bonds referred to, in which event the right of the new company to rebond the property cannot be disputed.

Very respectfully, your obedient servant,

T. W. BREVARD, Jr.

(Reply endorsed:)

I concur in the view of Colonel Brevard, and shall issue no bonds under the new law until the lien upon the road is satisfied.

(Signed) HARRISON REED,
Governor.

961 EXHIBIT N.

JACKSONVILLE, FLA., *February* 8*th*, 1871.

Messrs. HOLJE BOISSEVAIN, *Bankers*,
Amsterdam, *Holland* :

GENTLEMEN : On December 18th, 1870, Governor Harrison Reed, of Florida, received a telegraphic dispatch from you, substantially as follows:

> "Being negotiating four million bonds issued by your State, the Jacksonville, Pensacola and Mobile Railroad beg to know by telegraph from you whether provision made for payment interest, whatever result railroad traffic. Financial position of State really sound, and bonds undoubted security?"

To this dispatch Governor Reed replied as follows:

> "Bonds recently recalled by the company; no provision will, therefore, be made for interest."

962 It was hoped that Governor Reed's telegram would have the effect of causing the bonds to be returned, as the railroad companies desired they should be. This has not been done, but on the contrary more bonds than were then out have been sent to Europe for negotiation, though no money I infer has yet been realized. I feel it to be my duty, therefore, to make a statement of facts to you, which I hope that you will lay before others who may be interested with you in the negotiations.

When the legislature of Florida enacted the laws under which the bonds your telegram inquired about were issued, it was believed by the two railroad companies, hereafter named, that the proceeds of the State bonds when sold would be honestly and legitimately applied to the extension through the western portion of this State of the lines of railroad already built from the eastern to the middle portion. That extension was so much desired by the two companies owning the completed railroads that they were willing to mortgage, and did mortgage their roads to the State, in order to secure the issuing of State bonds upon which to raise money to enable the newly organized company to build said extension. The railroads which so pledged their mortgage bonds to the State were the Florida Central Railroad, sixty miles long, and the Tallahassee Railroad, one hundred and fifty miles long. The former gave its mortgage bonds to the amount of one million dollars; the latter to the amount of three million dollars; and this latter road consolidated its line with that proposed to be built westward from the completed road, and the two companies became one, under the name of the Jacksonville, Pensacola and Mobile Railroad Company. But the Florida Central Railroad, commencing at Jacksonville and running westward sixty miles, was not included in the consolidation. Subsequently, and after three million of the State bonds had been sent to Europe, it was discovered that the president of the Jacksonville, Pensacola and Mobile Railroad, who had been active in procuring the legislation and inducing the completed roads to give to the State their bonds in exchange for the State's bonds which were issued to him, had made, even before he got the bonds, secret contracts with some of his creditors, by which the larger portion of the proceeds were to be diverted from the purposes for which the bonds were issued, and were to be applied in payment of individual debts. This produced such dissatisfaction and caused such investigations by the companies which had mortgaged their roads to the State, as resulted in both of the companies, through their several directories, rescinding the action by which their roads were mortgaged, and recalling the bonds. The million of bonds issued by the State, on the security of a like amount pledged to the State by the Florida Central Railroad, had not then gone into the hands of the president of the Jacksonville, Pensacola and Mobile Railroad, but were held by a party till certain conditions precedent were performed, before delivery to the president of the Jacksonville, Pensacola and Mobile Railroad. That million of bonds then were returned to the State, and the bonds of the company upon the security of which the others were issued were withdrawn from deposit with the State, and were in the hands of the party already referred to, to be returned to the company for cancellation, when they were by that party without the authority or knowledge of the railroad company, or of any 963 of its officers, and in violation of the company's resolutions of recall and rescission, delivered to an agent of the president of the Jacksonville, Pensacola and Mobile Railroad, who by influences best known to himself effected with the governor of the State their re-exchange for the State bonds, which latter were hurriedly and secretly sent out of the State and to Europe before any legal process could be obtained for their detention. This redelivery to the governor of Florida of the Florida Central Railroad Company's million of bonds is a gross fraud on that company, and none who are advised of it, and buy or advance money on the State's bonds, for which they were exchanged, will have any legal or moral right to ask that they receive any benefit or advantage from the security so wrongfully obtained.

The same may be said of the three million of State's bonds issued on the pledge of the same amount of bonds of the Tallahassee or Jacksonville, Pensacola and Mobile Railroad. No one, who, having notice of that company's rescission of its action and recall of its bonds, advances money on, or buys the State's bonds for which the others were pledged, will have legally, or morally, any locus standi in curia as against that railroad company. The creditors and stockholders of the railroad companies will assert their right, resist the wrongs that have been perpetrated and attempted, and seek, successfully, redress in the judicial tribunals. You have had the above-mentioned action of the railroad companies brought to your notice by the telegram from Governor Reed, who sent it after consulting with the said companies, and at their instance, and you have incurred all the legal disqualifications to urge against the railroad companies any claim based on their supposed suretyship for any bonds of the State.

An examination of the law under which the State's bonds were issued discloses that the governor has caused half a million more of bonds to be issued than the law provides for. The law allows the issue of $16,000 per mile upon so much of said roads as may be completed and in running order; only 210 miles were, when the bonds were issued, completed, and only a mile and a half have been completed since, and no more is being completed. This would allow of an issue at the time it was made of only $3,360,000. Add the liberal allowance of ten miles for side tracks, &c., if such unreasonable construction of the law be claimed, and it legalizes only $3,520,000 of the bonds.

To secure the principal and interest of the Jacksonville, Pensacola and Mobile Railroad Company's bonds (but not of the bonds of the Florida Central Railroad), the law gives the State of Florida a statutory lien, valid as a first mortgage, on that company's road and property, and authorizes the governor, on failure of the company in any payment of principal or interest, to seize and sell the road at auction, and authorizes the State to purchase and to pay for it with any evidence of indebtedness the State may hold against the road, while every other bidder would, in case of purchase, have to pay cash. This summary process is not applicable to the Florida Central Railroad; but to the other road only. What would be the result in case of failure of the Jacksonville, Pensacola and Mobile Railroad to pay principal or interest on its bonds? The State, if no resistance, or if unsuccessful 964 resistance through the courts were had, might seize, sell, and buy, paying for the purchase with the road's obligations, while the State might not, perhaps could not, or would not, pay her own; nor is there any way known to our system of government by which a State can be compelled to pay its obligations. You will thus perceive the character of the securities offered you, and the taints of fraud that affected them from their first issue, and that still do, and will act advisedly. This communciation is made in the interest of the stockholders of the companies whose bonds have, by misrepresentation and bad faith, been obtained and exchanged with the State of Florida for the State's bonds, which you have been, and may still be, negotiating for. The stockholders do not intend to submit to the fraud which has been attempted on them. They seek to have the State's bonds brought back, and a re exchange effected, and it is to that end that this letter is written. Such a course will prevent litigation. Persistence in the wrong will insure it. Attempts may be made to give credit to the bonds by professional and perhaps by judicial opinions from this State, but the facts that I state are incontestable, and I can give you much more and more detailed information concerning the worthlessness of the securities that you are negotiating for, and I will do so if desired. But I have said enough to make discreet men repudiate the securities and abandon negotiations.

I will say further, that since the mortgage of the railroads to the State, 128 miles of the completed road, being all except twenty-two miles on which the State has any statutory lien, have been sold by the United States under a judicial process in their favor, issued from a United States court; thus divesting the company's title, and vesting it in the individual purchaser. That sale of course relieves that much of the road of the lien created in favor of the State of Florida by the mortgage before mentioned. You are at liberty to show this letter to whom you please, and to give it the widest publicity, and will oblige me by acknowledging its receipt. I will presume on a very slight acquaintance, to refer you, touching myself, to Hon. H. S. Sanford (late U. S. minister to Belgium), at Brussels.

Respectfully,

E. M. L'ENGLE,

Of counsel for the Florida Central Railroad Company.

965 **EXHIBIT O.**

Supreme Court of the United States. No. 3 (original), October term, 1876.

THE STATE OF FLORIDA, COMPLAINANT,
vs.
EDWARD C. ANDERSON, JR., AND OTHERS, defendants.
} Bill in equity.

Mr. Justice BRADLEY delivered the opinion of the court:

Application has been made to the court by various parties in this

case for the balance of the fund which occurred from the operations of the railroad whilst in the hands of the receiver, and which is now in the registry of this court. This fund grew out of and was the immediate fruit of the property itself, and should be handed over to the same parties to whom this was properly deliverable, as we have decided that the property should be delivered to the complainant, the State of Florida, for the purpose of observing the liens and trusts to which it is subject in the hands of the State according to the disposition thereof to be made by the State courts in the principal litigation. We think that the fund on hand, after paying such sums as are properly chargeable
933 thereon under our decree, should be disposed of in the same way.

We are of opinion that the claim presented in behalf of Lyhs & Gelson should, under the circumstances, be paid before the fund is paid over; also two small bills for supplies, which were reported by the receiver as having come to his hands, and the additional costs that have been incurred, including one per cent. commission to the register.

A decree will be made accordingly.

Final decree.

Supreme Court of the United States. No. 3 (original), October term, 1876.

THE STATE OF FLORIDA, COMPLAINANT,
vs.
EDWARD C. ANDERSON, JR., AND OTHERS,
defendants.

Application being made in this case in behalf of a copartnership firm by the name of Lyhs & Gilson for the payment of a bill for supplies furnished for the railroads in charge of Robert Walker, the receiver, shortly before his appointment, and which supplies came to his hands and possession as such receiver by the consent of Sherman Conant, to whom the said supplies had been consigned, and said bill having never been paid, and it seeming equitable and just, and the consent of the counsel for complainant being given thereto, it is ordered that the register do pay said bill to said firm of Lyhs & Gilson, or their attorney, amounting to the sum of fifteen hundred and ninety-five dollars and ninety-five cents.

And whereas the said receiver, in his twelfth annual report, states that a few days before he took possession of said railroad John C. Clark and S. B. Hubbard severally furnished to Jonathan C. Greely, former receiver, certain supplies, which all, or nearly all, came into the hands of said Walker and were used by him in repairs, said Clark's bill amounting to fifty-eight dollars and seventy-five cents, and said Hubbard's to sixty-six dollars and ninety-six cents, and said bills having never been paid, it is ordered that the register pay said bills to the said parties or their attorneys, respectively.

It is further ordered that the register do also pay such additional costs of the officers of this court as have been incurred since the decree made on the first day of May last and not yet paid, and that he be authorized to retain one per cent. of all moneys received for his commission upon the same.

It is further ordered that the balance of moneys in the registry of the court be paid by the register to the treasuer of the State of
967 Florida, to be disposed of according to the trusts that have been

or may be declared of and concerning the same by the supreme court of Florida or other court of said State having jurisdiction of the premises

It is further ordered that the application of Daniel P. Holland for the said balance and surplus be denied.

Filed and entered December, 1876.

968 (Indorsed:) U. S. cir. c't, n'the'n dist. Fla. In equity. J. Fred Schutte et al. vs. West'n Div. West'n N. C. R. R. Co. et al. Exhibts to answer of trustees. I. I. fund. G. P. Raney, D. S. Walker, sol's for trustees.

Filed Dec. 29th, A. D. 1877.

CHAS. H. FOSTER, *Clerk.*

Rec'd & filed April 20, 1878.

P. WALTER, *Clerk.*

(Pages 968 to 1036, inclusive, omitted, per stipulation.)

1037 In the United States circuit court, northern district of Florida. In equity.

J. FRED SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereto saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answers of the said defendants is uncertain, untrue, and insufficient to be replied to by this repliant, without this, that any other matter or thing whatsover in said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by his said bill he hath already prayed.

W. G. M. DAVIS,
Solicitor for Complainant.

Filed May 27th, 1878.

P. WALTER, *Clerk.*

1038 United States circuit court, northern district of Florida.

J. FRED SCHUTTE, JAN PRINS, ADRIANUS Prins, Elias Fuld, et al., complainants,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, the Jacksonville, Pensacola & Mobile Railroad Company, the Florida Central Railroad Company et al., defendants.

The said complainants, for replication to the answer of the Western Division of the Western North Carolina Railroad Company, say they will prove their said bill to be true, certain, and sufficient in law, and that the answer of said defendant is untrue; all of which the complainants are and will be ready to prove as this honorable court shall direct, and they pray as in their said bill, they have already prayed.

W. G. M. DAVIS,
Solicitor for Compl'ts.

Filed Oct. 1st, 1877.

CHAS. H. FOSTER, *Clerk.*

1039 In the circuit court of the United States, northern district of Florida.

J. FRED SCHUTTE, JAN PRINS, ADRIANUS Prins, Heinrich Ulrici, et al., complainants,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, the Jackville, Pensacola and Mobile Railroad Company, et al., defendants.

The said complainants for replication to the separate answer of the Jacksonville, Pensacola and Mobile Railroad Company, say, they will prove the said bill to be true, certain, and sufficient in law, and that the answer of the defendants is untrue; all of which the complainants are and will be ready to prove, as this honorable court shall direct, and they pray as in their said bill they have already prayed.

W. G. M. DAVIS,
Solicitor for Compl'ts.

Filed Oct. 1st, 1877.

CHAS. H. FOSTER, *Clerk.*

1040 Ithe circuit court of the United States for the northern district of Florida.

J. FRED SCHUTTE, JANS PRINS, ADRIANUS Prins, Heinrich Ulrici, et al., complainants,

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, the Florida Central Railroad Company, et al., defendants.

The said complainant, for replication to the separate answer of the Florida Central Railroad Company, say that they will prove their said bill to be true, certain, and sufficient in law, and that the answer of said defendant is untrue, all of which the complainants are and will be ready to prove as this honorable court shall direct, and they pray as in their said bill they have already prayed.

W. G. M. DAVIS,
Solicitor for Compl'ts.

Filed Oct. 1st, 1877.

1041 In the United States circuit court, fifth circuit, northern district of Florida.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS Prins, Heinrich Ulrici, Elias Fuld, et al., complainants,

vs.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Florida Central Railroad Company, Edward M. L'Engle, et al., defendants.

The said complainants for replication to the answer of Edward M. L'Engle, one of the defendants to the above cause, say they will prove their said bill to be true, certain, and sufficient in law, and that the answer of said defendant is untrue, all of which the complainants are and will be ready to prove as this honorable court shall direct, and they pray as in their said bill they have already prayed.

W. G. M. DAVIS,
Solicitor for Compl'ts.

Filed Oct. 1st, 1877.

CHAS. H. FOSTER, *Clerk.*

1042 In the circuit court of the United States, northern district of Florida.

J. FRED SCHUTTE, JAN PRINS, HEINRICH ULRICI, Elias Fuld, et al., complainants,

vs.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, et al., defendants.

The said complainants, for replication to the joint and several answer' of the defendants James M. Baker, George R. Foster, N. K. Sawyer, J. C. L'Engle, Charles B. Fenwick, Milton S. Littlefield, W. J. Lawton, and Joseph B. Stewart, directors of the Florida Central Railroad Company, say they will prove their said bill to be true, certain, and sufficient in law, and that the answer of said defendants is untrue, all of which the complainants are and will be ready to prove as this honorable court shall direct, and they pray as in their bill they have already prayed.

W. G. M. DAVIS,
Solicitor for Complt's.

Filed Oct. 1st, 1877.

CHAS. H. FOSTER, *Clerk.*

(Pages 1043 to 1066 inclusive omitted per stipulation.)

1067 J. FRED SCHUTTE, JAN PRINS, ADRIANUS Prins, Heinrich Ulrici, Elias Fuld, and others

vs.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Jacksonville, Pensacola and Mobile Railroad Company, and others.

And now, on this the 6th day of April, A. D. 1878, comes the defendant, The Jacksonville, Pensacola and Mobile Railroad Company, by S. B. Stephens, its solicitor, and it appearing that the plea of said Jacksonville, Pensacola and Mobile Railroad Company duly filed in this cause, on the second day of August, A. D. 1877, to the complainants' bill and the relief therein prayed, and all and every part thereof, has not been set down for argument by the complainants, as required by law, but hath thereby admitted the plea of said defendant to be true in point of fact and good and sufficient in law to bar the complainants' bill, and all and singular the matters therein alleged as against this defendant.

1068 Wherefore, in consideration of the premises and upon the further motion of the defendant's solicitor, it is ordered, adjudged, and decreed that the complainant's bill be, and the same hereby is, dismissed against the defendant, the said Jacksonville, Pensacola & Mobile Railroad Company, this defendant, and that defendant have and recover of the complainant its costs in this behalf expended.

S. B. STEPHENS,
Sol. for J., P. & M. R. R. Co.

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

I, Charles H. Foster, clerk of the United States circuit court for the northern district of Florida, middle division, do hereby certify that the foregoing is a true and correct copy and transcript of an order entered in the case of J. Fred Schutte et al. v. The Western Division of the Western North Carolina Railroad Company et al. in the chancery order book of my office.

Witness my hand and the seal of said court at Tallahassee, in said district, this 2nd day of October, 1879.

[SEAL.] CHAS. H. FOSTER, *Clerk*,
By W. F. QUAILE,
A. D. C. for said Dist. & Cir.

(Pages 1069 to 1071 inclusive omitted per stipulation.)

1072 NEW YORK, *May 12th*, 1877.

Gen'l W. G. M. DAVIS, *Jacksonville, Fla.:*

SIR: As the trustee and agent in the United States for the holders of the Florida eight per cent. bonds, held in the Kingdom of the Netherlands, I have to respectfully request you to appear as counsel for such bondholders in any suits you may deem necessary for the protection of their rights in Florida, and in all respect' act for them in accordance with special letter of instruction herewith enclosed.

I am, sir, your most resp't'l',

AD. ENGLER,
P. O. Box 4445.

Filed.

P. WALTER, *Clerk*.

1073 In the United States circuit court, northern district of Florida.

J. FRED SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Co. et al.

On motion of W. G. M. Davis, solicitor of complainant, it is ordered that Adolph Engler be admitted as a party complainant in the above cause, to represent the interests vested in him by the powers in writing given said Engler by said complainants, a copy of one of which is filed with the answer of the Western Division of the Western North Carolina Railroad Company.

THOMAS SETTLE, *Judge*.

Filed.

PHILLIP WALTER, *Clerk*.

1074 United States circuit court, northern district of Florida.

J. FRED SCHUTTE
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Jacksonville, Pensacola and Mobile Railroad Company, et al.

The plea in bar filed on the part of the defendant, The Jacksonville, Pensacola and Mobile Railroad Company, in this cause, having been set down for argument and called for hearing, it is ordered that the same be continued and reserved to the final hearing of this cause, and that the defendants then have the same benefit as separately heard, argued, and determined.

June 11th, 1878.

THOMAS SETTLE, *Judge*.

Filed.

P. WALTER, *Clerk*.

(Page 1075 omitted per stipulation.)

76 United States circuit court, northern district of Florida. In equity.

J. FRED. SCHUTTE, JANS PRINS, ADRIANUS Prins et al.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

On motion of solicitors for complainants, it is ordered that John A. Shields, who is a commissioner appointed by the circuit court of the United States for the southern district of New York, under the laws of the United States, and who reside' in the city of New York, and has his office in the post-office building in said city, be and he is hereby appointed a commissioner to take the testimony of such witnesses as may be produced before him for examination as witnesses in said cause upon interrogatories and cross-interrogatories now or which may be filed therein, and that proper commission empowering said John A. Shields so to act be issued.

THOMAS SETTLE, *Judge*.

Filed Jan'y 22d, 1879.

P WALTER, *Clerk*.

1077 In the United States circuit court, northern district of Florida. In equity.

J. FRED. SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

Upon motion of the solicitors for the complainants in the above cause, Joseph B. Stewart, solicitor for the Western Division of the Western North Carolina Railroad Company, and James M. Baker, solicitor for the Florida Central Railroad Company, appearing and not opposing the the same, it is ordered that the above cause be set down for final hearing on the first Monday of May next.

Feb'y 22d, 1879.

THOMAS SETTLE, *Judge.*

Filed Feb'y 22d, 1879.

P. WALTER, *Clerk.*

1078 In the circuit court of the U. S., 5th circuit, north'n dist. Fla. In equity.

J. FRED SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

Upon motion of the solicitor for complainants it is ordered that the testimony in this cause be opened and published.

Done and ordered this the 13th day of May, A. D. 1879, in open court.

THOMAS SETTLE, *Judge.*

Filed May 13th, 1879.

P. WALTER, *Clerk.*

1079 J. FRED SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

On motion of solicitors for complainants it is ordered that the bill be dismissed as to the following defendants: Edward Lewis, Patrick Houstoun, Robert H. Gamble, Charles E. Dyke, sr., Edward M. L. Engle, Robert Walker, Clayton A. Cowgill, George W. Betton, James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, Charles B. Fenwick, J. C. L. Engle, Joseph B. Stewart, sued as directors of the Florida Central Railroad Company; and as to Milton S. Littlefield, individually, and Robert J. Washington, Chandler H. Smith, S. A. Smith, sr., Smith Simkins, B. C. Lewis, W. J. Himes, trustee, Mrs. A. F. Finlayson, James G. Gibbs, and the Western Division of 1080 the Western North Carolina Railroad Company, the costs of said defendants to be paid by said complainants upon taxation thereof by the clerk of this court. This order being made without prejudice as to any evidence which may have been taken in the cause affecting the rights of any of the parties still remaining parties in the cause.

May 20th, 1879.

JOSEPH P. BRADLEY, *C. J.*

Filed May 19th, 1879.

P. WALTER, *Clerk.*

1081 *Motion to suppress deposition taken in Holland.*

In the United States circuit court, 5th judicial circuit, northern district of Florida.

J. FRED SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN N. C. R. R. Co. et al.

This motion coming on this 22d day of May, 1879, to be heard, and the same being argued by counsel and considered by the court, it is ordered that the motion be granted and the depositions therein named be suppressed.

JOSEPH P. BRADLEY, *Circuit Justice.*

Filed May 22d, 1879.

P. WALTER, *Cl'k,*
By L. PHILLIPS, *D. C.*

(Page 1082 omitted per stipulation.)

1083 Supreme Court of the United States.

J. FRED. SHUTTE, JAN PRINS, ADRIANUS Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J. Brunnekruff, J. H. Grem, Willenmier Van Tyer Van Taer, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Techelaar, jr., Jacobus Wertheim, P. Van Reysen, Mey de Beneditby Beer, Gerard A. Heineken, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyen, N. J. Frauket, Johannes Willem Donk, Vander Stoop, & Berg, who are aliens and subjects of the King of the Netherlands, in their own behalf, and in behalf of such other persons having like claims, who may come in and be made parties plaintiffs herein, and contribute to the expenses thereof,

against

THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, the Florida Central Railroad Company, George F. Drew, governor of the State of Florida, Walter Gwynn, treasurer of the State of Florida, Hugh A. Corley, commissioner of lands and immigration of the State of Florida, George P. Raney, attorney-general, Walter Gwynn, treasurer, Columbus
1084 Drew, comptroller, George F. Drew, governor, which officers are trustees of the internal improvement fund and herein sued as such.

In equity.

Know all men by these presents that we, the Florida Central Railroad Company of the State of Florida, and Rodney S. Church, of No. 333

Dean street, Brooklyn, New York, and Henry Beyer, of No. 412 West 46th street, New York, and Richard W. Salevay, of No. 231 McDougal street, Brooklyn, and J. P. Johnson Howard, of No. 1622 Fulton street, Brooklyn, and John A. Wallace of No. 76 West 12th street, New York City, are held and firmly bound unto J. Fred Shutte, Jan Prins, Adrainus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J. Brunnekruff, J. H. Grem, Willenmier Van Tyer Van Taer, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaar, jr., Jacobus Wertheim, P. Van Reysen, Mey de Beneditby Beer, Gerard A. Heineken, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyer, N. J. Franket, Johannes Willem Donk, Vander Stoop & Berg, who are aliens and subjects of the King of the Nether-
1085 lands, who brought their bill of complaint in their own behalf, and in behalf of such other persons having like claims, who might come in and be made parties plaintiffs therein, and contribute to the expenses thereof, in the full and just sum of one hundred thousand dollars, to be paid to the said J. Fred Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J. Brunnekruft, J. H. Grem, Willenmier Van Tyer Van Taer, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaar, jr., Jacobus Wertheim, P. Van Reysen, Mey de Benedithy Beer, Gerard A. Heineken, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyen, N. J. Franket, Johannes Willem Donk, Vander Stoop & Berg, who are aliens and subjects of the King of the Netherlands, who brought their bill of complaint in their own behalf, and in behalf of such other persons having like claims, who might come in and be made parties plaintiffs therein, and contribute to the expenses thereof, their certain attorney executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents. Sealed with our seals, and dated
1086 this twenty-first day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas, lately at a circuit court of the United States for the northern district of Florida, in a suit depending in said court, between the parties above entitled, which title is made a part hereof, decree was rendered against the above entitled defendants, and the said defendant, the Florida Central Railroad Company, has taken and prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the judge of the circuit court of the United States for the northern district of Florida.

Now, therefore, the condition of this obligation is such, that if the above named Florida Central Railroad Company shall prosecute its said appeal to effect and answer all damages and costs—if it shall fail to make good its plea, then this obligation shall be void; otherwise, the sum shall be and remain in full force and virtue.

THE FLORIDA CENTRAL RAILROAD COMPANY,
[SEAL F. C. R. R. CO.] By E. M. L'ENGLE,
Its President.

RODNEY S. CHURCH.
HENRY BEYER.
RICHARD W. SALWAY.
1087 J. P. JOHNSON HOWARD.
JOHN A. WALLACE.

Signed, sealed, and acknowledged by Rodney S. Church, Henry Beyer and Richard W. Salway before me this 21st day of July, A. D. 1879.

[SEAL U. S. COMM.] JOHN A. SHIELDS,
U. S. Commissioner, S. D. N. Y.

Signed, sealed, and acknowledged by J. P. Johnson Howard before me this 21st day of July, 1879.

[SEAL U. S. COMM.] JOHN A. SHIELDS,
U. S. Commissioner, S. D. N. Y.

Signed, sealed, and acknowledged by the Florida Central Railroad Company, in the person of its president, E. M. L'Engle, who personally appeared before me, & so signed and acknowledged this 23d day of July, 1879, as the act and deed of said company.

JOSEPH A. WELCH,
U. S. Commissioner, So. Dist. of New York.

The foregoing bond is hereby approved both as to form and sufficiency.
Dated , 1879.

1088 Signed, sealed, and acknowledged by John A. Wallace before me this 22d day of July, 1879.

[SEAL.] JOSEPH A. WELCH,
U. S. Commissioner, So. Dist. of New York.

SOUTHERN DISTRICT OF NEW YORK,
State of New York, City & County of New York:

Rodney S. Church, of No. 333 Dean street, Brookly', New York, one of the surities named in the annexed bond on appeal, being duly sworn, deposes and says that he owns real estate in the counties of Kings and Queens, in the State of New York, consisting of No. 233 & 235 Washington street, Brooklyn, 311, 311½, & 313 Bedford avenue, Brooklyn, No. 180 Dean street, Brooklyn, country seat, house, &c., and sixty acres of land near Babylon, Queens County, and two farms in Pike County, Pennsylvania, and that the same is of the fair value of not less than ninety thousand dollars, and none of this property is subject to any incumbrance whatever, and that he owns personal estate in the
1089 States of New York and Pennsylvania worth at least the sum of ten thousand dollars, consisting of stocks, bonds, farming utensils, cash, etc., and that it is subject to no incumbrance whatever. And that there are no unsatisfied judgments or executions against him, and that he is under no recognizance, and that he is worth in good property not less than one hundred thousand dollars over and above all debts, liabilities, and lawful claims, as he has no debts whatever.

RODNEY S. CHURCH, *Surety.*

Subscribed and sworn to before me this 21st day of July, 1879.

JOHN A. SHIELD,
U. S. Commissioner, S. D. of N. Y.

1090 SOUTHERN DISTRICT OF NEW YORK,
State of New York, City & County of New York, ss:

Henry Beyer, of No. 412 West 46th street, in the city of New York, the surety named in the annexed bond on appeal, being duly sworn, deposes and says that he owns in his own right real estate in the city of New York, consisting of lot of land and two houses, No. 412 West Forty-sixth street, in the city of New York, and that the same is of the value of not less than seventeen thousand dollars, and is subject to no incumbrance, except a mortgage of five thousand dollars, and that he owns personal estate in the city of New York, and that its value is not less than one thousand dollars; that it consists of furniture, cash, etc., and that it is subject to no incumbrance, and that there are no unsatisfied judgments or executions against him, and that he is under no recognizance, and that he is worth in good property not less than twelve thousand dollars over and above all debts, liabilities, and lawful claims against him, and all liens, incumbrances, and lawful claims upon his property.

HENRY BEYER, *Surety.*

Sworn to before me this 21st day of July, 1879.

JOHN A. SHIELD,
U. S. Commissioner, S. D. of N. York.

1091 SOUTHERN DISTRICT OF NEW YORK,
State of New York, City and County of New York, ss:

Richard W. Salway, of No. 231 McDougal street, in the city of Brooklyn, New York, the surety named in the annexed bond on appeal, being duly sworn, deposes and says that he owns in his own right real estate in the city of Brooklyn, and in Oneida County, New York, consisting of three lots of land on Bedford between Hayward & River sts., Brooklyn; five lots on Brooklyn ave, between East N. Y. ave. and Albany ave., one lot on Hayward street, between Bedford & Lee aves., Brooklyn; and farm of six hundred acres of land, with house and outbuildings, in Remsen, Oneida County, New York, and 47 lots at Forestport, Oneida County, New York, and that the same is of the value of not less than twenty-nine thousand dollars, and is subject to no incumbrance whatever. And that he owns personal estate in the State of New York, and that its value is not less than six thousand dollars; that it consists of stock in business, furniture, farming utensils, &c., and that it is subject to no incumbrances whatever, and that there are no unsatisfied
1092 judgments or executions against him, and that he is under no recognizance whatever, and that he is worth in good property not less than twenty-nine thousand dollars over and above all debts, liabilities, and lawful claims against him, and all liens, incumbrances, and lawful claims upon his property.

RICHARD W. SALWAY,
Surety.

Sworn to before me this 21st day of July, 1879.
[SEAL.] JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

1093 SOUTHERN DISTRICT OF NEW YORK,
State of New York, City & County of New York, ss:

J. P. Johnson Howard, of No. 1622 Fulton street, in the city of Brooklyn, New York, the surety named in the annexed bond on appeal, being duly sworn, deposes and says that he owns, in his own right, real estate in the county of Kings & Queens, consistings of one house & twelve lots on Dean street, near Troy ave., and two lots at Coroma Park, Queens County, 80-acre farm in Essex County, New York, 640 acres in Hamilton County, New York, and a house and lot in Rahway, New Jersey, and that the same is of the value of not less than thirty thousand dollars, and is subject to no incumbrance whatever, and that he owns personal estate in the city of New York and Brooklyn, and that its value is not less than five thousand dollars; that it consists of furniture, jewelry, cash, &c., and that it is subject to no incumbrances whatever, and that there are no unsatisfied judgments or executions against him, and that he is under no recognizance, and that he is worth in good
1094 property not less than thirty-five thousand dollars over and above

all debts, liabilities, and lawful claims against him, and all liens, incumbrances, and lawful claims upon his property.

J. P. JOHNSON HOWARD,
Surety.

Sworn to before me this 21st day of July, 1879.
[SEAL.] JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

1095 SOUTHERN DISTRICT OF NEW YORK,
State of New York, City and County of New York:

I, John A. Wallace, being duly sworn, deposes and says: I reside at 76 West 12th street, New York City, and am one of the sureties on the foregoing bond on appeal; I own real estate (free and clear) of at least sixty-five thousand dollars in value, in the State of New York. I own personal property in the city of New York, and its value is not less than two hundred thousand dollars, consisting of government bonds, railroad bonds and stocks, and other securities, which are subject to no incumbrance whatever. There are no unsatisfied judgments or executions against me, and I am worth in good property not less than two hundred and sixty thousand dollars over and above all debts, liabilities, and lawful claims against me, and all liens upon my real estate, which liens do not exceed the sum of $1,000.

JOHN A. WALLACE.

Subscribed & sworn to before me this 22d July, 1879.

JOSEPH A. WELCH,
U. S. Commissioner, So. Dist. of New York.

1096 I approve of the within bond, to operate as a supersedeas in so far as the Florida Central Railroad and its appurtenances are concerned.

July 24th, 1879.

JOSEPH P. BRADLEY,
Associate Justice Sup. Court, Circuit Justice, &c.

Filed this 29th day of July, 1879.

PHILIP WALTER, *Clerk.*

1097 Supreme Court of the United States.

J. FRED SCHUTTE, JAN PRINS, ADRIANUS Prins, Heinrich Ulrici, and others
vs.
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, The Florida Central Railroad Company, and others.

Know all men by these presents that we, the Jacksonville, Pensacola & Mobile Railroad Company, and Edward M. L'Engle, of Duval County, Florida, are held and firmly bound unto J. Fred Schutte, Jan Prins, Adrianus Prins, and Heinrich Ulrici, in their own behalf and in behalf of all others complainants in the suit hereinafter named, in the sum of one thousand dollars, to be paid to the said J. Fred Schutte, Jan Prins, Adrianus Prins, and Heinrich Ulrici, for themselves and all others complainants in the said suit, their executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally nizance, and that he is worth in good property not less than twelve thousand dollars over and above all debts, liabilities, and lawful claims against him, and all liens, incumbrances, and lawful claims upon his property.

HENRY BEYER, *Surety.*

Sworn to before me this 21st day of July, 1879.

JOHN A. SHIELD,
U. S. Commissioner, S. D. of N. York.

1091 SOUTHERN DISTRICT OF NEW YORK,
State of New York, City and County of New York, ss:

Richard W. Salway, of No. 231 McDougal street, in the city of Brooklyn, New York, the surety named in the annexed bond on appeal, being duly sworn, deposes and says that he owns in his own right real estate in the city of Brooklyn, and in Oneida County, New York, consisting of three lots of land on Bedford between Hayward & River sts., Brooklyn; five lots on Brooklyn ave, between East N. Y. ave. and Albany ave., one lot on Hayward street, between Bedford & Lee aves., Brooklyn; and farm of six hundred acres of land, with house and outbuildings, in Remsen, Oneida County, New York, and 47 lots at Forestport, Oneida County, New York, and that the same is of the value of not less than twenty-nine thousand dollars, and is subject to no incumbrance whatever. And that he owns personal estate in the State of New York, and that its value is not less than six thousand dollars; that it consists of stock in business, furniture, farming utensils, &c., and that it is subject to no incumbrances whatever, and that there are no unsatisfied 1092 judgments or executions against him, and that he is under no recognizance whatever, and that he is worth in good property not less than twenty-nine thousand dollars over and above all debts, liabilities, and lawful claims against him, and all liens, incumbrances, and lawful claims upon his property.

RICHARD W. SALWAY,
Surety.

Sworn to before me this 21st day of July, 1879.
[SEAL.]

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

1093 SOUTHERN DISTRICT OF NEW YORK,
State of New York, City & County of New York, ss:

J. P. Johnson Howard, of No. 1622 Fulton street, in the city of Brooklyn, New York, the surety named in the annexed bond on appeal, being duly sworn, deposes and says that he owns, in his own right, real estate in the county of Kings & Queens, consistings of one house & twelve lots on Dean street, near Troy ave., and two lots at Coroma Park, Queens County, 80-acre farm in Essex County, New York, 640 acres in Hamilton County, New York, and a house and lot in Rahway, New Jersey, and that the same is of the value of not less than thirty thousand dollars, and is subject to no incumbrance whatever, and that he owns personal estate in the city of New York and Brooklyn, and that its value is not less than five thousand dollars; that it consists of furniture, jewelry, cash, &c., and that it is subject to no incumbrances whatever, and that there are no unsatisfied judgments or executions against him, and that he is under no recognizance, and that he is worth in good 1094 property not less than thirty-five thousand dollars over and above all debts, liabilities, and lawful claims against him, and all liens, incumbrances, and lawful claims upon his property.

J. P. JOHNSON HOWARD,
Surety.

Sworn to before me this 21st day of July, 1879.
[SEAL.] JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

1095 SOUTHERN DISTRICT OF NEW YORK,
State of New York, City and County of New York:

I, John A. Wallace, being duly sworn, deposes and says: I reside at 76 West 12th street, New York City, and am one of the sureties on the foregoing bond on appeal; I own real estate (free and clear) of at least sixty-five thousand dollars in value, in the State of New York. I own personal property in the city of New York, and its value is not less than two hundred thousand dollars, consisting of government bonds, railroad bonds and stocks, and other securities, which are subject to no incumbrance whatever. There are no unsatisfied judgments or executions against me, and I am worth in good property not less than two hundred and sixty thousand dollars over and above all debts, liabilities, and lawful claims against me, and all liens upon my real estate, which liens do not exceed the sum of $1,000.

JOHN A. WALLACE.

Subscribed & sworn to before me this 22d July, 1879.
JOSEPH A. WELCH,
U. S. Commissioner, So. Dist. of New York.

1096 I approve of the within bond, to operate as a supersedeas in so far as the Florida Central Railroad and its appurtenances are concerned.

July 24th, 1879.

JOSEPH P. BRADLEY,
Associate Justice Sup. Court, Circuit Justice, &c.

Filed this 29th day of July, 1879.
PHILIP WALTER, *Clerk.*

1097 Supreme Court of the United States.

J. FRED SCHUTTE, JAN PRINS, ADRIANUS Prins, Heinrich Ulrici, and others
vs.
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, The Florida Central Railroad Company, and others.

Know all men by these presents that we, the Jacksonville, Pensacola & Mobile Railroad Company, and Edward M. L'Engle, of Duval County, Florida, are held and firmly bound unto J. Fred Schutte, Jan Prins, Adrianus Prins, and Heinrich Ulrici, in their own behalf and in behalf of all others complainants in the suit hereinafter named, in the sum of one thousand dollars, to be paid to the said J. Fred Schutte, Jan Prins, Adrianus Prins, and Heinrich Ulrici, for themselves and all others complainants in the said suit, their executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally firmly by these presents, sealed with our seals and dated the 1098 twenty-fourth day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas lately, at a circuit court of the United States for the northern district of Florida, in a suit depending in said court between the parties above entitled, a decree was rendered against the above-named defendants, and the defendant the Jacksonville, Pensacola and Mobile Railroad Company has taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the said suit:

Now, therefore, the condition of this obligation is such that if the above-named Jacksonville, Pensacola and Mobile Railroad Company shall prosecute its said appeal to effect, and answer all costs if it shall fail to make good its plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

EDWARD M. L'ENGLE. [SEAL.]

I approve the foregoing bond.
July 24th, 1879.

JOSEPH P. BRADLEY,
Asso. Justice Sup. Ct. & Circuit Justice.

Filed Aug. 5, 1879.

P. WALTER, *Clerk.*

1099 In the circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEO. F. DREW, GOVERNOR OF THE STATE OF Florida, and Geo. F. Drew; Columbus Drew, comptroller; Walter Gwynn, treasurer; Geo. P. Raney, attorney-general; Hugh A. Corley, commissioner of land and immigration of the State of Florida, and who constitute the trustees of the internal improvement fund of the State of Florida; the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, James G. Gibbes, T. C. Spooner, and Walter Gwynn, treasurer of the State of Florida, and Charles H. Foster, Gideon Maria Boissevain, Adrian J. Mildus, Joseph Zaddock, Adrian Stoop, John Collinson, and Thomas B. Coddington.

Jacksonville, Pensacola and Mobile.

And now, at a term of the circuit court of the United States for the northern district of Florida, held this 26th day of April, A. D. 1877, this cause coming on further to be heard and considered as to the 1100 defendants Frank R. Sherwin, Gideon M. Boissevain, Adrian J. Mildus, Joseph Zaddock, and Adrian Stoop, upon the notice and motion for a decree pro confesso duly entered at a former day of this term, and it appearing that the bill of complaint in this cause was duly filed in the clerk's office of this court on the eighth day of March, A. D. 1877, and that the writ of subpœna as prayed was duly served on the said Sherwin, Boissevain, Mildus, Stoop, and Zaddock, by the serving and leaving a copy thereof with Horatio Bisbee, jr., the attorney and

solicitor of said defendants Sherwin, Boissevain, Mildus, Zaddock, and Stoop, on the (8th) eighth day of March, A. D. 1877, made returnable on the second day of April, 1877, when the said defendants and each of them were commanded and ordered to enter their separate and several appearances in this cause on or before the said second day of April, 1877, or submit to a decree pro confesso, as appears by the return of said writ. And it further appearing that said defendants Sherwin, Boissevain, Mildus, Zaddock, and Stoop, although so duly
1101 served, notified, warned, and commanded, wholly failed to obey
the said writ of subpœna, but have made default thereto, and have each and severally made default in this cause, and that the complainant, by its solicitors, at a previous day of this term, duly entered a notice and motion for a decree pro confesso against said defendants in due form, in the proper rule and order book of this court, and of which the said defendants have taken no heed, and the complainant, by its solicitors, now further moves the court for a decree pro confesso against the said defendants, Sherwin, Boissevain, Mildus, Zaddock, and Stoop, and the court having duly considered the premises and inspected the record, order and proceedings mentioned, and the complainants' bill, praying relief upon the facts therein alleged, and being fully advised in the premises, doth now order, adjudge, and decree, that the bill of complaint filed in this cause, and all and singular the matters
1102 therein alleged, be, and the same hereby are, adjudged and decreed
as to the defendants, Frank R. Sherwin, Gideon M. Boissevain, Adrian J. Mildus, Joseph Zaddock, and Adrian Stoop, to be true, as matters of fact as in said bill alleged, and that now and by the court it is further ordered, adjudged, and decreed that the said Sherwin, Boissevain, Mildus, Zaddock, and Stoop have no interest in or right and title to the papers called bonds in the pleadings mentioned, prior to or to the exclusion of the rights of the complainant, and that the complainant is entitled to all the relief in its said bill prayed as against the said defendants, and which is hereby granted, adjudged, and decreed.

And it is further ordered, adjudged, and decreed that the said Frank R. Sherwin, Gideon M. Boissevain, Adrian J. Mildus, Joseph Zaddock, and Adrian Stoop, and all and singular their attorneys, agents, and solicitors, be, and they hereby are, jointly and severally enjoined and restrained from further asserting or attempting to assert any claim or
1103 demand whatsoever against the Jacksonville, Pensacola and Mo-
bile Railroad Company, its franchise, property or estate, that can or may, or in any manner shall, interfere with the rights of the complainant, as in the bill of complaint alleged, and the relief therein prayed; and it is further ordered, adjudged, and decreed that the said Sherwin, Boissevain, Mildus, Zaddock, and Stoop, and all and singular their attorneys, agents, and solicitors, are especially enjoined and restrained from further interfering with the said Jacksonville, Pensacola and Mobile Railroad for or on account of the matters and things in complainant's bill alleged, or any of them, and shall not seize, or attempt to seize, or advertise, or cause to be advertised, the said Jacksonville, Pensacola and Mobile Railroad for sale, or to hinder, or cause to be hindered, the said company or the complainant in the exercise of all due and lawful control and management of the affairs of the
1104 said Jacksonville, Pensacola and Mobile Railroad Company, its
franchise, property and estate without the special leave and order of this court in that behalf granted, and subject to such further and final decree as may be entered as to the other defendants who have ap-

peared, or have not made default, in this cause in the final trial and hearing thereof.

And it is further ordered, adjudged, and decreed that the complainant do recover of and have judgment for its costs against the defendants, Frank R. Sherwin, Gideon M. Boissevain, Adrian J. Mildus, Joseph Zaddock, and Adrian Stoop, to be taxed and assessed according to law.

By the court.

THOMAS SETTLE, *Judge.*

Filed April 26th, 1877.

PHILIP WALTER, *Clerk.*

1105 To the circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, the Florida Central Railroad Company, the Jacksonville, Pensacola and Mobile Railroad Company, Gideon M. Boissevain, Adian J. Mildus, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, John Collinson, Milton S. Littlefield, and Thomas B. Coddington.
} Florida Central.

And now, at a term of the circuit court of the United States for the northern district of Florida, held this 26th day of April, A. D. 1877, this cause coming on further to be heard and considered as to the defendants Frank R. Sherwin, Gideon M. Boissevain, Adrian J. Mildus, Joseph Zaddock, and Adrian Stoop, upon the notice and motion
1106 for a decree pro confesso duly entered at a former day of this term, and it appearing that the bill of complaint in this cause was duly filed in the clerk's office of this court on the ninth day of February, 1877, and that the writ of subpœna as prayed was duly served on the said Sherwin, Boissevain, Mildus, Zaddock, and Stoop by the serving and leaving a copy thereof with Horatio Bisbee, jr., the attorney and solicitor of said defendants Sherwin, Boissevain, Mildus, Zaddock, and Stoop, on the seventh (7th) day of March, A. D. 1877, made returnable on the second day of April, 1877, wherein the said defendants and each of them were commanded and ordered to enter their several and separate appearances in this cause on or before the said second (2d) day of April, A. D. 1877, or submit to a decree pro confesso as appears by the return of said writ; and it further appearing from the records and files of this court that said defendants Sherwin, Boissevain, Mildus, Zaddock, and Stoop, although so duly served, notified, warned, and commanded, wholly failed to obey the said writ of subpœna, but have made default thereunto, and have each and severally
1107 made default in this cause, and that the complainant, by its solicitors, at a previous day of this term, duly entered a notice and motion for a decree pro confesso against said defendants, in due form, in the proper rule and order book of this court, and of which the said defendants have taken no heed, and the complainant, by its solicitors, now further moves the court for a decree pro confesso against the said defendants Sherwin, Boissevain, Mildus, Zaddock, and Stoop, and the

court, having duly considered the premises and inspected the record, order and proceedings mentioned, and the complainants' bill, praying relief upon the facts therein alleged, and being fully advised in the premises, both now order, adjudge, and decree that the bill of complaint filed in this cause, and all and singular the matters therein alleged be, and the same hereby are, adjudged and decreed as to the defendants Frank R. Sherwin, Gideon M. Boissevain, Adrian J. Mildus, Joseph Zaddock and Adrian Stoop to be true as matters of fact, as in said bill alleged, and that now, and by the court, it is further ordered,
1108 adjudged and decreed that the said Sherwin, Boissevain, Mildus, Zaddock and Stoop have no interest in or right and title to the papers called bonds, in the pleadings mentioned, prior to or to the exclusion of the rights of the complainant, and that the complainant is entitled to all the relief prayed for in its said bill as against the said defendants, and which is hereby granted, adjudged and decreed.

And it is further ordered, adjudged and decreed that the said Frank R. Sherwin, Gideon M. Boissevain, Adrian J. Milders, Joseph Zaddock and Adrian Stoop, and all and singular their agents, attorneys and solicitors be, and they hereby are, jointly and severally enjoined and restrained from further asserting, or attempting to assert, any claim or demand whatsoever against the Florida Central Railroad Company, its franchise, property, or estate, that can or may, or in any manner shall, interfere with the rights of the complainant as in the bill of complaint alleged, and the relief therein prayed.

1109 And it is further ordered, adjudged and decreed that the said Sherwin, Boissevain, Milders, Zaddock, and Stoop, and all and singular their agents, attorneys and solicitors, are especially enjoined and restrained from further interfering with the said Florida Central Railroad, for or on account of the matters and things in complainant's bill alleged, or any of them, and shall not seize or attempt to seize, or advertise or cause to be advertised, the said Florida Central Railroad for sale, or to hinder, or cause to be hindered, the said company, or the complainant, in the exercise of all due and lawful control of the management and affairs of the said Florida Central Railroad Company, its franchise, property and estate, without the special leave and order of this court in that behalf granted, and subject to such further and final decree as may be entered as to the other defendants who have appeared or have not made default in this cause in the final trial and hearing thereof.

1110 And it is furthere*d* ordered, adjudged and decreed that the complainant do recover of and have judgment for its costs against the defendants, Frank R. Sherwin, Gideon M. Boissevain, Adrian J. Milders, Joseph Zaddock and Adrian Stoop, to be taxed and assessed according to law.

By the court.

THOMAS SETTLE, *Judge.*

Filed April 26th, 1877.

PHILIP WALTER, *Clerk.*

Decree pro confesso vacated by consent.

(Page 1111 omitted per stipulation.)

1112 In circuit court, northern dist. of Florida.

WESTERN DIVISION NORTH CAROLINA RAILroad Company
vs.
GEO. F. DREW, THE JACKSONVILLE, PENSAcola & Mobile Railroad Company, et al.

Term at Tallahassee, Florida, May, 1877.

Ordered that all the defendants herein have leave to file cross bills in this suit.

THOMAS SETTLE, *Judge.*

Filed May 7th, 1877.

P. WALTER, *Clerk.*

1113 United States circuit court, northern district of Florida, in equity.

WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company
vs.
GEORGE F. DREW, GOV., ET ALS.

In this cause it is ordered that the defendants, George F. Drew, governor of Florida, and Walter Gwynn, treasurer, be and are allowed till the first Monday in June, A. D. 1877, to plead to or answer the bill in this cause.

Done and ordered in open court this the 7th day of May, A. D. 1877.

(Signed) THOMAS SETTLE, *Judge.*

Filed May 7th, 1877.

(S'g'd) PHILIP WALTER, *Clerk.*

1114 U. S. circuit court, northern dist. of Florida.

WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Co.
vs.
GEO. F. DREW, GOVERNOR OF THE STATE OF Florida; The Florida Central Railroad Co., et al.

And now comes the complainants, by its solicitors, Joseph B. Stewart and E. M. Thompson, and upon their motion it is ordered that the complainant be, and it hereby is, granted leave to amend its bill by adding as parties defendant thereto J. Fred. Schutte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, Edward Isaac Asser, Gideon Maria Boissevain, Dr. Nicolaas Jacob Den Tex, and Adolph Engler, trustee, each of whom are alleged to be, and, by matters of record, appear to be interested in the subject-matter of this suit.

JOSEPH P. BRADLEY,
Circuit Justice.

MAY 22d, 1877.

Filed this 23d day of May, 1877.

P. WALTER, *Clerk.*

1115 **U. S. circuit court, northern dist. of Florida.**

WESTERN DIVISION OF THE WESTERN NORTH
Carolina R. R. Company
vs.
GEO. F. DREW, GOVERNOR OF THE STATE OF
Florida, The Florida Central R. R. Company,
The Jacksonville, Pensacola & Mobile R. R.
Co., Gideon Maria Boissevain, Adrian J. Mildens, Joseph Zaddocks, Adrian Stoop, Frank
A. Sherwin, claiming to be the authorized
agent of the four parties last named, John
Collinson, Milton S. Littlefield, Walter Gwynn,
Thomas B. Coddington, et al.

It appearing to my satisfaction that a suit is pending in this court upon bill filed by the Western Division of the Western North Carolina R. R. Company, complainant, against George F. Drew, governor of the State of Florida, The Florida Central R. R Co., The Jacksonville, Pensacola & Mobile R. R. Co., Gideon Maria Bossevain, Adrian J.
1116 Mildeus, Joseph Zaddocks, Adrian Stoop, Frank R. Sherwin, claim-
ing to be the authorized agents of the four parties last named, John Collinson, Milton S. Littlefield, Walter Gwynn, Thomas B. Coddington, Gideon Maria Boissevain, J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, J. Borzo, Elias Fuld, Edward Isaac Asser, Dr. Nicolaas Jacob Den Tex, & Adolph Engler, defendants.

And it further appearing that the defendants Gideon M. Boissevain, Adrian J. Mildeus, Jos. Zaddocks, Adrian Stoop, J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, Edward Isaac Asser, Dr. Nicholaas Jacob Den Tex, are each subjects of the King of Holland, and reside in or about Amsterdam in said kingdom, and John Collinson is a subject of the Queen of Great Britain, and resides in London, England, and the defendants Thomas B. Coddington & Adolph Engler are residents of the State of New York, and reside in the city of New York, and reside beyond the territorial jurisdic-
1117 tion of this court, so that the ordinary writ of subpœna cannot
be served upon them or either of them; and it further being represented to me that said parties are, or claim to be, interested in the subject-matter of this suit, and are material parties thereto; wherefore it is now ordered, that said non-resident defendants, and each of them, be served with a notice of the pendency of this suit by the personal service of a certified copy of this order upon each of them to enter their appearance in person, or by solicitor, on or before the 1st Monday of August, 1877, and then & there plead, answer, or demur to the complainant's bill in such manner as they may be advised, and according to the rules of this court, or that in default thereof a decree pro confesso will be entered against them, & each of them, provided that a copy of this order be served upon them thirty days previous to the first Monday of Aug., 1877.

Dated May 22, 1877.

JOSEPH P. BRADLEY,
Circuit Justice.

Filed this 22nd day of May, 1877.

PHILIP WALTER, *Clerk.*

1118 U. S. circuit court, northern district of Florida.

WESTERN DIVISION OF THE WESTERN NORTH Carolina R. R. Company
vs.
GEO. F. DREW, GOVERNOR OF THE STATE OF Florida, the Jacksonville, Pensacola & Mobile Railroad Company, et al.

And now comes the complainant, by its solicitor, Joseph B. Stuart & E. M. Thompson, and upon their motion it is ordered that the complainant be, and it hereby is, granted leave to amend its bill by adding as parties defendant thereto J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, Edward Isaac Asser, Gideon Maria Boissevain, Dr. Nicolaas Jacob Den Tex, and Adolph Engler, trustee, each of whom are alleged to be and by matters of record appear to be interested in the subject-matter of this suit.

May 22, 1877.

JOSEPH P. BRADLY,
Circuit Justice.

Filed this 23 day of May, 1877.

PHILIP WALTER, *Clerk.*

1119 *Application for injunction and injunctions granted by Justice Bradley.*

Circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant,
vs.
GEO. F. DREW, GOVERNOR, WALTER GWYNN, treasurer of the State of Florida, the Florida Central Railroad Company, the Jacksonville, Pensacola & Mobile Railroad Company, et als., defendants.

Jos. B. Stewart, E. M. Thompson, solicitors for complainant.

Filed 22nd day of May, 1877.

PHILIP WALTER, *Clerk.*

1120 Circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant,
vs.
GEO. F. DREW, GOVERNOR, WALTER GWYNN, treasurer of the State of Florida, the Florida Central Railroad Company, the Jacksonville, Pensacola & Mobile Railroad Company, et als., defendants.

Application for injunction.

The object of this suit, as set forth in the prayer of the bill, is to enjoin the governor of Florida from seizing and selling the Florida Central Railroad, extending from Jacksonville to Lake City, and to have declared null and void certain bonds purporting to be bonds of the Florida Central Railroad Company, one thousand in number, for one thousand dollars each, dated 1st of January, 1870, which bonds are in possession of the treasurer of the State of Florida, and for non-payment of interest on which the governor threatens to seize and sell the road. The bill further prays that the said treasurer may be decreed to surrender said bonds to the company, and that certain persons, made defendants, to wit, John Collinson and others, may be enjoined from harrassing the company on account of said bonds,

The governor having advertised the road for sale, motion is now made, on petition filed for that purpose, for a preliminary injunction against him to prevent his seizing and selling the road; against the treasurer from parting with the bonds pending suit, and against the parties claiming relief on account of the bonds from further interfering with the said railroad, or causing it to be seized, until final decree in the cause.

1121 The motion for injunction is opposed by the defendants, the governor and treasurer of the State, on three grounds:

First. That the complainant has no title and no right to interfere in the matter;

Secondly. That if it ever had title, it has lost and waived it by laches, and by acts which estop it from claiming any relief;

Thirdly. That the bonds are not void, but are in equity good against the company for the benefit of persons holding certain State bonds, which they purchased in good faith, and which were issued to the company in exchange for the said company bonds, but which being void, the said purchasers have a right to resort to the bonds in question, and the State has a right to compel their payment for this purpose.

The bill has been demurred to, and the demurrer has been overruled after argument. The question of the complainant's title and the question of laches, so far as appeared on the face of the bill, were fully discussed on the demurrer; and unless the aspect of the case on these points have been changed, the decision made upon that argument must be regarded as the law of the case. The defendants not having filed answers, the case still remains as before on the pleadings. But affidavits have been read on the present motion, both on the part of the complainant and the defendants, and various records and documents, either verified or conceded to be authentic, have been referred to. So far as these may have altered the complainant's case, it is necessary to examine them.

Before doing this, however, it is proper to observe that it would be very unfair to the parties to decide the whole merits of the case on this motion upon mere affidavits. The granting of a preliminary injunction is in the discretion of the court, and in exercising this discretion, it will look at the consequences which would ensue on the one hand by granting it, and on the other by withholding it. In the present case it is apparent that if the complainant has the rights claimed by the bill, and if the bonds are really void, or there are plausible grounds for supposing them to be so, a very serious, if not irreparable, injury would ensue by seizing and selling the road in the summary manner proposed. On the other hand, if it should turn out that the complainant's title is defective, or that the company bonds are amenable to the claims of the State bondholders referred to, a temporary suspension of the sale cannot materially injure them. The property is there, and will remain there, and its earnings can, in the mean time, be employed in 1122 keeping it in repair. The possibility that a favorable opportunity of disposing of it, known to exist, may be missed by the delay, can hardly be deemed a legal ground for precipitating a sale which would most certainly destroy the rights of the complainant if it has any. These are considerations necessary to be borne in mind in disposing of the present motion.

I am fully aware of the great importance to the people and business of the State that the vexatious litigation respecting this and the connecting railroad should be terminated; and that the roads should come into the possession of responsible parties, clothed with a secure title, in order that they might feel encouraged to improve and extend it and make it what it should be, a first-class line of communication. But however desirable it may be that this result should be hastened, it is very questionable whether it would be hastened by disregarding those obvious principles of justice of which all parties litigating in good faith have a right to enjoy the benefit.

Looking, then, at the affidavits laid before me, I do not see that the title of the complainant has been materially affected by anything new which has been evolved. In truth the allegations of the bill have rather been corroborated than weakened. It seems to be indisputable that Swepson and Littlefield, between them, did procure the stock of the Florida Central Railroad Company with the proceeds of North Carolina bonds, which they had no right to dispose of in that way; and that the complainant, so soon as the fraud was discovered, endeavored to hold them and their confederates accountable; and after pursuing the wrongfully converted funds through much litigation, and after many ineffectual attempts at compromise, the complainant finally procured an acknowledgment of its equitable claim to this stock, which Littlefield who is a party to this suit and holds the principal part of it does not deny. The affidavits of Rollins, the president of the complainant, and of Mr. Stewart, the solicitor, are to the effect that in December last, previous to the commencement of this suit, Littlefield recognized the rights of complainant to the stock of the Florida Central Railroad Company, and made a full and complete transfer thereof to the use of the complainant.

The suggestion made by defendants' counsel that the North Carolina bonds, the proceeds of which were embezzled, were void, and were repudiated by the State, and therefore that the complainant had no title to call Swepson and Littlefield and their confederates to account, and that the parties who purchased the bonds are the real bene- 1123 ficiaries entitled to pursue these funds, may possibly be well founded and may govern the rights of the parties on the final hearing of the cause on the merits of the case. But I do not feel justified at this stage of the cause in assuming the facts on which this suggestion is grounded are sufficiently made out. All the negotiations, agreements of compromise, and litigations which have taken place between the complainant and the parties having possession of the funds have either proceeded upon a concession of the plaintiff's right or have resulted in adjudications confirmatory of it. So far as appears by the disclosures in this cause the complainant is the only party equitably interested in the principal part of the stock of the Florida Central Railroad Company.

II. The next question is, whether, conceding this to be so, the complainant has not by permitting Littlefield, Swepson, and their associates to appear as the owners of the stock, they have not made them their agents and trustees so as to be bound by their acts as apparent stock-

holders and as directors of the company, at least so far as regards innocent parties dealing with them as such? On this question, without going into the evidence in detail, I shall do little more than state the conclusion to which I have arrived—a conclusion based, it must be remembered, only on affidavits and the documents which have been presented on this hearing. It seems to me that the question proposed must be answered in the affirmative, to wit, that the complainant has permitted Littlefield and his associates so to deal with the property as to make their acts performed in their capacity of stockholders and officers of the Florida Central Railroad Company binding, except as to those persons who had notice that they were acting in any transaction in fraud of the rights of the complainant. It is sufficient in this connection to refer to the agreement made on the 16th day of April, 1870, between the Florida Central Railroad Company, George W. Swepson, president; the Jacksonville, Pensacola & Mobile Railroad Company, Milton S. Littlefield, president, and Littlefield, majority owner of the stock of the Tallahassee Railroad Company, of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by N. W. Woodfin and others, commissioners appointed by act of the legislature of North Carolina, approved by the stockholders of said corporation (that is, the complainant), of the second part. The agreement recites that whereas G. W. Swepson, late president of the Western Division of the Western North Carolina Railroad Company, made certain investments of the funds of said company in securities of
1124 and interest in the said Florida Central Railroad, Jacksonville,
Pensacola & Mobile Railroad, and the Tallahassee Railroad of the State of Florida, as per report made by said Swepson to said commissioners, amounting in the aggregate to $1,287,436.03, to bear interest from the 1st of November, 1869, at 8 per cent. per annum; and whereas Swepson heretofore conveyed to Littlefield, subject to the payment of the above claim, his interest in the above railroads; and whereas Littlefield has received authority from the legislature of Florida and said several railroad companies to receive bonds to be issued by and for account of the several railroad companies, which bonds are to be exchanged for the bonds of the State of Florida, to be issued for the purpose of aiding the finances of the said several railroad companies, all of which bonds are now in a state of preparation; and whereas Littlefield has made a contract with S. W. Hopkins & Co. for the disposition of said bonds as the same may be issued; the proceeds of the issue of the bonds of the Central Railroad Company of Florida, amounting to $960,000, are to be applied to the payment of existing liabilities of the several railroad companies, including $150,000 to be paid to the commissioners aforesaid for the purpose of paying existing liabilities of the Western Division of the Western North Carolina Railroad Company. After these recitals it is agreed by the parties that the proceeds of the sale of said bonds to be issued by the Florida railroad companies and the State of Florida are to be equally divided between the Western Division aforesaid and the Florida railroads, until the entire amount of $1,287,436.03, with interest as aforesaid, is fully paid. It is further agreed that all the interest owned or claimed by Swepson and Littlefield, or which as individuals they have a right to control in the Florida railroads, is pledged for the faithful fulfilment of this contract, without the right or the part of any party to interfere with their management or control to the affairs of the roads. This agreement was signed by Swepson and Littlefield and by the North Carolina commissioners who assumed to act for the complainant, and had been appointed by the legislature, and as they declare, by the complainant, so to act. As the State of North

Carolina was the largest stockholder of the complainant and as it is conceded that the affairs of the complainant—the Western Division—were for a long time administered by these commissioners, I must assume on this hearing that they had proper authority to represent the complainant in this transaction. At all events, the complainant company had full notice of it and must be regarded as bound so far as innocent third parties are concerned.

1125 This agreement is important not only as showing that the complainant acquiesced in the management of the affairs of the Florida railroads by Littlefield and Swepson as the apparent stockholders and officers thereof, but that it acquiesced in the issue of the very bonds which are involved in this case, and in their exchange for the Florida State bonds and in the disposal and sale of the latter. And although subsequent agreements may have been made between the parties (as there were, more than once), yet the whole subsequent conduct of the complainant with regard to the Florida railroad property was in affirmation of the authority of Swepson and Littlefield to represent the stock and affairs of the Florida companies. At all events, nothing seems to have been done by the complainant during the long period that followed to put the public on its guard against dealing with these persons as the proper and lawful stockholders and officers of those companies.

Upon the whole case, therefore, as it stands before me on affidavits, I come to the conclusion that the complainant can claim no rights except such as the Florida Central Railroad Company itself can claim in view of the acts of its known and apparent stockholders and officers. After permitting the affairs of the company to be managed by those stockholders and officers for so many years, it cannot claim to have the company exempted from any obligations which it has assumed or to which it may be equitably liable. It cannot claim to stand in a better position than the corporation itself; and especially is this true in reference to bona fide purchasers of the Florida State bonds issued in exchange for the bonds of the corporation. But my conclusion is that it is entitled, as the case now stands, to represent the interests of the corporation, and to ask that its just rights may be protected.

III. Then, lastly, the question arises, whether the parties at whose instance and in whose behalf the governor of the State of Florida proposes to sell the Florida Central Road are bona fide purchasers of the Florida State bonds issued in exchange for the bonds of the corporation.

On this question I must confess that I am not entirely free from doubt. The papers presented to the governor were undoubtedly sufficient to authorize him to take the initiatory steps which he has done in advertising the property for sale. He considered them sufficient, and the law makes him the judge, at least, in the first instance, of their sufficiency. Parties adversely interested, of course, have the right to a judicial investigation and determination of the question. The governor's power in the matter is analogous, though in some respects superior, 1126 to that of a mortgagee with a power of sale. Such a mortgagee is not obliged to resort to the courts, but may sell on default of payment by giving notice according to the terms of the mortgage. But any person interested adversely to such a sale may apply to the courts and have his rights adjudicated therein.

Whilst, therefore, the governor had the right, in the first instance, to determine on the sufficiency of the proofs laid before him, the complainant, as representing the interests of the Florida Central Railroad Company, had the concurrent right of appealing to the courts for an adjudication upon the claims of those in whose behalf the governor assumed to act. And it seems to me that all that is requisite on the part of the railroad company is to show a probable ground of defence against those claims, in order to invest the court with the jurisdiction of the controversy. It would deprive parties of the benefit of a judicial determination of their rights, and would impose upon the governor a responsibility which, I doubt not, he would be very unwilling to assume, if the court, on the presentation of such a case, should decline to assume jurisdiction of the controversy.

Whilst it must be assumed, therefore, and whilst on examination there appears no doubt that the proofs laid before the governor were prima facie sufficient to justify the proceedings undertaken by him, the facts which have now been disclosed by the complainant are calculated to raise grave doubts whether the parties claiming to be purchasers of the State bonds in question are really and bona fide such. At all events, a sufficient probable ground of defence has been raised to entitle the complainant to a judicial examination, and to render it inexpedient that the property should be sold until such an examination can be had.

Entertaining these views as to the relative rights of the parties, and being convinced by the showing which has been made that there is at least ground for questioning the rights of the bondholders, it is unnecessary that I should examine the affidavits and papers in detail, as that will be more proper on the final hearing of the cause.

Without expressing any opinion on the question whether the bondholders are entitled in any event to set up an equity to have the bonds of the corporation enforced for their benefit—a question which has been somewhat discussed, if not decided, by the supreme court of Florida—I am of opinion that a temporary injunction ought to issue in this case to prevent the governor from selling the road or other property of the company, and from taking possession of the same, until the further order of the court.

1127 The parties, however, will have leave at any time to move for a dissolution of this injunction, on filing answers and showing positively the fact that they are bona fide purchasers of State bonds, unless on further consideration the court should be of opinion that it would prejudice the rights of the parties to make a sale before final decree.

The injunctions granted.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainants,

vs.

GEORGE F. DREW, GOVERNOR OF THE STATE of Florida; Columbus Drew, comptroller; Walter Gwynn, treasurer; Geo. P. Rainey, attorney-general; Hugh A. Corley, commissioner of lands and immigration; and who constitute the trustees of the internal improvement fund of the State of Florida; The Jacksonville, Pensacola & Mobile Railroad Company; Milton S. Littlefield, James G. Gibbs, T. C. Spooner; and Walter Gwynn, treasurer of the State of Florida; and Chas. H. Foster, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, John Collinson and Thomas B. Coddington, defendants.

At a circuit court of the United States held on the 21st day of May, 1877, in a for the northern district of Florida, at Tallahassee, one of the places where said court is authorized to be held, comes the complainant, by its solicitors, Joseph B. Stewart and E. M. Thompson, and moves the court for the granting of an interlocutory injunction restraining the defendants, Geo. F. Drew, and all and singular his servants, agents, and attorneys, together with all other persons in that behalf intermeddling, from selling, or advertising for sale, the Jacksonville, Pensacola & Mobile Railroad, until final trial of this cause, or the further order of this court.

And comes, also, the defendants, Geo. F. Drew, governor of the State of Florida; Columbus Drew, comptroller; Walter Gwynn, treasurer; George P. Rainey, attorney-general; Hugh A. Corley, commissioner of lands and immigration, and who constitute the trustees of the internal improvement fund of the State of Florida, by their counsel, George P. Rainey and Henry R. Jackson, and who, without answering the bill of complaint, submitted their several affidavits and the affidavit of Charles D. Willard, showing reasons why the injunction as prayed by the complainants should not be granted; and the said motion for injunction having been argued by the counsel of the parties complainant and defendant, and the court being duly advised in the premises, and in consideration thereof it is now by the court ordered and adjudged and decreed that the defendant, George F. Drew, governor as aforesaid, together with all and singular his agents, attorneys, and servants or appointees, are enjoined and restrained from selling or advertising, or causing or permitting to be advertised for sale, the Jacksonville, Pensacola & Mobile Railroad, until the further order of this court.

JOSEPH P. BRADLEY,
Circuit Judge.

MAY 22, 1877.

1128 THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEO. F. DREW, GOVERNOR OF THE STATE OF Florida, The Florida Central Railroad Company, The Jacksonville, Pensacola & Mobile Railroad Company, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, claiming to be the authorized agents of the four parties last named; John Collinson, Milton S. Littlefield, Walter Gwynn, and Thomas B. Coddington, defendants.

At a circuit court of the United States, held on the twenty-first day of May, 1877, in and for the northern district of Florida, at Tallahassee, one of the places where such court is authorized to be held, comes the complainant by its solicitors, J. B. Stewart and E. M. Thompson, and moves the court for the granting of an interlocutory injunction against the defendants, George F. Drew, governor, and Walter Gwynn, treasurer, restraining the said George F. Drew, governor, and all and singular his servants, agents, or attorneys, together with all other persons in that behalf intermeddling, from seizing, holding, or advertising for sale the Florida Central Railroad, or in any manner molesting or interfering with the same, until the final trial of this cause, or the further order of this court.

And comes also the defendants, George F. Drew, governor, and Walter Gwynn, G. P. Rainey, and Henry R. Jackson, and who, without answering the bill of complaint, submitted their separate affidavits, and the affidavits of others, showing reason why said injunction, as prayed for, should not be granted; and the said motion for injunction having been argued by counsel on the part of the complainant and defendants, and the court being fully advised in the premises, and upon due consideration thereof, doth order and adjudge and decree that the defendant, George F. Drew, governor as aforesaid, and all and singular his servants, agents, or attorneys, together with all other persons whomsoever in that behalf intermeddling, be restrained, and they, each and severally, hereby are restrained and enjoined from the seizing, holding, or advertising for sale the said Florida Central Railroad, or in any manner molesting or interfering with the same until the final hearing of this cause, or until the further decree of this court.

JOSEPH P. BRADLEY,
Circuit Justice.

MAY 22, 1877.

1129 U. S. circuit court, northern dist. of Florida.

WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company
vs.
GEO. F. DREW, GOVERNOR OF THE STATE OF Florida, The Jacksonville, Pensacola and Mobile Railroad Company, et al.

It appearing to my satisfaction that a suit is pending in this court upon bill filed by the Western Division of the Western North Carolina R. R. Company, complainant, against George F. Drew, governor of the State of Florida, and George F. Drew, governor; Columbus Drew, comptroller; Walter Gwynn, treasurer; Geo. P. Raney, attorney-general; Hugh A. Corley, commisioner of lands & immigration of the State of Florida, and who constitute the trustees of the internal improvement fund of the State of Florida; the Jacksonville, Pensacola & Mobile Railroad Company, Milton S. Littlefield, James G. Gibbs, 1130 T. C. Spooner, and Walter Gwynn, treasurer of the State of Florida, and Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, John Collinson, Thos. B. Coddington, J. Fred Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, Edward Isaac Asser, and Dr. Nicolaas Jacob den Tex, and Adolp Engler, defendants; and, it further appearing that the defendants, Gideon M. Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, J. Fred Schutte, Jan Prins, Adrianus Prins, Heinrick Ulrici, Elias Fuld, J. Borzo, Edward Isaac Asser, Dr. Nicolaas Jacob den Tex, are each subjects of the King of Holland, and reside in or about Amsterdam in said kingdom, and that the defendant, John Collinson, is a subject of the Queen of Great Britain, residing in London, England, and that the defendants, Thomas B. Coddington and Adolph Engler, are citizens of the State of New York, residing in the city of New York, and beyond the territorial jurisdiction of this court, so that the ordi- 1131 nary writ of subpœna cannot be served upon them or either of them; and it further being represented to me that said parties are, or claim to be, interested in the subject matter of this suit, and are material parties thereto; wherefore it is now ordered that said non-resident defendants, and each of them be served with a notice of the pendency of this suit by the personal service of a certified copy of this order upon each of them to enter their appearance in person, or by solicitor, on or before first Monday in August, A. D. 1877, and then & the*ir* to plead, answer, or demur to the complainant's bill in such a manner as they may be advised, and according to the rules of this court, or that in default thereof a decree pro confesso will be entered against them, and each of them, provided that a copy of this order be served upon them thirty days previous to the first Monday in August, 1877.

May 22, 1877.

JOSEPH P. BRADLEY,
Circuit Justice.

Filed this 22 day of May, 1877.

PHILIP WALTER, *Clerk.*

1132 In the circuit court of the United States for the northern district of Florida. In chancery.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEO. F. DREW, GOVERNOR OF THE STATE OF Florida, The Florida Central Railroad Company, et al.

The complainant in the above entitled cause having applied for leave to file its amended and supplemental bill, leave to file the same is hereby granted.

THOMAS SETTLE, *Judge.*

DECEMBER 17, 1877.

Filed Dec'r 17, 1877.

P. WALTER, *Clerk.*

1133 In the circuit court of the United States for the northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainants,
vs.
GEO. F. DREW, GOVERNOR OF THE STATE OF Florida, and George F. Drew, governor, Columbus Drew, comptroller, Walter Gwynn, treasurer, Geo. P. Raney, attorney-general, Hugh A. Corby, commissioner of lands and immigration, trustees of the internal improvement fund, &c., The Jacksonville, Pensacola & Mobile Railroad Company, Milton S. Littlefield, James G. Gibbs, Adolph Engler, trustee for the holders of the alleged bonds of the State of Florida involved in this suit, Thomas B. Coddington, et al., defendants.

The complainants having given notice to the defendants that the complainant desires and claims the right to have evidence in the above

entitled cause taken orally before an examiner, to be appointed by the court for that purpose, as provided by the sixty-seventh rule of equity practice, and having applied for such examiner to take the testi-
1134 mony of witnesses residing in the city of New York, it is now and hereby ordered and directed that James M. Ball and Richard E. Stillwell, who is a United States commissioner, residing in and for the southern district of New York, and said Ball being a resident of said city of New York, be and they are hereby appointed examiners of this court, to take testimony in this cause in the manner provided by law and the rules of equity practice prescribed by the Supreme Court of the United States, and that a commission do issue therein accordingly.

THOMAS SETTLE, *Judge.*

JANUARY 3D, 1878.

Filed Jan'y 3d, 1878.

P. WALTER, *Clerk.*

(Pages 1135 to 1140 omitted per stipulation.)

1141 Circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant,

vs.

GEORGE F. DREW, GOVERNOR, THE JACKSONVILLE, Pensacola and Mobile Railroad Company, The Florida Central Railroad Company, et al., defendants.

And now, at a circuit court of the United States held in and for the northern district of Florida, held on the twenty-third day of February, 1878, comes the complainant by its solicitor, and moves the court for a decree pro confesso against the defendant John Collinson, one of the parties defendant to this suit; and it appearing that the order of service made by this court on the 22d day of May, 1877, with the United States writ of subpœna under the seal of this court thereunto attached, was duly served on the said defendant, John Collinson, more than thirty days previous to the first Monday in October, A. D. 1877, and
1142 that said defendant hath not appeared to this cause or answered the complainant's bill, but hath made default therein: it is now, upon the further motion of the complainant's solicitor, ordered, adjudged, and decreed that the complainant's bill of complaint filed in this court be, and the same is, as to the said John Collinson, and as to all and singular the matters and things therein alleged, confessed, and admitted to be true, in manner and form as therein alleged; and that the complainant be and hereby is adjudged and decreed to have and receive all and singular the relief in said bill of complaint prayed as against the defendant John Collinson, and that a judgment and decree be entered in favor of complainant, granting the relief so prayed upon the final hearing of this cause.

THOMAS SETTLE, *Judge.*

Filed Feb. 23d, 1878.

P. WALTER, *Clerk.*

1143 Circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant,
vs.
GEORGE F. DREW, GOVERNOR, THE JACKSONVILLE, Pensacola and Mobile Railroad Company, The Florida Central Railroad Company, et al., defendants.

And now, at a circuit court of the United States, held in and for the northern district of Florida, on the 23rd day of February, A. D. 1878, comes the complainant by its solicitor and moves the court for a decree pro confesso against the defendant, Adolph Engler, trustee for J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, J. Borzo, Elias Fuld, Edward Isaac Asser, Dr. Jacob den Tex, and others, parties defendant to this suit; and it appearing that the order of service 1144 made by this court on the 22nd day of May, 1877, with the United States writ of subpœna, under the seal of this court thereunto attached, was duly served on the said defendant, Adolph Engler, more than thirty days previous to the third day of September, A. D. 1877, to wit, on the 17th day of July, 1877, and that said defendant hath not appeared to this cause, or answered the complainant's bill, but hath made default therein; it is now, upon the further motion of the complainant's solicitor, ordered, adjudged, and decreed that the complainant's bill of complaint filed in this court be, and the same is, as to the said Adolph Engler, trustee, and as to all and singular the matters and things therein alleged, confessed and admitted to be true in manner and form as therein alleged; and that the complainant be, and hereby is, adjudged and decreed to have and receive all and singular the relief in said bill of complaint prayed as against the defendant, Adolph Engler, trustee, and that a judgment and decree be entered in favor of complainant, granting the relief so prayed, upon the final hearing of this cause.

(S'g'd) THOMAS SETTLE, *Judge.*

Filed Feb'y 23rd, 1878.

(S'g'd) PHILIP WALTER, *Clerk.*

1145 In the United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE FLORIDA Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE JACKSONVILLE, Pensacola & Mobile Railroad Company, et al.

It is ordered this first day of March, 1878, that Mr. Read, clerk

U. S. circuit and dist. court, at Ashville, North Carolina, and Joseph B. Batchelor, at Raleigh, North Carolina be, and they respectively hereby are, appointed examiners to take depositions of witnesses in the above-entitled cause in the respective places named, and that the clerk of this court is hereby authorized to issue commissions to
1146 them, respectively, upon the application of the parties plaintiff or defendant in said suits.

It is further ordered that said testimony be taken in the manner prescribed in the 67th rule of equity practice.

THOMAS SETTLE, *Judge.*

Filed this 1st day of March, 1878.

PHILIP WALTER, *Clerk.*

1147 In United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE FLORIDA Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE JACKSONVILLE, Pensacola and Mobile Railroad Company, et al.

It is ordered this first day of March, 1878, upon the motion of the complainant, that the above entitled causes shall be heard together, and that the testimony taken and to be taken shall serve in each case respectively, so far as applicable thereto or the issue therein in-
1148 volved; and it is further ordered that the taking of testimony in the above causes shall be concluded on or before the first Monday in May, 1878, unless by order of this court extending the time for good and sufficient cause shown.

THOMAS SETTLE, *Judge.*

Filed this 1st day of March, 1878.

PHILIP WALTER, *Clerk.*

1149 In the circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, ET AL.
} 2 suits in equity.

It is ordered that the time for completing the taking of testimony under the commissions now outstanding in the hands of Special Examiner Joseph B. Batchelor and Joseph H. Durkee, esqs., be extended to the second Monday in June, A. D. 1878, unless sooner executed and returned by said examiners.

THOMAS SETTLE, *Judge.*

Filed May 10th, 1878.

PHILIP WALTER, *Clerk,*
O. W. BROMELLER, *Dep'ty.*

(Page 1150 omitted per stipulation.)

1151 In the U. S. circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE FLORIDA Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE JACKSONVILLE, Pensacola and Mobile Railroad Company, et al.

It is ordered that the taking of testimony in the above causes be continued until the first Monday in September, A. D. 1878.

THOMAS SETTLE, *Judge.*

June 17th, 1878.

(Page 1152 omitted per stipulation.)

1153 Circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, ET ECT.

And now comes the complainant, the Western Division of the Western North Carolina Railroad Company, by Joseph B. Stewart, its solicitor, and upon its motion the supplemental bill filed in this cause, on the 23rd day of November, A. D. 1877, be and the same hereby is dismissed.

Done in open court this 26th day of June, 1878.

THOMAS SETTLE, *Judge.*

Filed June 26, 1878.

P. WALTER, *Clerk.*

1154 In the United States circuit court, fifth judicial circuit, northern district of Florida.

WESTERN DIVISION OF THE W. N. C. RAILroad Co. et al.
vs.
THE FLORIDA CENTRAL R. R. COMPANY ET al.

&

WESTERN DIVISION OF THE WESTERN N. Carolina R. R. Company et al.
vs.
GEO. F. DREW, GOV., THE J., P. & M. R. R. Co. et al.

It is ordered that the time for executing the commissions for taking testimony now outstanding in the hands of the special examiner, Jas. H. Durkee & Jos. B. Batcheler, esq'rs, be extended to the first Monday in July, 1878.

And it is further ordered that the commission heretofore issued to Robt. E. Stillwell, U. S. commissioner for the southern district of New York, be reissued to said Stillwell, to take the deposition of H. H. Thompson and other witnesses, on the part of the complainant, and that said commission so reissued to said Stillwell be executed on or before the 1st day of July, 1878.

THOMAS SETTLE, *Judge*.

Filed.

P. WALTER, *Clerk*.

1155 United States circuit court for the northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &c., The Florida Central Railroad Company, et al,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &c., The Jacksonville, Pensacola and Mobile Railroad Company, et al.

And now, at a circuit court held in and for the circuit aforesaid, on this 2nd day of December, 1878, comes the complainant, and upon its motion it is ordered that the time for taking testimony upon the commissions now outstanding, or such further commissions as may be issued, be and the same hereby is extended to the 2d Monday in January, 1879.

W. B. WOODS, *Judge*.

Filed Decr. 4th, 1878.

P. WALTER, *Clerk*.

1156 In United States circuit court, 5th circuit, N. district of Florida.

WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company
vs.
GEO. F. DREW, GOVERNOR OF THE STATE OF Florida, The Florida Central Railroad Company, et al., and cross-bill of Florida Central Railroad Company.

On motion of James M. Baker, solicitor for the Florida Central Railroad Company, it is ordered that leave be granted to the said Florida Central Railroad Company to amend its cross-bill filed in the above-stated case by adding as parties thereto J. Fred. Schutte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Barzo, Edward

1157 Isaac Asser, Nicholas Jacob Den Tex, and Adolph Angler, trustee, who appear to be parties in interest, and who have been made parties to the original bill filed in this cause by order of Justice Bradley, dated May the 22d, 1877.

THOMAS SETTLE, *Judge*.

JACKSONVILLE, *Feb'y 22d*, 1879.

Filed Febr'y 22, 1879.

P. WALTER, *Clerk*.

1158 In the circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., and The Florida Central Railroad Company & others,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., and The Jacksonville, Pensacola & Mobile Railroad Company, & others.

And now comes the complainant, by its solicitor, Joseph B. Stewart, and upon its motion it is ordered that the time for taking testimony in the above causes be, and the same is hereby, extended until the first Monday in April.

THOMAS SETTLE, *Judge*.

Dated Feb'y 22d, 1879.

Filed Feb'y 22d, 1879.

P. WALTER, *Clerk*.

1159 In United States circuit court, 5th judicial circuit court, N. district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEO. F. DREW, GOVERNOR OF THE STATE OF Florida, et al., and cross-bill of The Florida Central Railroad Company.

It appearing to the court that Gideon Maria Boissivain, Adeson J. Mildus, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, John Collinson, Thomas B. Coddington, J. Fred. Schutte, Jans Prins, Heinrich Ulrici, Elias Fuld, J. Barzo, Edward Isaac Asser, Nicholas Jacob Den Tex, & Adolph Engler, trustee, defendants in the cross-bill filed in above stated cause by the Florida Central Railroad Company praying
1160 the removal of liens claimed to exist against the Florida Central
Railroad, being within said northern district of Florida, are not

inhabitants of the said district, and that personal service on said defendants is not practicable—

On motion of the James M. Baker, solicitor for the Florida Central Railroad Company, complainant in said cross-bill, it is ordered that the above-named defendants appear and plead, answer, or demur to the said cross-bill on or before the 7th day of April next, being rule day; and further, that this order be published once a week for six consecutive weeks in the Daily Sun & Press at Jacksonville, Florida.

THOMAS SETTLE, *Judge.*

JACKSONVILLE, *Feb'y 22d*, 1879.

Filed Feb'y 22d, 1879.

P. WALTER, *Clerk.*

1161 STATE OF FLORIDA,
County of Duval, ss:

I certify that the annexed advertisement, cross-bill, Western Div. Western N. C. Railroad Co. vs. Geo. F. Dew, governor State af Fla., et al., and cross-bill of Fla. Central Railroad Co., as per annexed copy, hes been published in the Jacksonville Sun and Press, a paper authorized to publish official and legal notices, for the space of six weeks, beginning on the 24th day of February, A. D. 1879, inclusive.

A. E. SAWYER,
Bookkeeper of Sun and Press.

Sworn to and subscribed before me this seventh day of April, A. D. 1879.

[SEAL.] JEROME C. ANDREW,
Notary Public.

Filed April 7, 1879.

P. WALTER, *Clerk.*

In United States circuit court, 5th judicial circuit, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, et al., and cross-bill of the Florida Central Railroad Company.

It appearing to the court that Gideon Maria Boissevain, Adrian J. Milders, Joseph Zadocks, Adrian Stoop, Frank R. Sherwin, John Collinson, Thomas B. Coddington, J. Fred. Schutte, Jan Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, Edward Isaac Asser, Nicholas Jacob den Tex, and Adolph Engler, trustee, defendants in the cross-bill filed in the above-stated cause by the Florida Central Railroad Company, praying the removal of liens claimed to exist against the Florida Central Railroad, being within said northern district of Florida, are not inhabitants of the said district, and that personal service on said defendants is not practicable, on motion of James M. Baker, solicitor for the Florida Central Railroad Company, complainant in said cross-bill, it is ordered that the above-named defendants appear and plead, answer or demur, to the said cross-bill on or before the seventh day of April next, being rule-day; and, further, that this order be published once a week for six consecutive weeks, in the Daily Sun and Press, at Jacksonville, Florida.

THOMAS SETTLE, *Judge.*

JACKSONVILLE, *February* 22 1879.

I hereby certify that the foregoing is a true copy of the original order made on the 22d day of February, 1879, on file and of record in my office.

PHILIP WALTER,
Clerk United States Circuit Court.
oaw6w

JACKSONVILLE, *February* 24, 1879.

1162 THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, et al., and cross-bill of the Florida Central Railroad Company.

On motion of James M. Baker, esq., solicitor for the Florida Central Railroad Company, it is ordered that a decree pro confesso be entered on the cross-bill of the Florida Central Railroad Company against the following-named defendants: Gideon Maria Boissevain, Adrian J. Milders, Joseph Zadoks, Adrian Stoup, Frank R. Sherwin, John Collinson, Thomas B. Coddington, J. Fred. Schutte, Jan Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, Edward Isaac Asser, Nicholas Jacob Den Tex, and Adolph Engler, trustee.

April 7, 1879.

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

1163 I, Philip Walter, clerk of the circuit court of the United States in and for said northern district of Florida, do hereby certify that the foregoing is a true and correct transcript from the minutes of the said circuit court of the United States, made and kept by me, and is a true copy of an order duly taken in open court and entered on said minutes at page 25 thereof, on the seventh day of April, A. D. 1879.

Witness my hand and the seal of said court, at Jacksonville, in said district, this 1st day of October, A. D. 1879.

[SEAL.]
PHILIP WALTER, *Clerk.*
By W. F. QUAILE,
A. D. C. in for said Dist. & Cir.

1164 In the circuit of the United States, northern district of Florida:

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR & TRUSTEE, The Florida Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR & TRUSTEE, the Jacksonville, Pensacola & Mobile Railroad Company, et al.

It is now and hereby ordered by the court that the above-entitled suits be and they hereby are set for trial and final hearing on the first Monday in May.

Dated Feb'y 22, 1879.

THOMAS SETTLE, *Judge.*

Filed Feb'y 22, 1879.

P. WALTER, *Clerk.*

1165 In United States circuit court, northern district of Florida.

MONDAY, *April 7th*, 1879.

* * * * * * *

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Jacksonville, Pensacola and Mobile Railroad Company, et al.

On motion of John T. Walker, esq., it is ordered that the time for taking testimony in this cause be extended to the third Monday in April instant.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Florida Central R. R. Co., et al.

On motion of John T. Walker, esq., it is ordered that the time for taking testimony in this cause be extended to the third Monday in April, instant.

1166 J. FRED. SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

On motion of W. G. M. Davis, esq., it is ordered that the time for taking testimony in this cause be extended to the first Monday in May next.

* * * * * * *

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

I, Philip Walter, clerk of the United States circuit court in and for said district, do hereby certify that the foregoing is a true and correct transcript from the minutes of the said United States circuit court kept by me as such clerk, and that the same appears at pages 22 and 23 of said minutes as part of the proceedings of said court under date of April 7th, 1879.

Witness my hand and the seal of said court, at Jacksonville, in said district, this 9th day of October, 1879.

[SEAL.]

PHILIP WALTER, *Clerk.*
By W. F. QUAILE, *A D. C. for* —

1167 U. S. circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Florida Central R. R. Company, et al.

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company,
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Jacksonville, Pensacola and Mobile R. R. Company, et al.

And now at a circuit court held in and for the circuit aforesaid, at Jacksonville, this 14th day of May, A. D. 1876. It is ordered that all testimony taken in the above-entitled suits be opened and published in the clerk's office, and that any commissions not returned by the examiners be opened and published by said clerk without further order.

Done in open court this 14th day of May, 1879.

THOMAS SETTLE, *Judge.*

Filed May 14th, 1879.

P. WALTER, *Clerk.*

1168 United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE JACKSONVILLE, Pensacola & Mobile Railroad Company & others.

The complainant in the above cause having asked leave to amend the bill filed therein as read to the court in the presence of the defendants' counsel, now in consideration of the fact that the complainants in the case of J. Fred. Schutte & als. vs. The Jacksonville, Pensacola & Mobile Railroad Company & others, have dismissed their bill as against The Western Division of the Western North Carolina Railroad Company, whereby the said last named company is deprived of the benefit of certain matters set up in its answer in said cause. It is, therefore, ordered that the complainant in this case have leave, upon the terms hereinafter
1169 stated, to amend its said bill in the manner proposed by the amendment now read to the court as revised thereby, but that it shall not be necessary for the defendants to answer the said amendment under oath or affirmation unless they choose so to do, and no further evidence shall be taken in the cause unless the defendants shall desire to take further evidence therein, in which case both parties shall have leave to take evidence on the matters stated in said amendment.

JOSEPH P. BRADLEY,
Asso. Justice Sup. C't.

May 21st, 1879.

Filed May 21st, 1879

P. WALTER, *Cl'k.*
By L. PHILLIPS, *D. C.*

1170 *Motion to suppress deposition taken in New York.*

WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company et al.
vs.
GEO. F. DREW, GOVERNOR, THE TRUSTEES int. improvement fund of Florida, et al.

This motion coming on to be heard this day, and being argued by counsel and considered by the court, it is ordered that the motion to suppress said deposition is hereby denied. (The question being whether the court had power to appoint an examiner in New York under the 67th rule in equity.)

May 22nd, 1879.

JOSEPH P. BRADLEY,
Circuit Justice.

Filed May 22, 1879.

P. WALTER, *Clerk.*
By L. PHILIPS, *D. C.*

1171 United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Florida Central Railroad Company, et als.

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Jacksonville, Pensacola and Mobile Rail-Company et als.

and

J. FRED. SCHUTTE ET ALS.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et als.

1172 Whereas the bill of J. Fred. Schutte and others, though in the form of an original bill, is in fact in the nature of a cross-bill, relating to the same subject-matter of litigation and setting up the same rights which the Western Division of the Western North Carolina Railroad Company by its bills seeks to overthrow, and as the controversy as a whole cannot be adjudicated without considering the cases involved in both bills; and whereas all the suits have really been prosecuted as one litigation, and as the complainants in the bill of Schutte and others do not reside in the United States and cannot be served with process, and yet as complainants are seeking to dispose of the very matter in controversy, the court is of opinion that the complainants in
1173 the Schutte bill should be required, as a condition of obtaining

the relief they seek, to make themselves parties to the bills of the Western Division of the Western North Carolina Railroad Company, so that the whole matter may be settled together.

Wherefore it is ordered that the complainants in the Schutte bill, who are defendants in the other bills, be required as a condition of obtaining the relief they seek, to enter appearance to the bills of the Western Division of the Western North Carolina Railroad Company or to adopt the defence of the parties situated in like case with them, who are defendants to those bills.

It is further ordered that the said J. Fred. Schutte and others shall have the option whether they will put in answers to the bills of the Western Division of the Western North Carolina Railroad Company and proceed to take testimony therein, or whether they will adopt the litigation in its present state and go to a hearing at the present time.

May 22d, 1879.

JOSEPH P. BRADLEY,
Circuit Justice.

Filed May 22d, 1879.

PHILLIP WALTER, *Clerk.*

1174 United States circuit court, northern district of Florida.

THE WESTERN NORTH CAROLINA RAILROAD Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Florida Central Railroad Company et al.

The Western North Carolina Railroad Company having exhibited its bill of revivor, praying the revival of the suit lately pending in this court in the name of the Western Division of the Western North Carolina Railroad Company against George F. Drew, governor, trustee, &c., The Florida Central Railroad Company and others, for reasons in said bill alleged, and the same having been duly considered by the court, it is ordered that said suit be, & the same is hereby, revived as to all and singular the matters and things at issue therein, and the relief therein prayed, and that the said suit proceed in the name of the said
1175 The Western North Carolina Railroad Company as complainants therein against all the defendants in said suit.

May 26th, 1879.

JOSEPH P. BRADLEY,
Circuit Justice.

Filed May 27th, 1879.

P. WALTER, *Clerk.*

1176 United States circuit court, northern district of Florida.

THE WESTERN NORTH CAROLINA RAILROAD Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Jacksonville, Pensacola & Mobile Railroad Company et al.

The Western North Carolina Railroad Company having exhibited its bill of revivor, praying the revival of the suit lately pending in this court in the name of the Western Division of the Western North Carolina Railroad Company against George F. Drew, governor, trustee, &c. The Jacksonville, Pensacola & Mobile Railroad Company and others, for reasons in said bill alleged, and the same having been duly considered by the court, it is ordered that said suit be, and the same is hereby, revived as to all and singular the matters and things at issue 1177 therein, and the relief therein prayed, and that the said suit proceed in the name of the said The Western North Carolina Railroad Company as complainant therein against all the defendants in said suit.

JOSEPH P. BRADLEY,
Circuit Judge.

MAY 26th, 1879.

Filed May 27th, 1879.

PHILIP WALTER, *Clerk.*

1178 United States circuit court, fifth judicial circuit, northern district of Florida.

SATURDAY MORNING, *May 31st*, 1879.

Court met pursuant to adjournment.

Present, Mr. Justice Bradley, presiding justice, and the Hon. Thomas Settle, district judge.

Court was opened in due form by the crier.

* * * * * * *

WESTERN NORTH CAROLINA R. R. CO.
vs.
J. FRED SCHUTTE ET AL.
} In equity.

After the reading of the opinion of Mr. Justice Bradley, and the signing of the decree, the plaintiffs prayed an appeal, which was allowed.

J. FRED SCHUTTE ET AL.
vs.
JACKSONVILLE, PENSACOLA AND MOBILE RAILroad Co. et al.
} In equity.

1179 After reading the opinion of Mr. Justice Bradley, and the signing of the decree, the defendant prayed an appeal, which was allowed.

J. FRED SCHUTTE ET AL.
vs.
FLORIDA CENTRAL RAILROAD CO. ET AL.
} In equity.

After the signing of the decree, the defendant, the Florida Central Railroad, prayed an appeal, which was allowed.

I, Philip Walter, clerk of the United States district and circuit courts for the northern district of Florida, fifth judicial circuit, do hereby certify that the foregoing is a true and correct copy of the original orders granting appeals in the above-entitled causes, made on the 31st day of May, A. D. 1879.

In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court at Jacksonville, Fla., on this the 6th day of October, A. D. 1879.

[SEAL.] PHILIP WALTER, *Clerk*,
By W. F. QUAILE,
A. D. C. of said Court.

1180 In the circuit court of the United States for the northern district of Florida. In equity.

THE WESTERN NORTH CAROLINA RAILROAD Company, complainant,
vs.
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad company and others, defendants.

This 31st day of May, A. D. 1879, this cause came on for final hearing on pleadings and proofs, and was argued by counsel, and the court being fully advised of and concerning the same, doth now here order, adjudge, and decree that the bill of complaint of the complainant in this cause be, and the same hereby is, dismissed with costs to be taxed.

Dated May 31st, 1879.
By the court.
(Signed) JOSEPH P. BRADLEY,
Circuit Justice.

Filed June 2nd, 1879.
(S'g'd) PHILIP WALTER, *Clerk.*

1181 In the circuit court of the United States for the northern district of Florida. In equity.

THE WESTERN NORTH CAROLINA RAILROAD Company, complainant,
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY and others, defendants.

This 31st day of May, A. D. 1879, this cause came on for final hearing on the pleadings and proofs and was argued by counsel, and the court being fully advised of and concerning the same, doth now here order, adjudge, and decree that the bill of complaint of the complainant in this cause be, and the same hereby is, dismissed with costs to be taxed.

Dated May 31st, 1879.
By the court.
(Signed) JOSEPH P. BRADLEY,
Circuit Justice.

Filed June 2nd, 1879.
(S'g'd) PHILIP WALTER, *Clerk.*

1182 United States circuit court, northern district of Florida.

THE WESTERN NORTH CAROLINA RAILROAD Company *vs.* GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, the Florida Central Railroad Company, the Jacksonville, Pensacola & Mobile Railroad Company, Gideon Maria Boissevain, Adrian J. Meldens, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, agent for the four parties last named, John Collinson, Milton S. Littlefield, Walter Gwynn, Thomas B. Coddington, J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Dr. Nicholas, Jacob Den Tex, J. Borzo, Edward Isaac Asser, and Adolph Engler, trustee. } In equity. Two cases.

And now comes the above-named complainant company, by its solicitor, and moves the court for an order permitting the supersedeas bond upon the appeals prayed and allowed in the above-entitled suits to be executed by sureties residing outside of the State of
1183 Florida should such course for any reason be desirable and necessary.

Wherefore, it is now at chambers in the city of Savannah, Georgia, on this sixth day of June, 1879, ordered, that the complainant and appellant in the above-entitled suits have leave to execute or cause to be executed a good and sufficient bond in the sum of one hundred thousand dollars, by sureties residing outside of the State of Florida, to be duly qualified as to the responsibility and sufficiency thereof; and that such bond, when so executed, approved, and filed with the clerk of the United States circuit court for the northern district of Florida, at Jacksonvile, shall operate as a supersedeas of all sales under the decrees rendered in the above-entitled causes, pending the hearing and determination of the appeal taken herein.

JOSEPH P. BRADLEY, *C. J.*

Filed June 13th, 1879.

P. WALTER, *Clerk.*

1184 (Indorsed:) U. S. circuit court for northern district of Florida. Western & North Carolina Railroad Company vs. Geo. F. Drew, governor of the State of Florida, et al. Order granting leave to execute bond for security on appeal outside of the State of Florida. Filed June 13th, 1879. Philip Walter, clerk.

1185 THE WESTERN NORTH CAROLINA RAILroad Company *vs.* GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Florida Central Railroad Company, et al. } On bill, &c.

THE WESTERN NORTH CAROLINA RAILROAD COMpany *vs.* GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., THE Jacksonville, Pensacola and Mobile Railroad Company, et al. } On bill, &c.

It appearing to the court from an inspection of the record of its pro-

ceedings that there has not been entered therein a formal decree dismissing the bills of said complainant company in conformity to the judgment and direction made by Mr. Justice Bradley in open court, on the 31st day of May, by which it was ordered that the bill aforesaid be dismissed with costs, it is now ordered that the bills originally filed by the Western Division of the Western North Carolina Railroad Company against George F. Drew, trustee, &c., the Florida Central Rail-
1186 road Company, et als, and which said bill was revived and presented in the name of the Western North Carolina Railroad Company, and the bill originally filed by the Western Division of the Western North Carolina Railroad Company, and which bill was revived and presented in the name of the Western North Carolina Railroad Company, be dismissed with costs, and that this order be now entered as of the thirty-first day of May, 1879, when it should have been entered of record.

THOMAS SETTLE, *Judge.*

Filed July 10th, 1879.

P. WALTER, *Clerk.*

1187 United States circuit court for the northern district of Florida.

THE WESTERN NORTH CAROLINA RAILROAD Company
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, The Florida Central Railroad Company, et al.,

and

THE WESTERN NORTH CAROLINA RAILROAD Company
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, The Jacksonville, Pensacola and Mobile Railroad Company, et al.

UNITED STATES OF AMERICA,
Southern District of New York:

Joseph B. Stewart, being duly sworn, deposes and says that he is solicitor for the plaintiff and appellant in the above-entitled suits; that since praying the appeals herein his unavoidable professional engagements in Kansas and elsewhere, at long distances from his home, have consumed much of his time that might and would otherwise have
1188 been devoted to perfecting said appeals and securing the bond to effect a supersedeas; that although, as matter of precaution, said appeals were prayed and allowed immediately upon the rendering of the judgments herein, the change of clientage which occurred upon the trial, transferring the suits to the jurisdiction of another corporation from that by which they were begun, necessitated the instructing of the officers of the new corporation as to the nature and merits of the litigation in order for them intelligently to determine whether or not it was their duty to prosecute said appeals; that the making of this investigation necessarily occupied much time; that said corporation has finally determined to prosecute said appeals and called a meeting of its

board of directors at as early a day as consistent with their bye-laws to take into consideration the completion of the necessary supersedeas bonds, which meeting has not yet transpired.

Deponent further says that by reason of the intermeddling of parties interested adversely to the appellant, the persons who had promised and agreed to become sureties on the necessary bonds have, at 1189 this late day, refused to execute the same, thus requiring further time to arrange for other parties to take their places; that the sixty days allowed by law in which to prepare and file supersedeas bonds will be insufficient in this case for the reasons stated; and that deponent therefore asks that the time be enlarged until September 1st, 1879, in which to perfect and file supersedeas bonds herein.

JOS. B. STEWART.

Subscribed and sworn to before me this 30th day of July, 1879.

[SEAL.] GEO. C. LLOYD,
Notary Public, New York C. C.

Inasmuch as these cases involve the rights of J. F. Schutte and others, bondholders, who have a suit pending to enforce said rights, the decree wherein has been appealed from, which suit was argued at the same time with these suits as one common litigation, the application to extend 1190 time to file a supersedeas bond herein will not be granted unless the appellants in that suit as well as the present suits will stipulate that the cases shall be decided on the merits only, all parties having gone to the final hearing by consent, and that said stipulation be made a part of the record.

JOSEPH P. BRADLEY,
Asso. Justice Sup. Court U. S.

JULY 31ST, 1879.

1191 United States circuit court, northern district of Florida.

THE WESTERN NORTH CAROLINA RAILROAD Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Florida Central Railroad Company, et al.

THE WESTERN NORTH CAROLINA RAILROAD Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Jacksonville, Pensacola and Mobile Railroad Company, et al.,

and

J. FRED. SCHUTTE, JAN PRINS, ET AL.,
vs.
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, George F. Drew, governor, &c., et al.

It is hereby stipulated and agreed by and on behalf of the Jacksonville, Pensacola & Mobile Railroad Company that the appeal taken by said company in the above-entitled suits shall be submitted to the Supreme Court of the United States upon the merits only.

1192 Dated New York, this 15th day of August, 1879.

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY,
[SEAL.] By M. S. LITTLEFIELD, *President.*

It is hereby stipulated and agreed by and in behalf of the Western North Carolina Railroad Company that the appeal taken in the above-entitled suits shall be submitted to the Supreme Court of the United States upon the merits only.

THE WESTERN NORTH CAROLINA RAILROAD COMPANY,
By JOS. B. STEWART, *Solicitor.*
Dated August 16th, A. D. 1879.

Filed this 23d of Aug't, 1879.

P. WALTER, *Clerk.*

1192½ (Indorsed:) No. 1. U. S. circuit court, northern dist. Fla. Western North Carolina Railroad vs. George F. Drew, gov., et al.

To be filed as part of the record.

J. P. BRADLEY,
Asso. Justice.

Filed this 23d of Aug., 1879.

PHILIP WALTER, *Clerk.*

1193 United States circuit court, northern district of Florida.

THE WESTERN NORTH CAROLINA RAILROAD Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, THE Florida Central Railroad Company, et al.

THE WESTERN NORTH CAROLINA RAILROAD Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &c., The Jacksonville, Pensacola and Mobile Railroad Company, et al.,

and

J. FRED. SCHUTTE, JAN PRINS, ET AL.,
vs.
THE JACKSONVILLE, PENSACOLA AND Mobile Railroad Company, George F. Drew, governor, &c., et al.

Know all men by these presents that we, The Western North Carolina Railroad Company, as principal, and James W. Wilson, Samuel McDowell Tate, and Samuel H. Wiley, as sureties, all of the State of North Carolina, are held and firmly bound unto George F. Drew, governor of the State of Florida, The Jacksonville, Pensacola and
1194 Mobile Railroad Company, The Florida Central Railroad Company, Gideon M. Boissevain, Adrian J. Mildens Joseph Zaddocks,

Adrian Stoop, Frank R. Sherwin, claiming to be agent for the four parties last named, John Collinson, Milton S. Littlefield, Walter Gwynn, Thomas B. Coddington, J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, Dr. Nicholas, Jacob Den Tex, J. Borzo, Edward Isaac Asser, and Adolph Engler, trustees, in the sum of one hundred thousand dollars, to be paid to the said George F. Drew and others above named, as obligees, to which payment, well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators firmly by these presents, sealed with our seals, dated this 15th day of August, 1879.

Whereas the above-named Western North Carolina Railroad Company has taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suits by the
1195 circuit court of the United States for the northern district of Florida:

Now, therefore, the condition of this obligation is such that if the above-named Western North Carolina Railroad Company shall prosecute its said appeal to effect and answer all costs and damages if it shall fail to make good its appeal, then this obligation shall be null and void; otherwise to remain in full force and virtue.

WESTERN N. C. RAILROAD CO.,
By J. W. WILSON, *President*.
JAS. W. WILSON. [SEAL.]
SAM'L McD. TATE. [SEAL.]
SAMUEL H. WILEY. [SEAL.]

In presence of—
GEO. C. LLOYD.

UNITED STATES OF AMERICA,
Southern District of New York, *ss*:

Be it remembered that on this 15th day of August, A. D. 1879, personally appeared before me James W. Wilson, who subscribed the foregoing bond as president of the Western North Carolina Railroad Company, who, being by me duly sworn, upon oath says that he is the president of said Western North Carolina Railroad Company,
1196 appellant in the above-entitled suits, and the seal affixed to his signature, on the part of said company, is the corporate seal thereof, and that he affixed the same thereto by authority of the same, and the said bond is executed by him as the act and deed of said company.

JAS. W. WILSON.

Subscribed and sworn to before me this 15th day of August, 1679.
[SEAL.] GEO. C. LLOYD,
Notary Public, New York Co., N. Y.

And be it further remembered that on this same fifteenth day of August, A. D. 1879, further appeared before me the said James W. Wilson and also Samuel McDowell Tate and Samuel H. Wiley, the above-named bounden sureties, who, being by me severally duly sworn, upon oath states that he, the said James W. Wilson, is possessed of and is the fee-simple owner of real and personal property of the true and reasonable value of more than the sum of twenty-five thousand ($25,000) over and above all
1197 lawful incumbrances thereon, and that he, the said Samuel McDowell Tate, is well and truly worth more than the sum of twenty-

five thousand ($25,000) dollars over and above all just and lawful incumbrances thereon, and that he, the said Samuel H. Wiley, is well and truly worth more than the sum of fifty thousand ($50,000) dollars over and above all just and lawful incumbrances thereon; and that the said joint and several obligors and sureties are jointly worth more than the sum of one hundred thousand ($100,000) dollars over and above all just and lawful incumbrances thereon, in their respective estates, and that the said James W. Wilson, Samuel McDowell Tate, and Samuel H. Wiley, being so under oath, did acknowledge the execution of the foregoing bond and obligation to be their joint and several act and deed, and that they executed, signed and sealed, and delivered the same for the uses and purposes therein mentioned, and that the said persons are personally known to me to be the same persons mentioned and described in said bond.

JAMES W. WILSON.
SAM'L Mc D. TATE.
SAMUEL H. WILEY.

Subscribed & sworn to before me this 15th day of August, 1879.
[SEAL.] GEO. C. LLOYD,
Notary Public, New York Co., N. Y.

1198 Application for extending the time to present a bond to operate as a supersedeas having been applied for before the expiration of the sixty days allowed by statute, and the delay being satisfactorily explained, and the parties having stipulated to argue the appeal on the merits only, the foregoing bond is approved and received for the purpose aforesaid.

JOSEPH P. BRADLEY,
Asso. Justice of Sup. C't, U. S.

AUGUST 16th, 1879.

Filed this 23d of Aug't, 1879.

PHILIP WALTER, *Clerk.*

(Endorsed:) Appeal and supersedeas bond, The Western North Carolina Railroad vs. George F. Drew, governor, &c., et al.

1199 In the circuit court of the United States, fifth judicial circuit, northern district of Florida.

Opinion and decree of Mr. Justice Bradley in the Florida railroad cases, delivered May 31st, 1879.

1200 In the circuit court of the United States, for the northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C.; The Florida Central Railroad Company *et al.*

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Jacksonville, Pensacola and Mobile Railroad Company *et al.*

J. FRED SCHUTTE, JAN PRINS ET AL.
vs.
THE JACKSONVILLE, PENSACOLA & MOBILE Railroad Company; George F. Drew, governor of the State of Florida *et al.*

On bill, &c.

Opinion delivered by Justice Bradley, May 31, 1879.

Filed this 31st day of May, A. D. 1879.

PHILIP WALTER, *Clerk.*

On final hearing at Jacksonville, May 19th to May 31st, 1879.

1201 Counsel appearing for the Western Division of the Western North Carolina Railroad Company: J. B. Stewart, J. K. Herbert.

For the Florida Central Railroad Company: J. M. Baker and J. T. Walker.

For J. Fred Schutte and others: W. G. M. Davis, M. H. Carpenter, C. D. Willard.

For the trustees of the internal improvement fund: G. P. Rainey, attorney-general of Florida.

For the holders of bonds of the Pensacola and Georgia Railroad Company: H. R. Jackson.

For the Jacksonville, Pensacola & Mobile R. R. Company: S. B. Stevens.

These cases involve vital questions relating to the title of and incumbrances upon two railroads, namely, that called the Florida Central Railroad, extending from Jacksonville to Lake City; and that called the Jacksonville, Pensacola & Mobile Railroad, extending from Lake City to the Chattahooche' River, including the branches from Tallahassee to St. Marks, and that leading to Monticello. It is conceded by all the parties that both roads were duly sold by the trustees of the internal improvement fund, under the internal improvement act in 1868 and 1869, and those sales constitute a starting point upon which all the claimants rely. The Florida Central was thus sold on the 4th day of March, 1868, to Willliam E. Jackson and his associate; and the Pensacola & Georgia Railroad, being the road from Lake City to Quincy; and the Tallahassee Railroad, being the road from Tallahassee to St. Marks, which two roads constitute the greatest part of the Jacksonville, Pensacola & Mobile Railroad, were sold on the 20th day of March, 1869, to Franklin Dibble and his associates. Conveyances were made to the purchasers in pursuance of these sales. No question is made about the title acquired by the purchasers of the Florida Central Railroad, nor of its subsequent devolution to the present company, called the Florida Central Railroad Company.

The legislature of Florida by an act passed on the 29th day of July, 1868, on the application of the purchasers, incorporated them into a body politic by the name aforesaid, and as purchasers and
1202 owners of the road. As such purchasers and owners they were made a corporation and authorized to organize as such, and "to declare the amount of which the stock in said Central Railroad Company should consist and to divide the same into shares." They did organize and created capital stock to the amount of 5,500 shares, took possession of their road, and commenced to operate it. It is not denied that the greater portion of the capital stock was subsequently purchased by

George W. Swepson, of North Carolina, who had the same transferred to Milton S. Littlefield. At least as early as the fore part of 1870 Swepson and Littlefield, or one of them, held nearly all the stock of the road and controlled and managed the company. The Western Division of the Western North Carolina Railroad Company has since claimed that it was the money of that company which Swepson and Littlefield used in the purchase of this stock: and that they misappropriated the same in making such purchases and therefore became the holders of said stock for the use and benefit of said company. This has been conceded by Swepson and Littlefield, and the stock is now understood to be held for the use and benefit of the Western North Carolina Railroad Company which has been substituted to the rights of the said Western Division. Thus far, therefore, we are not met by any controversy which calls for the adjudication of this court.

The history of the Jacksonville, Pensacola & Mobile Railroad Company and the roads which it claims to have acquired is more complicated. As before stated in that case, there were two roads purchased by the same parties, that of the Pensacola & Georgia Railroad Company, extending from Lake City to Quincy, with the branch at Monticello; and that of the Tallahassee Railroad Company extending from Tallahassee to St. Marks. Each of these companies had issued bonds under the internal improvement act, which were guaranteed by the internal improvement fund. Default in paying the interest on these bonds and the instalments due the sinking fund was the occasion of the roads being sold by the trustees. The sales were for amounts
1203 nearly equal to the principal of these outstanding bonds. The amount bid for the Pensacola & Georgia Railroad was $1,220,000, and the amount bid for the Tallahassee Railroad was $195,000, and the purchasers were allowed to pay the purchase money, if they could, in the said guaranteed bonds. They did bring in and surrender such bonds to the amount of $806,600 of the Pensacola & Georgia Railroad Company, which were received at par, and $153,700 of the Tallahassee Railroad Company, which were received at 94 or 95 cents to the dollar. It is conceded that a balance remained still to be paid of $472,065, and that that amount of the bonds of the said two companies are still outstanding. For this amount a draft or check was given, which was never paid, and which the parties giving it did not intend to pay. But by giving this check as cash the purchasers prevailed upon the agents of the trustees to deliver deeds for the property. It was a sheer fraud, and a lien for the balance of the purchase money, amounting to $472,065, immediately arose in favor of the trustees and has ever since attached to the property.

The holders of the outstanding bonds referred to are interested in this lien, because the purchase money which it represents in the fund on which the trustees rely for the payment of said bonds in relief of the internal improvement fund itself, so far as it is liable therefor; and also, because the said purchase money is the proceeds of the property which constituted the security of the said bonds. The holders of the said outstanding bonds have in divers ways attempted to enforce their indirect claim to this purchase money and to the lien for its payment, but the Supreme Court of the United States, in the case of the State of Florida vs. Anderson and others, decided that in view of all the complicated rights of the parties the lien must be enforced by the State or the trustees of the internal improvement fund, which the latter have endeavored to do, and which they seek to do in the suits now under consideration.

1204 As against the Jacksonville, Pensacola & Mobile Railroad Company, the existence of the lien was adjudicated by the Duval County circuit court by a judgment rendered on the 2d day of April, 1874, and a recovery was had by the trustees for the principal and interest then due, amounting to $661.845.55. This judgment was rendered in a suit brought by the State of Florida and the trustees of the internal improvement fund against the Jacksonville, Pensacola & Mobile Railroad Company and Milton S. Littlefield; and although that judgment was subsequently reversed in part, yet in a subsequent report of the same case in 16 Florida, 608, the Supreme Court declare that, on this point, the judgment of the Duval County circuit court was final, and that the matter was res adjudicata. But if it were not so, I have no hesitation in saying that the vendor's lien for the said unpaid purchase money, with interest and costs, was valid and binding on the Jacksonville, Pensacola & Mobile Railroad Company. The purchasers, Franklin Dibble and his associates, clearly held the railroads subject to the lien. They became incorporated as purchasers and owners of the property by an act of the legislature of Florida, passed the 24th day of June, 1869, by the name of the Tallahassee Railroad Company; and this company, therefore, being constituted of the same persons, only clothed with corporate powers, received the property subject to the same lien. On the 25th day of May, 1870, the Tallahassee Railroad Company became consolidated with the Jacksonville, Pensacola & Mobile Railroad Company, under and by virtue of the 14th section of the act incorporating the latter company, passed June 24, 1869, entitled "An act to perfect the public works of the State;" and one of the terms of the consolidation was that the consolidated company, under the name of the Jacksonville, Pensacola & Mobile Railroad Company, should, and it did thereby, assume all the debts and obligations of the Tallahassee Railroad Company since its organization. This consolidation, by which the two companies joined their properties together, did not discharge the lien. The property of the Tallahassee Company was brought into the common concern with all pre-existing equities attaching thereto. The consolidated company having, as one of its component parties, the Tallahassee 1205 Company, which held subject to the lien, cannot be regarded as a bona fide purchaser without notice. The notice with which that company was affected, in relation to the property brought with it into the common fund, affected also the consolidated company. Besides, the persons who held the principal part of the stock in and controlled the one company, likewise held the principal part of the stock in and controlled the other company.

As to the other parties in these suits, the Western Division of the Western North Carolina Railroad Company concede the existence and priority of the said lien, and the holders of the State bonds, issued in 1870, in exchange for the bonds of the Jacksonville, Pensacola, and Mobile Railroad Company, and of the Florida Central Railroad Company, who are represented by the complainants in the bill of J. Fred Schutte and others, do not contest the lien, having entered into amicable arrangement with the greater portion of the holders of the outstanding bonds who are interested therein.

I shall, therefore, hold, for the purposes of this case, that the trustees of the internal improvement fund are entitled to the first lien on the property of the Jacksonville, Pensacola & Mobile Railroad Company, extending from Jacksonville to Quincy and from Tallahassee to St. Marks, including the Monticello branch of the roads.

I will now proceed to the controversy which subsists between the Western Division of the Western North Carolina Railroad Company

and the holders of the State bonds issued in 1870. The former claims to be entitled to certain equities arising from the fraudulent use of its moneys by George W. Swepson and Milton S. Littlefield, in purchasing the bonds and property of the Pensacola & Georgia Railroad Company and the Tallahassee Railroad Company, before the devolution of said property to the Jacksonville, Pensacola & Mobile Railroad Company. The latter, namely, the holders of the State bonds, claim that they are bona fide holders of said bonds, without any notice of the frauds committed by Swepson and Littlefield, or of the equities of the North Carolina Company, and that they are, therefore, entitled to have the railroad and property of the Jacksonville, Pensacola & Mobile Railroad Company applied to the payment of their bonds before any relief is
1206 granted to the North Carolina Company. This is the real controversy in these cases, although the said bondholders (who being mostly residents of Holland may, for convenience, be called the Dutch bondholders) affect to ignore the claims of the North Carolina Company, and seek to have a decree irrespective thereof.

It is established beyond controversy that the bonds which were used by F. Dibble and his associates, in payment of the bid for the two railroads in question, namely, that of the Pensacola & Georgia Railroad Company, and that of the Tallahassee Railroad Company, were furnished to them by George W. Swepson, and that Swepson procured the same by a fraudulent use of money in his hands, produced by the sale of North Carolina State bonds belonging to the Western Division of the Western North Carolina Railroad Company, of which he, Swepson, was president. After the roads were bid off at the said sale thereof by the trustees of the internal improvement fund, and before any payment was made on such bid, the purchasers, F. Dibble and his associates on one part, and Swepson on the other, entered into a written agreement, dated March 26th, 1869, by which, after reciting the fact of the sale and the amounts respectively bid for said railroads, it was, amongst other things, agreed that Swepson should deliver, as he should come into possession thereof, to be surrendered to the trustees of the internal improvement fund, the first mortgage bonds of said roads, purchased by him, amounting to about $900,000 of the Pensacola & Georgia bonds and about $150,000 of the Tallahassee Railroad bonds—the former to be surrendered at par, and the latter at their pro rata of the amount bid for said road at said sale, and the balance of the purchase money to be supplied by said F. Dibble and his associates. Secondly, it was agreed that as soon as might be after the title should be acquired from the trustees, first mortgage bonds should be issued, secured by a mortgage or trust deed on said roads, their equipments, and franchises, to be given to said F. Dibble and Swepson, as trustees. Thirdly, it was agreed that the bonds so to be issued should be delivered to Calvin B. Dibble and George W. Swepson, to be sold or negotiated, and the amount thereof for that purpose should be paid to George W. Swepson to reimburse him for the amount of money paid out by him in purchasing the first mortgage bonds aforesaid, and
1207 for commissions and attorney's fees, together with interest, and the additional sum of $100,000. Fourthly, it was agreed that the stock was to be divided and owned as follows: Swepson to have one-third, Calvin B. Dibble to have enough, with Swepson's share, to constitute a majority, and F. Dibble and his associates to have the remainder. Fifthly, it was agreed that Swepson should appoint four directors, F. Dibble and associates four, and that Calvin B. Dibble should be the

ninth director, which arrangement was to last until Swepson was fully paid.

In pursuance of this agreement Swepson shortly after furnished the first mortgage bonds which were delivered to the trustees of the internal improvement fund, namely, $806,600 of the Pensacola & Georgia Railroad bonds, and $153,700 of the Tallahassee Railroad bonds, in all $960,300 of said bonds, leaving still due, as beforesaid, the sum of $472,065. The deeds for the property were executed by the trustees in the name of the purchasers on the 8th of April, 1869, but delivery of them was withheld until the balance should be paid. An arrangement was made that two of the trustees should go to New York with the deeds, and there receive the said balance in cash. As before remarked, a worthless check was palmed off upon the trustees, who gave a receipt for the amount and delivered the deeds. In the consummation of this device Swepson bore the principal part. The deeds were subsequently recorded in Florida on the 22d day of April, 1869. On the same day Dibble executed to Swepson a trust deed as security for the fulfillment of the engagement entered into by the agreement of 26th of March, which trust deed was never recorded, its purpose being accomplished by carrying out the arrangement contemplated. This trust deed recited that Swepson had paid for Dibble and associates in purchase of said roads bonds to the amount of $960,300, and that he had paid to the trustees for the same parties the sum of $472,065, being the full amount due for said roads; it also recited the engagements Dibble made in the agreement of 26th March, and after formally conveying the property of the two railroads as conveyed by the trustees to Dibble, it declared the object of the trust deed to be to enable Swepson—which he bound 1208 himself to do—to convey the same to the corporation to be formed consisting of Dibble and his associates, as soon as they should have granted to them such or similar relief as the legislature had granted William E. Jackson and his associates by the act of July 29th, 1868; it was also declared to be for the purpose of securing Swepson in all advances made as specified and agreed upon in the agreement of March 26th, 1869, and the advancement of said sum of $472,065 until such time as said relief shall have been granted, and said Swepson should have conveyed said property to said corporation.

The counsel for the North Carolina Railroad Company places great stress on this trust deed, insisting that it enured to the benefit of the said company, whose money had been fraudulently used by Swepson in purchasing the $960,300 bonds; and that it conveyed the legal title of the property to Swepson, in whom it still remains, inasmuch as he never executed any deed in pursuance of the trust. But this trust deed was never recorded, and was never heard of by any of the parties to these suits until since the commencement thereof; and as all the terms of the deed were complied with, which made it the duty of Swepson to convey the property to the company thereafter formed; and as the title (as we shall presently see) was sufficiently transferred to the company in other ways, it is to be presumed that this deed was either looked upon by the parties to it as having no further office to perform or the execution of a deed in pursuance thereof was purposely omitted in order to perpetrate further frauds on some other innocent parties.

The fact is that an act was soon after procured similar to the act passed in behalf of William E. Jackson and his associates in relation to the Florida Central Railroad, and bonds were given and stock was disposed of amongst the parties in accordance with the agreement of

March 26, 1869. The act referred to was passed on the 24th day of June, 1869, and is entitled "An act for the relief of Franklin Dibble, A. Huling, E. M. Cheney, and their associates, purchasers of the railroad from Tallahassee to St. Mark's and of the railroad from
1209 Quincy to Lake City and incorporating the Tallahassee Railroad Company." It recites the sale of the two roads on the 20th day of March, 1869, by the trustees of the internal improvement fund to Franklin Dibble, A. Huling. E. M. Cheney and their associates, and that it was essential for the interests of the people of this State that the parties aforesaid should be invested with such corporate powers as were needful for the operations of said road as well as more accurately to define their powers and duties. It then enacted as follows:

"SECTION 1. That the said Franklin Dibble, A. Huling, E. M. Cheney, and their associates, and their successors and assigns, are hereby made a body politic and corporate, under the name of the Tallahassee Railroad Company, and they, their associates and assigns, as such body politic and corporate, are hereby vested with and shall be entitled to exercise and enjoy the like powers, franchises, and privileges as were granted to the Pensacola & Georgia Railroad Company and the Tallahassee Railroad Company by the several acts incorporating said Pensacola and Georgia Railroad Company and said Tallahassee Railroad Company, and with the right to hold, operate, and enjoy the said railroad, under the name of the Tallahassee Railroad Company, subject to the conditions annexed to the sale of said roads by the trustees of the internal improvement fund, and by and in the name of the Tallahassee Railroad Company, they, their associates, successors, and assigns may purchase, receive, and hold lands and tenements, goods and chattels of whatsoever character shall be necessary or useful for the purposes of said railroad, and the same to grant, sell, mortgage, or dispose of, and to sue and be sued, implead and be impleaded, to make a common seal, and at pleasure to break and alter the same, and to establish and put in execution such by-laws and regulations as may be necessary and expedient, not inconsistent with the constitution and laws of the State of Florida.

"SECTION 2. Be it further enacted, That the provisions of the act incorporating the Pensacola & Georgia Railroad Company, for the protection of its roads from trespass, injury, or intrusion, and providing for the punishment of persons who shall trespass upon or injure the same, be, and they are hereby, made applicable to all cases of trespass, injury, or intrusion on, to, or upon the aforesaid railroads, and the said Tallahassee Railroad Company shall be entitled to all the benefits and protection thereof and therefrom.

"SECTION 3. Be it further enacted, That said Franklin Dibble, A. Huling, E. M. Cheney, and their associates, shall be entitled to declare the amount of which the stock in the said Tallahassee Railroad Company shall consist, and to divide the same into shares, which shares, however, shall not be less than one hundred dollars each.

"SECTION 4. Be it further enacted, That said Tallahassee Rail-
1210 road Company may, when they shall see fit, rent, lease, farm out, or sell any part of the said railroad to any person or persons, corporators, or corporations, upon such terms as may be agreed on, provided said sale, renting, or leasing shall not be made to any person or persons or corporation owning any railroads out of the State of Florida.

"SECTION 5. Be it further enacted, That the board of directors of the said Tallahassee Railroad Company shall consist of nine directors, of whom the president of said company shall be one. The first directors shall be elected or appointed within one month after the passage of this act, and annually thereafter, at such time as may be fixed by resolution or law, but the said company shall not be dissolved for failure to elect or appoint its directors, so long as the said railroads shall be kept running and in operation, but the directors may be elected or appointed at the next meeting thereafter.

"SECTION 6. Be it further enacted, That said company shall have the right to issue coupon bonds in such denominations and *it* such rate of interest, annual or semi-annual, and payable at such time and place as they may determine, and may secure the same by mortgage on said railroads, their equipments, depots, workshops, property, and franchise, executed in such form and manner as may be determined: Provided, That any deed of trust, mortgage, conveyance, bond or bonds, or security which may have been executed, made, created, or contracted for, as a lien on said railroads or otherwise by said Franklin Dibble, in behalf of himself and his associates, prior to the passage of this act, shall be valid and effectual to all intents, either at law or in equity, as a lien or mortgage, or security on said railroad, as if the same had been made by virtue of this act, and shall in nowise be effected by any provisions thereof.

"Approved June 24th, 1869."

It seems to me from a careful examination of this statute, that it intends to clothe with corporate powers the said Dibble and his associates as purchasers and owners of the roads, and that no further conveyance fromt hem to the corporation into which they were constituted was contemplated. As a corporation they are invested with the rights to hold, operate, and enjoy the said railroad, under the name of the Tallahassee Railroad Company; and in the enjoyment thereof, free from molestation, they are to have the benefit of the provisions of the original charter of the Pensacola & Georgia Railroad Company. Instead of a subscription to capital stock, they are authorized to declare the amount of which the stock shall consist, and to divide the same into shares. They are authorized to lease or sell the "said railroad;" and to issue coupon bonds and secure the same by mortgage on "said railroads, their equipments, franchise, &c." The counsel for the North Carolina Railroad Company supposes that the concluding part of the last
1211 section was a notice to any persons dealing with the corporation,
of the trust deed executed to Swepson. But I do not think that this follows. That deed is not mentioned and the provision itself is a proper one to prevent the *the* operation of the act in transferring the title to a new personality from affecting the previous conveyances or mortgages—which it might be thought to do. Such previous conveyances or mortgages, however, would stand on their own inherent validity and effect, and would not, if unrecorded, operate to the prejudice of those dealing with the company without notice of them.

But the parties did not stop here. Fearing that the title so conferred by the statute might be questioned, a deed of confirmation and release was subsequently executed by Dibble and his associates to the Tallahassee Railroad Company. It is not dated, it is true, except by the year (1870), but that does not interfere with its effect and operation. Having to be executed by a number of parties and their wives, it is probable that the date was left to be inserted when it was completed, and was then overlooked.

I am clearly of opinion that the statute and this deed of confirmation and release are sufficient for the protection of all parties dealing with the company without any knowledge of the trust deed to Swepson.

It is pertinent to remark that the North Carolina Railroad Company, in its original bill, which is sworn to, expressly and without qualification, states that the railroads were duly conveyed to the corporation. The averment is as follows:

> "That pursuant to said acts of incorporation, or one of them, the said Franklin Dibble and associates did convey and transfer said Pensacola & Georgia & Tallahassee Railroads according to the terms of said trust agreement, when, and from and after which time, the said Pensacola & Georgia Railroad, and the said Tallahassee Railroad, as separate properties, and the said Tallahassee Railroad Company, as incorporated in the name of said F. Dibble and associates, on the same 24th day of June, 1869, became and now are the railroad owned by the corporation defendant, the said Jacksonville, Pensacola & Mobile Railroad Company, as aforesaid."

It is true the complainant has obtained leave to amend its bill by adding an averment that no such title ever was conveyed to the corporation. Had this positive averrment in the original bill been called to the attention of the court, it is doubtful whether the amendment 1212 would have been allowed. Standing as it does, however, in the bill, it shows that it was always the understanding of all parties that the title of the roads had been regularly passed to the corporation

The Tallahassee Railroad Company being duly organized according to the plan proposed by the parties, took possession of the railroads and operated or leased them to others. It maintained a separate existence for only eleven months, when it became amalgamated with the Jacksonville, Pensacola & Mobile Railroad Company, as will be mentioned hereafter.

It appears that its officers executed bonds to the amount of $1,500,000, which were delivered to Swepson, but were never used, and, if still in existence, have never been regarded as bona fide or valid issues of the company; being superseded by subsequent transactions effected by and through the Jacksonville, Pensacola & Mobile Railroad Company, after the two companies were consolidated. No relief based upon these bonds is sought by any of the parties.

We are next brought to the consolidation of the Tallahassee Railroad Company with the Jacksonville, Pensacola & Mobile Railroad Company. The charter of this company was granted by the legislature of Florida on the 24th day of June, 1869, by an act entitled "An act to perfect the public works of the State." As this act as amended has an important bearing on the questions to be decided in these cases, I will state the substance thereof in some detail. The corporators were George W. Swepson, Milton S. Littlefield, J. P. Sanderson, J. I. Requa, and William H. Hunt. The company was authorized to construct a railroad from Quincy, the terminus of the Pensacola & Georgia Railroad, westward to the Alabama line in the direction of Mobile, touching certain specified points, and to aid the company in the construction and equipment of its road, by the 9th. section of the act as amended in January, 1870, the governor of the State was directed to deliver to the president thereof coupon bonds of the State to an amount equal to $16,000 per mile for the whole line of road and length of railroad owned by or belonging to the company, in exchange for first mortgage bonds of said company, when the president should certify upon his oath that the road, or parts of road, was completed and in good running order.

By the 10th section of the act it was provided that in exchange for the bonds of the State, the president of the company should

1213 deliver to the governor coupon bonds of the company, payable to the State of Florida, signed by the president, sealed with the corporate seal, and payable at the same time and place as the State bonds.

By the 11th section, as amended by the act of January 28, 1870, a statutory lien was given to the State, valid as a first mortgage, duly registered, on the part of the road, for which the State bonds were delivered, and on all the property of the company appertaining to that part of the line, which it might then have or thereafter acquire, together with the powers and franchises, &c.; and on failure of the company to pay either principal or interest for twelve months after due, the governor was empowered to enter and take possession of said property and franchises, and sell the same at public auction; and it was directed that all moneys arising from such sale should be promptly and exclusively applied to the payment and satisfaction of the bonds issued by the State, or, if the bonds should not be presented, to be invested and held by the State of Florida as trustee for the bondholders, until they should demand the same, and then to be paid to them by the treasurer.

By the 14th section of the act it was declared that it should be lawful for the several companies owning the road or parts of roads from Quincy to Jacksonville, from Tallahassee to St. Marks, and the branch to Monticello, or either of them, by a vote of the owners of a majority of the stock in interest, and with the consent of the owners of a majority of the stock in interest of the Jacksonville, Pensacola & Mobile Railroad Company, to consolidate with the latter company, so as to become one corporation under its name, on such terms as might be agreed on; and after such consolidation the Jacksonville, Pensacola and Mobile Railroad Company were authorized to raise money by way of mortgage, &c., of the railroad and property, franchise and effects acquired by such consolidation; and issue coupon bonds, and to each of said company's was granted the same privileges as those granted to the Jacksonville, Pensacola & Mobile Railroad Company.

By the 4th section of the amended act of January, 1870, it was enacted that the governor should, for the purpose of aiding the Jacksonville, Pensacola & Mobile Railroad Company in the speedy construction of its road, deliver to the president of said company coupon bonds of the State, to the amount of $16,000 per mile, upon receiving from the
1214 president of the company first mortgage bonds of like amount, on any part of the road between Quincy and Jacksonville; but not for a greater length than 100 miles of any part of railroad between Quincy and Jacksonville. Provided, the said railroad company or companies should not issue first mortgage bonds to a greater amount than $16,000 per mile.

Under the 14th section of this act the Tallahassee Railroad Company, on the 25th day of May, 1870, was consolidated with the Jacksonville, Pensacola & Mobile Railroad Company, by the unanimous vote of the stockholders of both companies. From the minutes of the stockholders' meeting on this occasion, it appears that Littlefield, who had succeeded to Swepson's interest, held 18,000 shares of the 30,000 of the Tallahassee Railroad Company, and 9,930 of the 10,000 shares of the Jacksonville, Pensacola & Mobile Railroad Company, and that by the consolidation the stock of the two companies was increased to 60,000 shares, of which Littlefield held 38,433. The consolidated company was duly organized, and the road from Quincy to Lake City went into its possession.

I have no doubt that the effect of this consolidation was to vest in the consolidated company the property and franchises of both the companies, who were parties thereto.

In my judgment, therefore, the North Carolina Railroad Company must seek for the enforcement of any equities it may have by reason of the misappropriation of its moneys by Swepson and Littlefield, through its right to the interest which they acquired as stockholders in the Jacksonville, Pensacola & Mobile Railroad Company. So far as the public was concerned, Littlefield was the apparent owner of this stock. In dealing with the company, the public had a right to regard him as the owner of the stock. The corporation could only act by its officers. The action of those officers, unless known to be fraudulent, bound the company and its stockholders, and all those who claimed any equitable interest in the stock. If the North Carolina Railroad Company knew of the destination which its moneys had taken, and suffered Swepson and Littlefield to retain possession of the stock and control of the Florida corporation, they must abide by their acts as such. It had a remedy in the Florida courts to prevent the continuance of this state of things; and if did not choose to resort to this remedy, it must not call third parties in question for dealing with the corporation as a duly organized body, capable of transacting business.

1215 Under the powers conferred by its charter, and the amendment thereto of January 28th, 1870, the Jacksonville, Pensacola & Mobile Railroad Company executed its bonds to the State of Florida, in May or June, of that year, to the amount of $3,000,000, and received therefor the bonds of the State to the same amount, which were delivered to the president of the company, M. S. Littlefield, for disposition and sale thereof. Littlefield had already, by an agreement executed on the 13th of April, 1870, made an arrangement with S. W. Hopkins & Co., of New York and London, to dispose of the bonds which he expected to receive from the State on account of the Jacksonville, Pensacola & Mobile Railroad Company. This agreement is set out in the pleadings. It purports to treat for $4,000,000 *of dollars* of State bonds to be issued to the Railroad Company. It will be seen that $1,000,000 were contemplated to be issued by the Florida Central Railroad Company, of which Swepson had the control. Only three days after this arrangement with Hopkins & Co., to dispose of the bonds not yet issued, Swepson and Littlefield, whose peculations had now been discovered by the agents of the North Carolina Railroad Company, entered into an agreement with them for a participation in the proceeds of these Florida State bonds. This agreement was made at the city of Washington on the 16th day of April, 1870. It has such an important bearing upon the controversy in this case, that I think it proper to state it in full. It is as follows:

> "Memorandum of agreement and settlement between the Florida Central Railroad Company, George W. Swepson, president, and the Jacksonville, Pensacola & Mobile Railroad Company, Milton S. Littlefield, president, and Milton S. Littlefield, majority owner of the stock of said companies, and also of the stock of the Tallahassee Railroad Company, of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by N. W. Woodfin, W. G. Candler, W. Pink Welsh, and W. W. Rollins, commissioners appointed by an act of the legislature of North Carolina, approved by the stockholders of said corporation, of the second part. Witnesseth,

"That whereas George W. Swepson, late president of the Western Division of the Western North Carolina Railroad Company, made certain

investments of the funds of said company in securities of and interest in the said Florida Central Railroad, Jacksonville, Pensacola & Mobile Railroad, and the Tallahassee Railroad, of the said State of Florida, as per report made by the said George W. Swepson to the said com-
1216 missioners, amounting in the aggregate to the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, to bear interest from the first day of November, 1869, at the rate of eight per cent. per annum; and

"Whereas the said George W. Swepson heretofore conveyed to the said Milton S. Littlefield, subject to the payment of the above-recited claim, his interest in the above recited railroads; and whereas the said Littlefield has received authority from the legislature of the State of Florida and the several railroad companies, to receive bonds to be issued by and for account of the several railroad companies, which bonds are to be exchanged for the bonds of the State of Florida, to be issued for the purpose of aiding the finances of the said several railroad companies, all of which bonds are now in a state of preparation; and

"Whereas the said Milton S. Littlefield has made a contract with S. W. Hopkins & Co., No. 71 Broadway, for the disposition of said bonds as the same may be issued, the proceeds of the issue of the bonds of the Florida Central Railroad Company of the said State of Florida, amounting to nine hundred and sixty thousand dollars, are to be applied to the payment of the existing liabilities of the said several railroad companies, including the sum of one hundred and fifty thousand dollars to be paid to the commissioners aforesaid for the purpose of paying existing liabilities of the said Western Division of the Western North Carolina Railroad Company:

"It is understood and agreed by the parties of the first and second parts, that the proceeds of the sale of the said bonds so to be issued by the said Florida railroad companies and the said State of Florida, are to be equally divided, dollar for dollar, between the Western Division of the Western North Carolina Railroad Company and the said Florida railroads, and as the commissioners aforesaid receive by this first sale of bonds only the sum of one hundred and fifty thousand dollars, it is further understood and agreed, that out of the proceeds of the sale of the issue of the bonds of the Jacksonville, Pensacola & Mobile Railroads, there is first to be received by the commissioners aforesaid a sum sufficient to be equal to the amount received by and on account of the said Florida railroads, and then an equal amount is to be received by the said commissioners and the said Florida railroads, dollar for dollar, until the entire amount of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, with interest at eight per cent., as aforesaid, being the sum reported by the parties of the first part as due to the Western Division of the Western North Carolina Railroad, is fully paid.

"It is further understood and agreed by the parties of the first and second parts, that all the interest owned or claimed by the said parties of the first part, George W. Swepson and Milton S. Littlefield, or which they, as individuals, have a right to control in the said Florida railroads, are hereby pledged for the faithful fulfilment of this con-

1217 tract, without the right on the part of any party to interfere with our management or control of the affairs of the road.

"(Signed) GEORGE W. SWEPSON,
"*President Florida Central Railroad Company.*
"M. S. LITTLEFIELD,
"M. S. LITTLEFIELD.
President J., P. & M. Railroad Company.
"N. W. WOODFIN,
"W. W. ROLLINS,
"W. G. CANDLER,
"W. P. WELCH,
"*Commissioners.*

"Witnesses:
"M. W. RANSOM,
"R. R. SWEPSON."

After reading this agreement it seems to me impossible to contend that the North Carolina Railroad Company did not accept the situation, and acquiesce in the organization of the Florida Railroad Companies by Swepson and Littlefield, the issue of stock therein to them, and the issue of the bonds in question in this suit.

It has been strenuously argued by the counsel of said company that the issue of these bonds was a fraud upon it, and done without its knowledge, and against its interests and will. On the contrary, the fact is plain that the North Carolina company acquiesced in their issue, and stipulated for a large portion of the proceeds of the sale thereof. If a fraud was committed in the issue of these bonds, it was rather committed on the State of Florida and on the small minority in interest of the other stockholders of the Florida companies; and it is hardly possible to refrain from observing that the North Carolina company itself was a particeps criminis. What right had that company to make a private stipulation with Swepson and Littlefield, its own officers and agents, to take to its own use the proceeds of bonds issued by the State of Florida with the fond, but mistaken, expectation that they should be employed in developing its own resources upon its own soil?

It is idle to contend that the North Carolina corporation was not represented in this transaction. The authority of the commissioners appointed by the legislature of North Carolina to act in behalf of the company cannot be questioned. The State was much the largest stockholder, and the legislature had repealed the charter of the com-
1218 pany on the 14th of February preceding, and had appointed these commissioners to settle up its affairs. They were the only representatives of the company then existing. Littlefield himself was president of the company at the time of the repeal of its charter, and Rollins and Candler were directors. The commissioners acted in the company's name, and no one can justly challenge their right so to do. Besides, from that time onward, throughout the year 1870, and afterwards, the same commissioners continued to represent the company as well as the State in many ways, and always in affirmation of the issue of the bonds. Actions were brought and actions defended in the company's name in asserting its claim to the bonds, or the proceeds thereof. One of the commissioners, Col. Woodfin, was sent to London to secure their rights in this regard, and then made another final settlement there with Littlefield, by agreement, dated November 10th, 1870, on the part and behalf of the Western Division of the Western North Carolina Railroad Company, which agreement, throughout, purported to provide

ways and means for carrying out the agreement of April 16th, 1870, and securing to the said company the proceeds of the bonds sold and to be sold. Amongst other things, providing that an order should be given to said company on S. W. Hopkins & Co., for 800 of the bonds still in their hands, but with the condition that the bonds should be sold by Hopkins & Co. and the proceeds paid to the company. Such order was in fact given and accepted, and £10,000 sterling were subsequently received by the company on account thereof.

Calling these settlements conditional settlements, compromises, &c., is a new thought, the result of new light. No such language is used in the original bill. Besides, though they were conditional settlements, or compromises, they were entered into and had the same effect in misleading the public and inducing a sale of the bonds as if they had had no conditions attached to them. They were not like unaccepted offers of compromise, which, it is true, cannot be used to the prejudice of the party who makes them. They were executed agreements, and show the position which the North Carolina Railroad Company deemed it expedient to assume.

It is useless to go into all the evidence on this subject in detail. The truth is too evident, that not only did the North Carolina
1219 company acquiesce in the issue of the bonds, but that they urged
and promoted the sale thereof. The principal contest of this company consisted in endeavoring to get the proceeds of the bonds after they were sold; and this contest was continued until the 3,000 State bonds, issued to the Jacksonville, Pensacola & Mobile Railroad Company in exchange for its own bonds, had been sold and disposed of. In view of all the evidence on this subject, I am clearly of opinion that the North Carolina Railroad Company is to be held as participating in putting out these bonds upon the money market of the world, and that it cannot be heard to except against the bona fides of their issue and sale.

Having reached this conclusion, I must hold that the complainants in the case of J. Fred. Schutte and others, who have produced these very bonds, claiming to be the bona fide purchasers and holders thereof, are such holders unless the contrary be shown. But there is no evidence, of which I am aware, that shows in the slightest degree that they are not bona fide holders. The bonds being sold with the acquiescence of the North Carolina company, the holders thereof stand in the same position as the holders of any other negotiable securities. If, therefore, as the owners of these bonds, they have any title to relief as against the railroad and property of the Jacksonville, Pensacola & Mobile Railroad Company, they are entitled to such relief notwithstanding, and prior to any equities which the North Carolina company may be entitled to. The equities of the latter company are to be effected as equitable owners of the stock of the Jacksonville, Pensacola & Mobile Railroad Company, held by Littlefield and Swepson; and are to be enforced through the Jacksonville, Pensacola & Mobile Railroad Company, and can rise no higher than the rights of that company itself, as against third parties dealing with it in good faith.

The question then arises, whether the holders of the State bonds have, by reason of being such, any lien, legal or equitable, against the railroad and property of the Jacksonville, Pensacola & Mobile Railroad Company.

It has been decided by the supreme court of Florida that the State bonds which these parties hold were created and issued in violation of the constitution of the State, and that they are for that reason absolutely void. But the same court has also decided that the bona fide holders

of such bonds are entitled to the benefit of the bonds issued
1220 by the Jacksonville, Pensacola & Mobile Railroad Company, in
exchange for them, and to have such company bonds and the first mortgage lien created thereby enforced for their protection. In the case of Holland vs. The State of Florida, where this question was involved, the court held that the State of Florida occupied two distinct relations to the holders of the State bonds and to the railroad company, the first being that of a primary debtor on its own bonds, and mortgage creditor of the company for its indemnity; the second that of a trustee for the holders of the State bonds. "In this relation," says Mr. Justice Westcott (in which the other justices concurred), "the lien created by the statute was for the benefit of the holders of the State bonds. The proceeds of the sale, if he declined to surrender his bonds, were to be invested for him, and he was to have the beneficial interest of a cestui qui trust. The lien of the statute and the company bond, viewed in this light, was for his benefit, and the property and franchises of the company were to be his security for payment. And as the company received his money and the State received nothing, the company was to be held to the obligation of common honesty in the matter of payment and satisfaction." (15 Fla. Rep., 534.)

In the subsequent case of The State vs. The Florida Central Railroad Company (15 Fla., R. 723), the court further defines its position on this subject. It then says: "In the case of Holland vs. The State of Florida, we held that while the State bond, as an obligation against the State, as a simple and primary debtor, was void for want of constitutional power in the legislature to authorize such obligation, yet that under the statute the State held the bonds of the company, and the mortgage lien secured thereby for the benefit of the holder of the State bonds. That the State, under the statute, was to occupy these two relations, and that while the one failed for want of constitutional power in the legislature to authorize it, the other must be sustained, because the legislature did have the constitutional power to create it, and it was the duty of the court to enforce it. This court did not hold that the relation and rights of the State as 'trustees' were the result of any equity springing from the circumstances independent of the statute, but that its relation as a trustee was a creature of the statute. That, viewed in this light, the
lien created by the statute and the company bond was for the
1221 benefit of the bondholder, and the property and franchise of the
company were to be his security for payment." The court then proceeds to show that, under this view, the bondholder is not restricted to the amount paid by him for his bonds, but has all the rights of a "holder" of bonds, including that of recovering the full amount thereof.

The same views were again repeated in the *the* recent case of The Trustees of the Internal Improvement Fund vs. The Jacksonville, Pensacola & Mobile Railroad Company, and also reported in 16 Florida, 719.

A careful examination of the statute leads me to concur in this view of the subject. But the decision of the State court on a question of the construction of a State statute, if not absolutely binding on this court, is, at least, entitled to the very highest consideration and respect, and is to be regarded as of great authority. I feel compelled, therefore, to hold that the holders of the State bonds have a right to the enforcement of the mortgage lien created by the statute by virtue of the bonds of the Jacksonville, Pensacola & Mobile Railroad Company given in exchange therefor. The result of this opinion is, that next to the lien for the balance of purchase money due to the trustees of the internal improvement fund, the complainants in the case of J. Fred. Schutte and others are entitled to a mortgage lien upon the Jacksonville, Pensacola & Mobile Railroad, extending from Lake City to Quincy, and from Tallahassee to St. Mark's, including the branch to Monticello, with all its equipment property and franchises, for the payment of such portion of the bonds held by them, and the interest accrued thereon, as are to be considered as having been exchanged for the bonds of that company; and a first mortgage lien for the payment of the same bonds and interest upon the railroad extending from Quincy to Chattahoochee River, and its equipment property and franchises, reserving, however, for the present, further consideration of the claims of J. W. Gibbes, who has intervened pro intreses suo, in respect to that portion of the line.

The said J. Fred. Schutte and others, holders of said State bonds, will also be entitled to a decree, dismissing the bill of The Western North Carolina Railroad Company which relates to the Jacksonville, Pensacola & Mobile Railroad.

1222 I will now proceed to the consideration of the case relating to the Florida Central Railroad Company and its property. I have already stated that in this case there is no question about the status of the Western Division of the Western Railroad of North Carolina. Its interest arises altogether from its equitable right to the stock of the Florida Central Railroad Company, and its equities rise no higher than those which belong to the rights of a stockholder. This stock, during the period of the transactions under consideration, was held either by Swepson or Littlefield, or by those to whom they transferred it from time to time, for their own purposes. Parties dealing in good faith with the Florida Central Railroad Company as a corporation, have nothing to do with the manipulations of this stock. The main question in the present controversy is, whether the corporation itself became bound by the bonds which were issued in its name, the amount of which, as before stated, was $1,000,000.

The first inquiry that naturally presents itself is, whether the said company had power to issue such bonds. The act which incorporated the purchasers of the road, passed 29th of July, 1868, was in the same general form as that which incorporated the purchasers of the Jacksonville, Pensacola & Mobile Railroad Company, already recited. It did not, however, contain any section corresponding to the sixth section of that act, authorizing the issue of coupon bonds and the securing of the same by mortgage; but it gave the company the general power to grant, sell, mortgage, or dispose of any property acquired for the purpose of the railroad. It will be recollected, however, that the act entitled "An act to perfect the public works of the State," which incorporated the Jacksonville, Pensacola and Mobile Railroad Company by its 14th section, not only authorized the several companies owning the road or roads from Quincy to Jacksonville, &c., to consolidate with the Jacksonville, Pensacola and Mobile Railroad Company, but gave to each company the same privileges as were granted to the latter company by the act; and by the 4th section of the amended act, passed January 28th, 1870, it was enacted as follows, namely: That the governor shall, for the purpose of further aiding the said Jacksonville, Pensacola & Mobile Railroad Company in the speedy construction of its road, deliver to the president of said company coupon bonds of this State, of the same character as those above described in this act, to the amount of 1223 $16,000 per mile, upon receiving for and from the president of said company, first-mortgage bonds of like amount on any part or portion of the road between Quincy and Jacksonville. Provided, however, the State bonds under this section shall not be exchanged for first mortgage bonds for a greater length than 100 miles of any part of railroad between Quincy and Jacksonville. Provided the said railroad company or companies shall not issue first mortgage bonds to a greater amount than $16,000 per mile."

Now, there were only two roads between Quincy and Jacksonville, a part of the road belonging at the time of the passage of this act to the Tallahassee Railroad Company, extending from Quincy to Lake City, and the road of the Florida Central Railroad Company. The act, therefore, must necessarily have referred to these roads and to the companies owning the same. The supreme court of this State so decided in the case of The State vs. The Florida Central Railroad Company et als. (15 Fla., 704, 705), and held that this section authorized the Florida Central Railroad Company to issue coupon bonds to be exchaged for State bonds by the president of the Jacksonville, Pensacola & Mobile Railroad Company. Taking the two acts together, that of June 24th, 1869, and its amendatory act of January 28th, 1870, I have no doubt that the Florida Central Railroad Company did have all the requisite powers for issuing such bonds as were issued in this case in the name of said company, and that they might be issued for the purpose of exchanging them for a like amount of State bonds, in aid of the Jacksonville, Pensacola & Mobile Railroad Company. Of course it would be for the Florida Central Railroad Company to prescribe the conditions or consideration on or for which it would issue such bonds. It had the power to do it. If done, and the exchange should be made, and after this the State bonds received by the president of the Jacksonville, Pensacola & Mobile Railroad Company in lieu thereof should be misappropriated by the agents of that company, this would not relieve the Florida Central Railroad Company from its obligations arising upon its bonds to the bona fide holders of the State bonds.

Much stress has been laid in this case upon the fact that the bonds issued in the name of the Florida Central Railroad Company were not regularly executed, but were made and executed in the city of Washington, and signed by George W. Swepson, as president of the company, and by one H. H. Thompson, as treasurer, when the latter 1224 was not treasurer; and no authority having been given by the directors for the issue of any such bonds. But before the bonds were issued, the following action was taken by the board of directors on the 25th day of May, 1870, to wit:

"General Littlefield stated that Mr. Swepson, late president, had appointed H. H. Thompson, esq., as secretary and treasurer of this company for the past year, and moved that the action of the late president in this respect be approved and confirmed, which was agreed to."

A few days later, on the 2d of June, 1870, a meeting of the stockholders was held, representing a very large majority of the stock, when it was unanimously resolved that bonds to the extent of $16,000 per mile be issued by the company, to be a first lien or mortgage on the Florida Central Railroad, its equipments, franchise, &c., and then reciting that George W. Swepson, the late president, had caused to be prepared bonds to be issued by the company preparatory to an order of the board of directors to that effect, and which bonds were signed by said Swepson, as president, and countersigned by H. H. Thompson, treasurer. It was therefore unanimously resolved that the said bonds be adopted as the bonds to be issued, and that when issued they be a first lien or mortgage on the Florida Central Railroad, its equipment, franchise, &c. (except the lots in Jacksonville not used for depot purposes). It was further resolved that the bonds be placed in the hands of Edward Houston for the purpose agreed upon by an arrangement between himself and Milton S. Littlefield, "who, it was declared, was owner of nearly all the stock of the company," and the bonds or their proceeds to be held and applied according to said arrangement, except the proportion thereof applicable or apportionable to the stock owned by other parties, and upon the satisfaction otherwise of the terms of said arrangement with said Houston, the said bonds were to be by him transferred to Littlefield, or according to his direction to the extent of the stock owned by him at the time. On the same day the directors adopted the same resolutions, and further, a resolution that the president be authorized to do all acts, and, if necessary, to execute and deliver any proper deed under the seal of the company that might be deemed needful to make the first lien or mortgage in favor of the bonds.

In view of these resolutions, all talk about the irregular execution of the bonds, or of the application of the seal thereto, would seem
1225 to be irrelevant. It cannot be denied that the bonds were executed and placed in the hands of Littlefield for disposition according to the arrangement between him and Houstoun. That arrangement as it stood at this time was that there should be placed in Houstoun's hands as collateral security for $163,000 due to him from Littlefield one million of dollars of bonds of the State of Florida to be exchanged for said bonds of the Florida Central Railroad Company. After paying himself, the balance of the proceeds of said bonds was to be distributed and paid as follows, to wit:

To Edward Houstoun (as above)	$163,000
" John P. Sanderson	57,000
" M. D. Papy	16,000
" T. W. Brevard, attorney for holders of Pensacola & Georgia bonds	50,000
" John P. Sanderson, president of the Florida Central Railroad Company	340,000
	$620,000

The balance, if any, to Littlefield.

The arrangement further provided that if Littlefield should pay his debt of $163,000 to Houstoun the latter should place the bonds in the hands of S. W. Hopkins & Co. to be sold, and the proceeds to be held subject to the other claims above specified, and the balance to be paid to Littlefield.

Houstoun, in January, 1871, placed the bonds in the hands of T. B. Coddington on substantially the same trusts as he held them. On the 13th of April, 1871, at a stockholders' meeting of the Florida Central Railroad Company, he was authorized to place them in the hands of S. W. Hopkins & Co., subject to the same trusts as to the proceeds thereof.

Now the counsel for the North Carolina Company and for the Florida Central Railroad Company contend that the bonds executed by the company and exchanged for State bonds were executed for an unlawful purpose, namely, for the purpose of paying private debts or speculation, and not for that of aiding the Jacksonville, Pensacola & Mobile Railroad Company in the speedy construction of its road, nor for any corporate purpose of the Florida Central Railroad Company itself.

Supposing this to be true, how can the corporation itself or any one claiming under it raise this objection after having actually exe-

1226 cuted its bonds and procured the State bonds in exchange therefor, and authorized them to be sold to the public? It seems to me that there is a clear estoppel in the case. It would be to allow the company to perpetrate a fraud upon the public to allow such a defence to prevail. If the stockholders have used the money produced by the State bonds for their own purposes, instead of using it in aid of the Jacksonville, Pensacola & Mobile Company, or for the corporate purposes of their own company, neither they nor the corporation can be permitted to allege their own dishonesty as a reason for avoiding the binding obligation of their bonds. The fact seems to have been that the arrangement for making this issue of bonds had in view a distribution of their proceeds amongst the stockholders in proportion to their several interests. If there was not a fair deal; if some got more than their share, and others less, they must look to one another for an adjustment of their respective equities. They ought not to be permitted, at this late day, after the State bonds procured in exchange have been sold to purchasers, to plead that their bonds were created for an unlawful purpose.

The Florida Central Railroad Company itself is clearly estopped from making such a defence. The North Carolina company is also estopped, because in the agreements and proceedings which have been referred to, in which it was a party, it acquiesced in the issue of the bonds, and only claimed to share in the proceeds thereof. The agreement of April 16, 1870, before recited, expressly recognized the issue of bonds by the Florida Central Railroad Company, and provided that $150,000 of the proceeds thereof should be paid to the commissioners. And in a supplemental complaint of the said North Carolina company, filed in August, 1871, in a suit instituted by said company against Sidney W. Hopkins and others, in the supreme court of New York, the said company alleged and insisted as follows, to wit, "And the said plaintiffs further show, that said S. W. Hopkins & Co. have in their hands, as plaintiffs are informed and believe, a very large amount of the proceeds of the sales of said 4,000 bonds, which belong to these plaintiffs and to other parties interested therein, and that they intend to conceal and fraudulently retain such proceeds to their own use, &c," and they then invoke the equitable interposition of the court in respect to the proceeds
1227 of said bonds. This is but a casual instance of the manner in
which the North Carolina company ever treated the transactions relating to said bonds. Here, it will be observed, the company speaks of the entire issue of 4,000 bonds in one category, thus including those issued in exchange of the Florida Central, as well as others. As late as July, 1873, a consent decree was entered in the case of John Collinson vs. S. W. Hopkins and others, in the city of New York, to which the North Carolina Railroad Company was a party, whereby it was provided that $200,000 should be paid to said company out of the proceeds of the bonds which formed the subject of that litigation, being the last 1,200 bonds issued of the 4,000, and including the 1,000 bonds issued in exchange for those of the Florida Central Railroad Company.

It is useless to pursue this subject further, or to examine in detail all the voluminous testimony and documents which have been adduced in relation to it. It is too plain for doubt or question, that the North Carolina Company acquiesced, as well in the issue of the Florida Central bonds as of those of the Jacksonville, Pensacola & Mobile Railroad Company.

The truth is, that the agents of the North Carolina company seem to have been very well satisfied with the issue of the bonds, thinking, by means thereof, to be able to snatch something out of the fire by way of indemnity for the losses sustained by that company through the malfeasance of Swepson and Littlefield, and I think that said company is concluded from disputing the validity of the bonds as against those who have, in good faith, purchased the State bonds issued in exchange therefor. They may have been unfortunate in their endeavors to get the proceeds of the bonds after they were sold, but that was not the fault of the purchasers, and is no reason for depriving them of their property.

The question then arises, whether the complainant in the suit of J. Fred. Schutte and others are bona fide holders of the bonds, which they produce in this litigation.

The possession of the bonds is strong prima facie evidence of just title, and in ordinary cases throws upon the party questioning it the burden of showing that it is not bona fide—that the holder had notice of some vice or defect which vitiates the title. No such notice is shown in this case. On the contrary it appears from the evidence of Collinson and Collins that the bonds were sent to Holland to be sold. 1228 Collinson says that the bonds were purchased by him of S. W. Hopkins & Company, in London; that they were put on the Dutch market, and were sold there as he was informed; that the transactions were conducted by Messrs. Boissevain & Milders, and Mangay, of Holland, who purchased the bonds from him for the purpose of putting them on the market and selling them. Collins corroborates this testimony, and says that Mr. Woodfin, the agent of the North Carolina company, whilst in England, did all he could to promote their sale. Dr. Wertheim, who has been present at the hearing of these cases, was examined at the instance of the North Carolina company after the cases were called, and testified to having been a purchaser of some of the bonds himself in Amsterdam, and to the fact that some of his friends were purchasers, at prices which forbid the supposition that they were conscious of anything wrong in the sale of the bonds. He says that he was so stupid as to invest some of his money in these bonds at the rate of 80½ per cent., believing in the good faith of the State of Florida and the managers of the railroads. That he was bitterly deceived, and was unhappy enough to have more of the bonds out of the inheritance of his father; and not himself alone, but a great many widows, orphans, and charity institutions in Holland, purchased them, believing them to be a good and safe investment.

In an affidavit made by him in May, 1877, which was exhibited to him by the counsel of the North Carolina company on the examination, he says distinctly, that after examination and such information as could be obtained in Holland, the loan was issued there and the bonds were bona fide purchased in the market. He says the belief there was that the whole line from Jacksonville to Chattahoochee was consolidated into one line, and that all the bonds had respect to the line as one entirety. This was undoubtedly the impression that was given abroad, and had some foundation in the representations which were made by Littlefield and others.

In my judgement, upon the whole case as presented by the evidence and pleadings, the said bondholders are to be regarded as bona fida purchasers and holders of these bonds, and are entitled by reason thereof to a first mortgage lien therefor upon the Florida Central Railroad, so far as any of the bonds held are to be deemed as exchanged for its bonds.

This also seems to me to be in accordance with the justice of the 1229 case. These parties have parted with their money, relying on the good faith of the State, and the companies. It is not their fault that this money did not reach the proper hands. Had it been properly applied, the Florida Railroad companies, and their stockholders and those having an interest in the stock, including the North Carolina Railroad Company, would have reaped the benefits. If the money has been squandered or misapplied it is their misfortune, and should not be visited upon the purchasers of the bonds.

It remains to determine what portion of the bonds raise a lien on the Jacksonville, Pensacola & Mobile Railroad, and what portion a lien on the Florida Central. This branch of the subject is invested with some difficulties. I think it is pretty clear from the evidence in the case, that the first 3,000 State bonds were, in fact, issued in exchange for the bonds of the Jacksonville, Pensacola & Mobile Railroad Company, and that the last 1,000, numbered from 3,001 to 4,000 respectively, were issued in exchange for the Florida Central Railroad Company's bonds, the latter not being issued until April, 1871, when they were procured by Coddington. It is urged on the part of the bondholders that they had no knowledge of this distinction, and ought not to be affected by it. But I am not satisfied that their ignorance on the subject can affect the question. The lien of the bondholders is created by the statute. A resulting equity would have arisen without the aid of the statute, but the statute takes the place of this and regulates the right. Now, the 11th section of the "Act to perfect the public works of the State," passed June 24th, 1869, as amended in January, 1870, declares that "to secure the principal and interest of the said company's bonds, the State of Florida shall, by this act, have a statutory lien, which shall be valid to all intents and purposes as a first mortgage duly registered, on the part of the road for which the State bonds were delivered, &c." When by the 4th section of the amending act, passed in January, 1870, authority was given to issue State bonds in exchange for first mortgage bonds on any portion of the road between Quincy and Jacksonville, it cannot be supposed that such bonds were to be security for any other State bonds than those which should be given in exchange therefor. The question is not so much what the bondholders ought to have, as what the statute gives them. If they stood on grounds of mere equity, they might
1230 not be able to secure more than the amount paid by them for the bonds. I think, however, that the matter is to be governed by the statutes. I am of opinion, therefore, that the bondholders cannot claim to have a lien on the Florida Central railroad for any bonds except those whose numbers exceed the number 3,000. Of these, it appears, they hold 197. For these bonds, therefore, and the interest due thereon, they are entitled to a first lien on the said railroad, its equipments, franchise and property. For the remaining bonds held by them, whose numbers are 3,000 and under, of which they have produced 2,749, they will have a lien, as before expressed, on the Jacksonville, Pensacola & Mobile Railroad Company.

This disposes of the most important questions in these causes, and a decree will be made in conformity to this opinion, with such qualifications as may be agreed upon by the trustees of the internal improvement fund and the holders of the old first-mortgage bonds of Pensacola & Georgia and Tallahassee Railroad Companies on one part, and the holders of the State bonds on the other, as expressed in the memorandum plan which has been referred to, or otherwise. A decree will also be made for a sale of the several railroads for the purpose of raising the amount due to the respective parties according to the respective liens. The bills of the Western Division of the Western North Carolina Railroad Company will be dismissed with costs.

I have not deemed it necessary to advert to a great deal of the voluminous evidence taken in the causes. The ground taken in the opinion covers all the material points at issue between the parties, and I have stated the conclusions to which I have come from the most careful consideration which I have been able to give to the whole case.

There are various subsidiary matters depending upon the intervention of third parties, which if not decided before signing the decree may be reserved at the foot thereof and subsequently heard, and adjudged, and disposed of by a supplemental decree.

In addition to the matters discussed in the foregoing opinion, the counsel for Daniel P. Holland, James G. Gibbes, and various
1231 other parties submitted the questions arising upon interventions for their several interests in relation to the fund arising from the property of the Jacksonville, Pensacola & Mobile Railroad Company.

By the petition of D. P. Holland it appeared that on the 2d day of December, 1872, he obtained a judgment in this court against the Jacksonville, Pensacola & Mobile Railroad Company for the sum of $62,533.33-100, issued an execution thereon, and sold the railroad and its appurtenances, and became the purchaser at such sale, and received a deed from the marshal, and took possession of the road. This sale was afterwards adjudged illegal and was set aside. Holland now claims to have the moneys in the hands of the receiver applied to the payment of this judgment, on the ground that said moneys are the property of the company, being produced by the earnings of the road, and are not subject to the lien of the complainants or of the trustees of the internal improvement fund.

Justice Bradley remarked as follows: This claim cannot be allowed. The money realized by the receivers is a part of the fund as it stood when the receivers were appointed and put in possession. It is as much a part of the mortgaged premises as are the rails or the cross-ties of the road. It is the product and fruits of the property produced since the court took it in hand for the use of the liens and trusts by which it is bound. The property was taken possession of by the court by its receivers in order to preserve it for the use of those liens and trusts. The fruits arising therefrom whilst thus in custody of the court do not belong to the Jacksonville, Pensacola & Mobile Railroad Company in any such sense as to be liable to any other claims than those of the parties fo whose protection the road was taken into custody and such charges a appertain to its management and administration. It would be a strange doctrine to contend that the Jacksonville, Pensacola & Mobile Railroad Company itself could appear before the court and demand the money in the receiver's hands. And if the company cannot do this neither can any party whose claim is based, as Holland's is, only upon the company's rights.

The petition urges the statute of January 8, 1853, amending the laws relating to mortgages, which declares that the antiquated claim in favor of the mortgagee to the right of possession of the property speci-
1232 fied in the mortgage by reason of any alleged failure of payment, or breach of promise, or other default, shall in no case be recognized or admitted in a court of justice until all other steps and forms prescribed by law for the foreclosure of mortgages be complied with and observed; and which also declares that a constructive possession by the mortgagee shall not be allowed to impair the actual, and for ages admitted, right of possession of the mortgagor until deprived thereof by decree, and that the mortgage shall be held a specific lien on the prop.

erty, and the mortgagee incapable of acquiring possession until after decree of foreclosure.

This act was evidently intended to abolish the practice which prevailed in England and some of the older States of allowing the mortgagee to take possession of the mortgaged premises, or to recover the same in ejectment, the moment a default of payment occurred. It cannot apply to prevent the interference of a court of equity in a case where, by the voluntary negligence or misfeasance of the mortgagor, the property is being wasted and consumed so as to peril the security intended by the parties. It cannot apply to prevent such a court from appointing a receiver of a railroad where the railroad company is notoriously insolvent, and is using up and wasting the property. When such a case occurs, as it did in the present case, it is perfectly competent for the court to appoint a receiver to keep and preserve the mortgaged premises, and to enjoin the railroad company from further interfering therewith. And when this is done, it cannot be pretended that the company will be entitled to the receipts of the road whilst in the hands of the receivers, further than to be credited with the amount thereof, after deducting expenses.

Besides, the present is not the case of a mortgage, so far as the trustees of the improvement fund are concerned, but of a lien for purchase money, which the company or its predecessors, for whose acts it is bound, failed to pay. The continued possession of the property without paying the consideration is a quasi fraud against the vendor, and the purchaser is a trustee for him; and a court of equity is not restrained by anything contained in the statute from appointing a receiver if there is danger of the property being wasted or deteriorated.

I am of opinion, therefore, that neither the Jacksonville, Pensacola & Mobile Railroad Company, nor any party claiming under it, as Holland does in this case, can demand the moneys which the receiv-
1233 ers have realized from the management of the property, until the liens established by this decree have been satisfied.

The application of the petitioner is denied.

The claim of Gibbs and other intervenors will be reserved for further consideration.

Decree.

J. FRED SCHUTTE AND OTHERS, COMPLAINANTS,
vs.
THE JACKSONVILLE, PENSACOLA & MOBILE Railroad Company, the Florida Central Railroad Company, and others, defendants.
} In equity.

On this 31st day of May, A. D. 1879, this cause came on for final hearing on the pleadings and proofs therein, and was argued by counsel and was fully heard by the said court.

Whereupon, the court being fully advised of and concerning the same, doth here now order, adjudged, and decree as follows, viz:

1st. That the trustees of the internal improvement fund of the State of Florida have a first lien upon the railroad described in said bill of complaint, in this suit, running from Lake City to Quincy, in said State, with the branch road to Monticello, and the railroad running from Tallahassee to St. Mark's, in said State, and all the property, rights, and franchises belonging or appertaining thereto to secure the payment to

said trustees of the sum of four hundred and sixty-three thousand one
hundred and seventy-five 37-100 (463,175.37-100) dollars and interest
thereon since March 20th, A. D. 1869, at the rate of eight per centum
per annum, to attach and rest upon said railroads and property as fol-
lows: Of said principal sum upon said railroad from Lake City to Quincy,
with the branch to Monticello, four hundred and twelve thousand
1234 and four hundred dollars, and interest aforesaid, "and upon said
railroad from Tallahassee to St. Mark's, of said principal sum,
fifty thousand seven hundred and seventy-five 37-100 dollars, with inter-
est as aforesaid.

2d. That the complainants in this cause have a second lien on both of said railroads before mentioned, and upon all the property, privalages, rights, and franchises thereto appertaining, and a first lien upon that part of the railroad of the Jacksonville, Pensacola & Mobile Railroad Company between Quincy and Chatahoochee, in said State, to the amount of all bonds of the said State of Florida held and owned by them mentioned in the pleadings in this cause and numbered 3000 and under, together with the interest thereon matured and to mature. That the amount of said State bonds now owned and held by said complainants of principal sum is two millions seven hundred and fifty-one thousand dollars, and the interest now matured thereon amounts to one million six hundred and fifty-five thousand and one 60-100 dollars.

3d. That the complainants have a first lien upon the railroad mentioned in the bill of complaint, running from Lake City to Jacksonville, in said State, and all property, rights, and franchises thereto appertaining, to the amount of all the said bonds of the said State of Florida, exchanged for the bonds of the said Florida Central Railroad Company, numbered 3001 and upwards, held and owned by them, said complainants, and all interest now matured and to mature thereon. That the amount of all said last named numbered bonds owned and held by said complainants is one hundred and ninety-seven thousand dollars, and the amount of interest thereon now matured is one hundred and eighteen thousand five hundred and fifteen dollars and twenty cents.

4th. That the railroad and property and franchises pertaining thereto,
extending from Lake City to Chattahoochee, in said State, including the
branch road to Monticello, mentioned in the bill of complaint in this
cause, and the railroad from Tallahassee to St. Mark's, and the property
and franchises pertaining thereto, mentioned in said pleadings, be each
sold subject to the lien thereon, fixed by this decree to satisfy the lien
of the said complainants thereon; that said sales be made by Sherman
Conant and Alexander B. Hawkins, who are hereby appointed
1235 special masters of this court for that purpose; that said sale be
made at Jacksonville, in said State, and advertised for at least
ninety days before the day of sale, in some newspaper of general circu-
lation published in said Jacksonville, and also in some newspaper of gen-
eral circulation published in the city of New York; that the purchaser or
purchasers at said sale may deposit with said special master in payment of
his or their bid, the said Florida State bonds, numbered 3000 or under,
in the proportion which the whole amount of the bid bears to the whole
amount of said State bonds outstanding, and numbered 3000, or under,
and interest matured thereon, that is, four million four hundred and six
thousand and one dollar and sixty cents.

5th. That the said railroad from Jacksonville to Lake City be sold by said special masters, at the same time and place and on like advertisement as hereinbefore provided, to satisfy the lien of said complainants thereon declared by this decree. That the purchaser or purchasers, at said sale, may deliver to said special masters, in payment of his or their bid, said State bonds of the State of Florida mentioned in said pleadings, and numbered 3001 and upwards, in the proportion which the whole amount of said bid bears to the whole amount of said State bonds outstanding, and numbered last as aforesaid, that is, three hundred and fifteen thousand five hundred and fifteen dollars and twenty cents.

6th. That the balance of either bid for either of the roads herein directed to be sold above the amounts thereof to be paid in bonds as aforesaid, shall be paid to said special masters in cash, at the time of said sale, and if not paid at once, the said masters shall immediately re-offer said property for sale until the same shall be sold and paid for according to this decree. That the amount paid in cash at either of the sales herein directed shall be paid into court by said masters, to be disposed of by the court, and on the coming in of said special master's report. If said sale or sales shall be confirmed, the purchaser or purchasers shall be placed immediately in possession of the property purchased.

7th. That unless the purchaser or purchasers of said railroad from Lake City to Chattahoochee and the branch to Monticello, and the railroad from Tallahassee to St. Mark's, or either of them, shall, within one year from the day of the sale thereof, discharge and satisfy the liens of the trustees of the internal improvement fund of the State
1236 of Florida thereon respectively, as hereinbefore declared, then the said railroad's property and franchises, thereto respectively pertaining, extending from Lake City to Quincy, including the branch road to Monticello, and the railroad and property and franchises thereto belonging extending from Tallahassee to St. Mark's, shall be taken possession of and sold by the marshal of the United States for said district separately to satisfy the liens thereon respectively fixed by this decree, and said sale shall be advertised to take place at Tallahassee, in said State, in a newspaper of general circulation published in said Tallahassee, and also in a newspaper of general circulation published in the city of New York, at least ninety days before the day of sale, and the purchaser or purchasers at said sale or sales may pay to the marshal in satisfaction of their bid for either of said roads the bonds which are a lien upon said road, that is, the bonds to pay which the lien of vendor exists as declared by this decree, in the proportion which the whole bid bears to the whole amount of bonds which are a lien as aforesaid on said road, and shall pay the balance in cash at the time of said sale, and the marshal shall return said bonds so received by him and the balance, if any, of cash into court, to be disposed of as the court shall direct.

8th. That in case the sales herein directed to be made to satisfy said complainants' said liens shall not be sufficient to fully satisfy the amounts due said complainants on the said State bonds numbered 3000 and below, the said complainants shall be subrogated to the right of the trustees of the said internal improvement fund of Florida as to any claim and right which said trustees have against any person or persons in regard to said unpaid portion of said purchase money, which is declared by this decree to be a first lien as aforesaid, and also as to any other security, or securities, which said trustees were or are possessed of, out of which to enforce payment to them of the amount of said unpaid purchase money or any partt here of, or out of which said trustees might have enforced payment of said lien therefor.

9th. That the application of Daniel P. Holland to have his judgment paid out of the funds in the hands of the receivers, in this case, be, and the same is hereby, denied.

10th. And whereas James G. Gibbs has filed a petition to inter-

1237 vene pro interesse suo, claiming certain right in that portion of the said railroad extending from Quincy to Chattahoochee, and prays to have the same adjudicated and allowed; it is therefore ordered and decreed that the rights of said Gibbs, whatever they may be, in said portion of said railroad be reserved from the effect and operation of the present decree, and any sale to be made by virtue thereof, and that it be referred to Joseph H. Durkee, esq., as a special master to take proofs with regard to the claim of said Gibbs, with liberty to the complainants, or any other party in the cause, to controvert the said claim by proofs or otherwise, and that the said master do report upon the same with all convenient speed, and return the proofs taken, and his conclusions thereon, in order that the court, by a supplemental decree, may take order in the matter as law and equality may require, and any proofs which have been taken in this cause may be used before the master in reference to said claim.

11th. It is further ordered, adjudged, and decreed that any balance of money which may remain in the hands of the treasurer of Florida, applicable to the payment of the liens herein and hereby established, and not otherwise disposed of by any court having jurrisdiction and control of the same, be paid by the said treasurer to the receivers in this cause, to be appropriated, with the other moneys in their hands under the direction of the court, to the uses of this cause, and to the satisfaction of this decree, in favor of the trustees of the internal improvement fund.

It is further ordered that any further equities not herein and hereby disposed of, including the claims of those who have intervened for their interest in the fund, do stand for further consideration and disposition upon the foot of this decree.

It is further ordered that the costs of the trustees of the internal improvement fund in this cause, and in the cause of the Western Division of the Western North Carolina Railroad Company, in which they are defendants, be taxed and paid out of the moneys in the hand of the receivers.

And be it further ordered that the complainants in this cause recover their costs to be taxed, and on taxation, that the same be paid out of the fund in the hand of the receivers in this cause.

JOSEPH P. BRADLEY,
Circuit Justice.

1238 Filed this 31st day of May, 1879.

PHILIP R. WALTER, *Clerk.*

1238½ Filed this 23rd day of Aug., 1879.

P. WALTER, *Clerk.*

(Pages 1239 to 1362 omitted per stipulation.)

1362 APRIL 20TH, 1878.

Present, Joseph H. Durkee, esq., examiner; Joseph B. Stewart, esq., solicitor for complainant; John A. Henderson, esq., counsel for George F. Drew, governor, &c.

HARRISON REED was offered as a witness on the part of complainant, and being first duly sworn, did depose and say as follows:

1. Question. State your name, age, and residence.

1363 Ans. Harrison Reed; age, sixty-four; residence, Duval County, Florida.

2. Ques. In what manner were you occupied in the year 1870, and 1871, 1872, and 1873?

Ans. I was governor of the State of Florida from June, 1868, to January 8th, 1873.

3. Ques. While acting as governor did you or did you not sign, execute, and exchange any bonds of the State of Florida for the bonds of any railroad company or companies of the State of Florida?

Ans. I did sign and exchange bonds as authorized to be issued under what is known as the act of January 28th, 1870, authorizing the exchange of bonds with the Jacksonville, Pensacola and Mobile Railroad Company to the amount of $16,000 per mile upon what was the alleged length of said road, extending from Jacksonville westward.

4. Ques. When were said bonds issued? and state the number that were issued and exchanged by you on the part of the State of Florida.

Ans. In and during the year 1870 I exchanged bonds of the State of Florida, numbering from one to three thousand, inclusive, of one thousand dollars each, for a like number of bonds of the Jacksonville, Pensacola and Mobile Railroad Company, and numbered from three thousand and one to four thousand, inclusive, for a like number of bonds of the Florida Central Company.

5. Ques. Referring now to the bonds last named, numbered from three thousand and one to four thousand, did you, or did you not, exchange and deliver said State bonds to, and receive said Florida Central Railroad bonds from, any agent or representative of the Florida Central or Jacksonville, Pensacola and Mobile Railroad Companies?

Ans. I do not recollect who delivered the Florida Central Railroad bonds to me.

6. Ques. Please state, then, with whom you made such exchange of said Florida State bonds numbered above three thousand, to the best of your knowledge and recollection.

Ans. My recollection now is that I delivered one million of bonds to Edward Houstoun, which were afterwards returned by him and deposited with the comptroller, and afterwards, I don't recollect the date, they were re-exchanged with Thomas B. Coddington, he acting in conjunc-
tion with Edward Houstoun, and participating in the arrange-
1364 ment, and also Robert H. Gamble, who was at the time comptrol-
ler of the State of Florida. Milton S. Littlefield also approved of
the exchange.

7. Ques. I will now ask you to be so good as to state, to the best of your knowledge and recollection, in what manner, to, and with whom said exchange of bonds of the State of Florida, numbered above three thousand, was made, as you have stated, and for what purpose.

Ans. The final exchange was made with Thomas B. Coddington for the purpose of raising the means to pay certain sums of money, amounting to about three hundred thousand dollars and upwards, to Edward Houstoun, John P. Sanderson, M. D. Papy, Robert H. Gamble, F. H. Flagg, James D. Westcott, and Thomas B. Coddington, and the balance of the proceeds to be placed to the credit of the State of Florida, in the National Trust Company of the city of New York.

8. Ques. State, to the best of your knowledge, information, and belief, what use and disposition was made of said bonds numbered above three thousand, and whether the same were sold and the proceeds applied as directed by you on the part of the State of Florida.

Ans. I have no personal knowledge of the final disposition made of said bonds, except as to two hundred and twenty-four, which were cancelled; which I think I, as governor, gave notice to the legislature in one of my annual messages. From information, I believe that two hundred of the bonds were placed in the hands of John Collinson, of London, England, to provide for interest on the Florida State bonds numbered from one up, and that the remainder was enjoined in a suit still pending in New York and London. I never heard of any others above three thousand being sold.

9. Ques. I will ask you to state whether or not there were any charges of illegality or fraud published or circulated in reference to said bond issue, and, if so, to what extent.

(Defendant's solicitor objects to the question, on the ground that the question is indefinite, and that the evidence sought is not the best evidence.)

Ans. There were charges of illegality and fraud circulated.

10. Ques. While you were governor did you, or did you not, receive any communication from persons residing abroad in reference to the validity of said Florida State bonds? and, if yea, state from whom you received such communications, what was their purport, and if in writing, and in your possession, please produce the same, or a copy thereof, as a part of your examination.

1365 Ans. I did receive communications, I think, by letter and telegram both, but I have no such letters in my possession now, or knowledge where they are. I cannot specify from whom the letters and telegrams were received. One, I recollect, either a letter or telegram, was from Amsterdam, and one from London. The purport of these communications was as to whether these bonds were valid and legal.

11. Ques. What reply, if any, did you make to such communications and inquiries?

Ans. My recollection is, that I, in reply to the first inquiry, stated that the bonds were legally issued; but in reply to the telegram from Amsterdam, at a latter period, I stated that no provision had been made for the payment of interest upon the bonds, and, under the circumstances, none would be.

12. Ques. I will ask you if you have looked for, and, if not, if you will be so good as to examine the papers, telegrams, and correspondence in in reference to the validity of said bonds, if any are in your possession, and will produce the same, if found, as a part of your deposition?

Ans. At the time of leaving the office of governor, I made an examination for such papers. I could not find them, and have not been able to find them since.

13. Ques. At the time said bonds, numbered above three thousand, or the last thousand of the four thousand, were exchanged for said papers purporting to be the bonds of the Florida Central Railroad Company, did you or did you not hear of any objection on the part of said company to its said bonds being used? and, if yea, state in what manner said objections were expressed by the directors or stockholders of said company.

Ans. At the time of the re-exchange, I had heard of objections being made on the part of some members of the Florida Central Railroad Company, or persons connected with it. I may have had official notice; I don't know; I can't recollect.

14. Ques. Were you, or were you not, a member of the internal improvement fund of the State of Florida in the year 1869?

Ans. I was ex-officio member of the board, and its president.

15. Ques. Was, or was not, the then line of railroads, known as the Pensacola and Georgia and Tallahassee Railroads, sold by the trustees of

the internal improvement fund during the year 1869? and, if yea, please state at what time said sale was made.

1366 Ans. The sale was made, and to the best of my recollection, about the 20th of March, 1869.

16. Ques. Who became the purchasers at such sale?

Ans. F. Dibble and associates.

17. Ques. At the time said sale was made, was there, or was there not, any agreement between said board of trustees and F. Dibble and associates that they should have an act of incorporation, if deemed necessary, and that the legislature of the State should be convened for that purpose? and, if yea, please state to the best of your recollection what transpired in reference to said sale, purchase and agreement.

Ans. Previous to the sale, and after advertisement, all persons contemplating purchase were given to understand by me, as governor, that they would have the same privileges and franchises granted by the legislature which had been given to the purchasers of the Florida Central Railroad and the Fernandina and Cedar Keys Railroad, which had been, sold under my predecessor, and that to insure the extension of the road to the Chattahoochee in time to command the transportation of the cotton crop of the ensuing season, I would call an extra session of the legislature to enable the purchasers to obtain corporate powers. After the sale, which occurred while I was absent from the State on official business, on my way home I was met at Savannah by Messrs. Requa and Cheney, who represented the new purchasers, and they required me to renew to them the pledge previously referred to, which I did; and upon the consummation of the sale by Messrs. Gamble, the comptroller, and Meek, the attorney-general, agents for the board of trustees, appointed for that purpose, I redeemed my pledge, and the legislature assembled in June, 1869.

18. Ques. Referring again to the subject of the exchange of bonds numbered above three thousand, I will call your attention to what purports to be printed copy of the deposition of Thomas B. Coddington, given in this case, sworn to on the 21st day of January, 1878, extending from pages 23 to 34 of said print, and ask you to look at the same, and the documents and papers therein set forth, and state whether or not the said deposition and papers made part thereof, so far as the same relate to you, and within your personal knowledge and recollection, are correct?

(Question objected to by defendant's solicitor, on the ground that it is indefinite.)

1367 Ans. I have examined said testimony mentioned in the question this morning, and so far as it relates to me and my official and personal connection with the acts and doings therein referred to, it is substantially correct, according to my recollection, with one addition or modification: that I enjoined Mr. Coddington, personally, in no case to deliver the bonds until the amount due the State, as claimed by me, was provided for. That is the last thing that passed between us when he left.

19. Ques. Do you know, or can you state, any other matter or thing material to this, your examination, of interest to the parties plaintiff or defendant beyond what you have answered; and, if yea, please state the same fully and at large in your answer, as if specially interrogated thereunto?

Ans. Nothing specially occurs to me beyond what I have stated in answer to questions. The subject of said issue of bonds by the State of Florida was a matter of so great importance that I considered it fully in view of the charges of fraud that might be circulated. In the exchange of said bonds, I expected in ever instance the proceeds thereof to be applied, under the provisions of the law, to the perfection of the work for which they were issued, and by myself as governor, acting on the part of the State of Florida, I made known my actions, and the reasons thereof, in my communications to the legislature of the State. In my annual message laid before the legislature January 4th, 1872, I there alluded to the said four millions of dollars of State bonds and those numbered above three thousand, as follows: "The last million of the four were delivered and are held in trust, to be disposed of when the amount of $300,000 balance due the internal improvement fund is paid. This sum is still unpaid, and remains a lien on that portion of the road between Lake City and Quincy." In referring to this balance in round numbers of $300,000, I had in view the fact that I had been officially notified by the president of the Jacksonville, Pensacola and Mobile Railroad that 103 of the Pensacola and Georgia Railroad bonds, of $1,000 each, and bonds held by other parties whom I don't now recollect, had been provided for, leaving a balance due the internal improvement fund, as then stated, of $227,000.

The further examination of witness is adjourned to Monday, April 22d, 1878, at 10 o'clock a. m.

1368 MONDAY, *April 22d*, 1878.

Present as before.

Cross-examination of Harrison Reed by counsel for George F. Drew, governor, defendant:

20. Ques. Will you please state whether the exchange of the bonds of the State of Florida, as made by you as governor thereof, of $3,000,000, for a like amount of the bonds of the Jacksonville, Pensacola and Mobile Railroad Company, and of $1,000,000 for the bonds of the Florida Central Railroad Company, was made with two distinct and independent corporations, each receiving separate and definite bonds, or with one corporation, upon the securities as offered, or in any otherwise, and if so, how? State also why, if for any particular reason within your knowledge, the bonds were exchanged, commencing west and proceeding to the east rather than vice versa?

(Complainant's solicitor excepts to the question, on the ground of assuming a fact not established by direct examination of the witness.)

Ans. The $4,000,000 were issued and delivered simultaneously to the president of the Jacksonville, Pensacola and Mobile Railroad Company, or upon his order. I do not know that the bonds were issued commencing at the west and running to the east. They were issued upon the certificates of the president of the Jacksonville, Pensacola and Mobile Railroad Company, of the length of the road then constructed between Jacksonville and Quincy and branches.

21. Ques. What representation was made as to the ownership of said road at the time of the exchange of said bonds by the Jacksonville, Pensacola and Mobile Railroad Company, its officers or agents, and if you state that there were representations made as to the ownership thereof, state whether such representations were a part of the conditions upon which such exchange was made?

(Complainant's solicitor excepts to the question, for the reason that the ownership of a railroad or a franchise must be proved by record, and cannot be shown by verbal proof.)

Ans. Such representations were made. Those representations were a part of the conditions under which such exchange was made.

22. Ques. What were such representations of ownership, and by whom were they made?

(Complainant's solicitor excepts to the question, on the ground that the representation of the president of said railroad company is not evidence of any fact material to this case.)

1369 Ans. The representations that I delivered the bonds upon were made by Colonel J. P. Sanderson, at the time of presenting the certificates. I then submitted the law under which I was to act to M. D. Papy and Sanderson in conjunction, stating my understanding of the law, that they were limited to an issue of bonds upon one hundred miles of constructed road; and I had the law examined and an opinion given in writing, signed by Papy and Sanderson, showing that the company was entitled to receive bonds on the whole line of road constructed and operated by said company. Upon the delivery of that opinion, I accepted it as the law and delivered the bonds accordingly. I delivered the bonds under the law, upon the receipt of the proper certificates from the President of the Jacksonville, Pensacola and Mobile Railroad Company as to the length of the road owned and operated by them.

(Complainant's solicitor excepts to the answer as not being the best evidence, and the production of the certificates called for.)

23. Ques. Have you the certificates called for, and if so, will you produce them?

Ans. I have not the certificates, and I do not know where they are.

24. Ques. Did you receive that certificate as the executive of the State?

Ans. I did, and filed it among the executive papers.

25. Ques. Did you turn it over to your successor?

Ans. I do not know. I turned the office over to my successor?

26. Ques. Do you, or not, know whether that certificate or certificates were purloined from the archives of the State?

(Complainant's solicitor excepts to the question, as being illegal in substance, and assuming a fact not in proof.)

Ans. There were two certificates, I think—one extending from Jacksonville to Lake City, the other extending from Lake City to Quincy and St. Mark's. I do not know whether they were purloined from the archives of the State or not.

27. Ques. You spoke in your direct examination of objections that were made to the reissue of the bonds numbered above 3000; will you state explicitly by whom were such objections made, and what, if any, was the interest of the objectors in the line of railway, or any part of it, and were such objections made to you officially? Do you refer to the objections of others than those made by Gamble, Westcott and Papy?

1370 (Complainant's solicitor objects to the question as immaterial.)

Ans. My recollection now is that there was some action taken or objection made by parties connected with what was called the Florida Central Railroad. The objections of Gamble, Westcott and Papy were all removed by the agreement made for the payment of their claims, and they assented to the delivery to Mr. Coddington of the bonds re-exchanged.

28. Ques. In your direct examination you stated that you received telegrams from abroad inquiring into the legality of the issue of those bonds. Did you, or not, receive information from abroad that it was necessary to have the authority or approval of the validity of the issue of those bonds by some court; and if so, what court of the State of Florida? And

if in answer you say yea, then state by whom was such information brought, and what action, if any, was taken by you thereon.

Ans. My recollection now is that I received a communication from abroad, and I do not now recollect from where nor by whom it was brought, that it would be necessary before the money could be realized upon the bonds to secure the opinion of the judges of the supreme court of the State of Florida as to their validity. I believe that I asked the judges their opinion under the constitution and received their answer in the affirmative.

29. Ques. You stated, in your direct examination, that you were prompted in the reissue of the last million of dollars by a desire to secure the State of Florida in the payment of a certain indebtedness. Will you please state what you mean by that indebtedness; how was it created, and in what way, and for what reason were the proceeds of such bonds, or any part thereof, to be applied thereto?

Ans. The indebtedness was incurred to the board of internal improvements, and arose in this way: At the time of the sale of the Pensacola and Georgia and Tallahassee Railroads by the board of internal improvements, Mr. Meek, the then attorney-general, and Mr. Gamble, the comptroller, were authorized and directed by the board of internal improvements to go to New York and receive the purchase money and make the transfer of the roads. I met them in New York, and they presented me with a conveyance drawn up to be signed by me, as governor and president of said board, conveying the title of the said roads, I think, to F. Dibble and associates, the purchasers. They then represented
1371 to me that the roads had been paid for, and I made the conveyance. They also represented to me that the balance of the purchase money that was paid after paying in nine hundred and some thousand dollars in bonds of the Pensacola and Georgia Railroad guaranteed by the internal improvement fund, the balance of $472,000 had been given to George W. Swepson, as confidential agent of the board of internal improvements, for the purchase of the remaining outstanding bonds of said road, under the authority of a resolution of the board of trustees of the internal improvement fund. I was subsequently notified by the president of the Jacksonville, Pensacola and Mobile Railroad Company that 103 of those outstanding bonds of $ 000 each had been redeemed by the agent, and that certain others, in the hands of parties specified, had been provided for, and I received a draft of $227,000, which was the balance remaining after the redemption of the bonds I have specified. That draft was presented in New York to S. W. Hopkins & Co., the parties upon whom it was drawn, and it had not been paid; and this redelivery of the $1,000,000 bonds to T. B. Coddington was upon the express condition that these amounts should be provided for. The draft I refer to was drawn by M. S. Littlefield, the president of the Jacksonville, Pensacola and Mobile Railroad Company.

30. Ques. You stated that you delivered or reissued the last million dollars of bonds to Coddington and Houstoun. Under what authority were they then acting, and for whom was the delivery made, and by what authority did you make the issue to them?

Ans. M. S. Littlefield, the then president of the Jacksonville, Pensacola and Mobile Railroad Company. The reissue was made under the authority of the act of the legislature.

(Signed) HARRISON REED.

The cross-examination of witness C. D. Willard is waived.

At this point an adjournment is ordered until Tuesday, April 23, 1878, at 10 o'clock a. m.

1372 TUESDAY, *April 23d*, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Wednesday, April 24th, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

WEDNESDAY, *April 24th*, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Thursday, April 25th, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

THURSDAY, *April* 25, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Friday, April 26th, 1878, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

FRIDAY, *April 26th*, 1878.

Pursuant to adjournment. No witness present. Adjournment ordered until Saturday, April 27th, 1878, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

SATURDAY, *April 27th*, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Monday, April 29th, 1878, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

1373 MONDAY, *April 29th*, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Tuesday, April 30th, 1878, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

TUESDAY, *April 30th*, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Wednesday, May 1st, 1878, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

WEDNESDAY, *May 1st*, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Thursday, May 2d, 1878, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

THURSDAY, *May 2d*, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Friday, May 3d, 1878, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

FRIDAY, *May 3d*, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Saturday, May 4th, 1878, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

1374 SATURDAY, *May 4th*, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Monday May 6th, 1878, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

MONDAY, *May 6th*, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Tuesday, May 7th, 1878, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

TUESDAY, *May 7th*, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Wednesday, 8th, 1878, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

WEDNESDAY, *May 8th*, 1878.

Met pusuant to adjournment. No witness present. Adjournment ordered until Thursday, May 9th, 1878, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

THURSDAY, *May 9th*, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Friday, May 10th, 1878, at ten o'clock a. m.

JOSEPH H. DURKEE,
Examiner.

1375 FRIDAY, *May 10th*, 1878.

Met pursuant to adjournment. No witness present. Adjournment ordered until Monday, May 13th, 1878.

JOSEPH H. DURKEE,
Examiner.

MONDAY, *May 13th*, 1878.

Met and adjourned until May 20th, 1878.

JOSEPH H. DURKEE,
Examiner.

MONDAY, *May 20th*, 1878.

Met and adjourned until May 27th, 1878.

JOSEPH H. DURKEE,
Examiner.

MONDAY, *May 27th*, 1878.

Met and adjourned until June 3d, 1878.

JOSEPH H. DURKEE,
Examiner.

JUNE 3*d.*

Met and adjourned until June 24th, 1878.

JOSEPH H. DURKEE,
Examiner.

JUNE 24, 1878.

Met and adjourned until Monday, July 29th, 1878.

JOSEPH H. DURKEE,
Examiner.

JULY 29TH, 1878.

Met and adjourned until Monday, August 26th, 1878.

JOSEPH H. DURKEE,
Examiner.

1376 MONDAY, *August 26th*, 1878.

Met and adjourned until September 16, 1878.

JOSEPH H. DURKEE,
Examiner.

SEPTEMBER 16TH, 1878.

Met pursuant to adjournment and adjourned until Wednesday, September 18th, 1878.

JOSEPH H. DURKEE,
Exam'r.

SEPTEMBER 18TH, 1878.

Met and adjourned until Thursday, September 19th, 1878.

JOSEPH H. DURKEE,
Examiner.

1377 On the 20th day of September, 1878, the following stipulation was filed in the case:

In the United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Florida Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Jacksonville, Pensacola and Mobile Railroad Company, et al.

It is hereby stipulated that the time for taking testimony in the above entitled causes be and the same hereby is extended to the first Monday in December, A. D. 1878, by giving the usual notice to the respective parties.

Dated Sept. 11th, 1878.

J. B. STEWART,
Sol. for Complainant.
JAS. M. BAKER,
Sol. for Fla. Central R. R. Co.
GEO. P. RAINEY,
Sol. for Trustees I. I. Fund.
S. B. STEPHENS,
Sol. J., P. & M. R. R. Co.

1378 In accordance with this stipulation, notice was given to James M. Baker, esq., sol. for the Florida Central Railroad Company; S. B. Stephens, sol. for the Jacksonville, Pensacola and Mobile Railroad Company; and Geo. P. Raney, sol. for trustees internal improvement fund of Florida, that on Monday, Sept. 23d, I would resume the taking of testimony in the above entitled suits.

On Monday, Sept. 23d, met pursuant to notice. Present, Joseph B. Stewart, esq., sol. for complainant. No witnesses being offered, an adjournment is ordered until Tuesday, Sept. 24th, at ten o'clock a. m.

1379 TUESDAY, *September* 24.

Met pursuant to adjournment. Present, Joseph B. Stewart, esq., solicitor for complainant, B. Stephens, esq., solicitor for the J., P. & M. R. R. Co.

GEO. R. FOSTER offered as a witness on behalf of the complainant, and the said Geo. R. Foster, being duly sworn, deposes and says:

1. Ques. State your name, residence, and occupation.

Ans. Geo. R. Foster, Jacksonville, Florida. I am a commission merchant.

2. Ques. Are you, or are you not, acquainted with a body corporate known as the Florida Central Railroad Company, one of the defendants in the suit?

Ans. I am acquainted with such corporation.

3. Ques. Please state what, if any, connection, individually or officially, you have had with such corporation?

Ans. I became a stockholder of said company soon after its organization, and was elected a director on the 25th day of May, 1870, and am now a director of the same. I was also secretary of said company from about 1873 to 1875.

4. Ques. Are you or not, as such stockholder, director and secretary, familiar with the records and proceedings of said company?

Ans. I have a general knowledge of the affairs and proceedings of said company, derived from my connections with it, as above stated.

5. Ques. Did or did not said company, at any time within your knowledge, issue, or agree to issue, its bonds, to be delivered to or used for any other railroad company for any purpose whatever? If yea, please name what company, and when such bonds were ordered to be issued, and under and by virtue of what agreement, if any.

Ans. It was not within my knowledge that the company issued any bonds. There were some bonds authorized to be issued by a meeting of the stockholders, and a meeting of the directors, also, held in Tallahassee June 2d, 1870, which said bonds were to be applied in a certain manner, which was shown by the record of proceedings of said meetings. This is the only autharity for issuing any bonds during my connection with the company, until 1877.

6. Ques. Will you please look at the book now shown you, and state whether or not you recognize the same as the record book, or book containing the proceedings of said Florida Central Railroad Company? And if yea, please state whether or not it is the record book
1280 to which you refer in your answer last given.

Ans. I have examined the book, and recognize it as the record book of the said Florida Central Railroad Company from August 13th, 1868, up to March, 1877, and to which I referred as the basis of my testimony as above given.

7. Ques. Please look at said book, at page 22, and state whether or not you were present at the meetings of the stockholders and directors recorded therein, from pages 22 to 25 inclusive.

Ans. I was.

8. Ques. Where was said meetings held?

Ans. In Tallahassee.

9. Ques. In what manner was said meetings convened, and you notified to attend? And was or was not notices of said meetings published in any newspapers previously to the same?

Ans. My recollection is that I was requested to attend personally. I have no recollection of seeing any publication. I had no knowledge for what the meeting was called until I was present.

10. Ques. At those meetings certain bonds were authorized to be issued which had already been signed by Geo. W. Swepson as president, and H. H. Thompson as treasurer, and directed to be delivered to Col. Edward Houston. Will you please state whether or not said bonds, or any one of the same, were or was not present and exhibited at said meeting for the inspection of the stockholders and directors?

Ans. None of said bonds were present, or exhibited, at said meeting.

11. Ques. Do you know said H. H. Thompson, referred to as treasurer of said company? And was he or not treasurer of the same at any time within your knowledge?

Ans. I do not know said Thompson. He was not the treasurer of said company at that time.

12. Ques. Who was the treasurer of said company at the time said bonds were proposed to be issued?

Ans. F. H. Flagg was secretary and treasurer at that time.

13. Ques. Do you know, or can you state, any other matter or thing, to the benefit of either party, besides what you have testified unto, material to this your examination? And if yea, please state the same at large in your answer as if you were particularly inter'ogated thereto.

Ans. I know nothing more.

1381 Cross-examination on the part of the J., P. & M. R. R. Co. is waived by its attorney, S. B. Stephens.

(Signed) GEO. R. FOSTER.

It is agreed on the part of the complainant and defendants present, that the origingal record book of the Florida Central Railroad Company, referred to as part of the testimony of the witness Geo. R. Foster shall be regarded as in proof for the use of all parties, and will be produced by the complainant on the hearing of the cause.

No other witnesses being offered, an adjournment is ordered until Wednesday, September 25th, 1878, at ten o'clock a. m.

(Signed) JOSEPH H. DURKEE,
Examiner.

WEDNESDAY, *September* 25.

Met pursuant to adjournment.

FRANKLIN W. ELY offered as a witness on the part of the complainant, and the said Franklin W. Ely having been duly sworn, deposes and says:

1. Ques. State your name, age, and residence.

Ans. Franklin W. Ely; I am 38 years of age; I reside in Jacksonville, Florida.

2. Ques. Do you or not know anything of a body corporate called the Tallahassee Railroad Company, and a body corporate called the Jacksonville, Pensacola and Mobile Railroad Company?

Ans. I do know of said companies.

3. Ques. Please state in what manner you derived your information, and what relation, if any, you have occupied to said companies, or either of them.

Ans. I am secretary of the Jacksonville, Pensacola and Mobile Railroad Company, and am in charge of the books and records, and have derived my knowledge from acting in that position. I am also in charge of the books and archives of the Tallahassee Railroad Company, previous and up to its consolidation with the Jacksonville, Pensacola and Mobile Railroad Company, and derive my knowledge of said company from the examination of its said books and papers.

4. Ques. You have spoken of a consolidation of the said Tallahassee Railroad Company with the said Jacksonville, Pensacola and Mobile Railroad Company. Will you please state when such consolidation occurred?

1382

Ans. It occurred on the 25th day of May, A. D. 1870.

6. Ques. Previous to such consolidation, was or was not the said Tallahassee Railroad Company an organized body, corporate and politic, in charge of and working a railroad? And if you say it was, please state where and between what points its said railroad was located.

Ans. The said Tallahassee Railroad Company was a body politic and corporate, working and operating its own railroad as such. The railroad of said company commenced at Lake City, in Columbia County, and extended to Quincy, in Gadsden County, and from Tallahassee to St. Mark's and the Monticello branch.

6. Ques. Are, or are not, the proceedings of consolidation of the said Tallahassee Company with said Jacksonville, Pensacola and Mobile Company evidence' by the records of the said Tallahassee Company? And will you produce the same as part of your answer to this question?

Ans. The said proceedings of consolidation are evidenced by said books, to which I refer as part of my answer, and produce the same before the examiner for inspection; but as the said books are original records in my charge I cannot part with them, but will produce and make part of my answer a true copy thereof, marked Appendix A.

7. Ques. The only railroad connected, and in operation, that entered such consolidation was the road of said Tallahassee Railroad Company you have above described? Is or is not that so?

Ans. There was no other railroad in working operation in said consolidation except as I have stated.

8. Ques. Did or did not said Jacksonville, Pensacola and Mobile Railroad Company consolidate with any other railroad company except the said Tallahassee Railroad Company?

Ans. They did not.

9. Ques. Are you not familiar with a body corporate known as the Florida Central Railroad Company? And if yea, did or did not said Jacksonville, Pensacola and Mobile Railroad Company, at any time within your knowledge, ever consolidate with said Florida Central Railroad Company, thereby forming and constituting one continuous line of road from Jacksonville westward, known as the Jacksonville, Pensacola and Mobile Railroad Company?

Ans. I do know said Florida Central Railroad Company. 1383 There never was any act of consolidation between it and the said Jacksonville, Pensacola and Mobile Railroad Company within my knowledge or belief. As stated, I have long been in custody of the books and records of the said Jacksonville, Pensacola and Mobile Railroad Company, and have repeatedly had occasion to read, examine, and copy the same in whole or in part, and have never seen any transaction or proceedings, at any meeting of the stockholders or directors, declaring a consolidation of the said Jacksonville, Pensacola and Mobile Railroad Company with said Florida Central Railroad Company.

10. Ques. Please state where the said Florida Central Railroad is located; that is, where it commences and where it terminates.

Ans. The Florida Central Railroad Company owns the line of road commencing at Jacksonville and terminating at Lake City, Columbia County, Florida.

11. Ques. Was there, or was there not, at any time any agreement entered into between the said Jacksonville, Pensacola and Mobile Railroad Company and the said Florida Central Railroad Company, whereby the latter was to issue its bonds, and deliver the same to the former, to be used for any purpose or in any way; and did or did not the said Jacksonville, Pensacola and Mobile Railroad Company at any time receive the bonds of the said Florida Central Railroad Company to be used, or which it agreed to use, in the construction of its road from Quincy westward, or for any other purpose; and, if yea, please state fully when and in what manner said issue and exchange of bonds was agreed to, and when and where said delivery and exchange of bonds was effected?

Ans. No such exchange of bonds ever was proposed or agreed to, or effected between said railroad companies, by any evidence within my knowledge. There are no proceedings or transactions to that effect, or tending thereto, in either the stockholders' or directors' proceedings, as shown by the records in my possession. There is nowhere any word or statement showing that the Jacksonville, Pensacola and Mobile Railroad Company agreed to receive, did receive, or in any manner become chargeable for or on account of any bonds of said Florida Central Railroad Company in any respect whatever.

12. Ques. You say you are in charge of the books of said Jacksonville, Pensacola and Mobile Railroad Company; will you be so good as to exhibit and file the same as part of your examination?

Ans. I am in custody of said books as secretary of said company, 1384 in which capacity they are in my possession, and I do not feel authorized to part with the control of the same; but I produce the originals here for inspection, and will prepare and file an exact copy of the same, marked Appendix B, as part of my testimony.

13. Ques. Are you, or are you not, familiar with the management and control of the said Florida Central Railroad Company; and, if yea, has it, or has it not, at all times been under the control and management of its own board of directors and officers as a body corporate?

Ans. I am familiar with the management of the Florida Central Railroad, and, to the best of my knowledge, it has been controlled by its own board of directors as a body corporate.

14. Ques. Do you know or can you state any other matter or thing material to this your examination of interest to either party beyond what you have been interrogated unto? and, if yea, please state the same fully and at large in your answer as if particularly interrogated thereto.

Ans. Nothing further occurs to me at present.

(Signed) FRANKLIN W. ELY.

Counsel for J., P. & M. R. R. Co. waives cross-examination of above witness.

Joseph B. Stewart, Esq., offered as a witness on the part of the complainant, and the said Joseph B. Stewart having been duly sworn, deposes and says:

My name is Joseph B. Stewart; I am in my fifty-fifth year; I am an attorney-at-law, and reside in the city of New York; I am the solicitor of complainant in these suits and prepared the pleadings in the same.

I commenced the preparation of these suits in December, 1874. Early in the year 1875 I visited Florida to examine the condition of the defendant corporations, the Florida Central, and the Jacksonville, Pensacola & Mobile Railroad Companies; I found both roads greatly neglected in their corporate management of the same. Before I took charge of the suits litigation had been pending in New York, Pennsylvania, Georgia and Florida, in which my clients and the corporations defendant, one or both of these, had been at all times involved, seeking in various ways to enforce the equities of the complainants for the recovery of a
sum of about one million two hundred and eighty-seven thousand
1385 (1,287,000) dollars, with interest thereon from October, 1868,
which was alleged to have been used fraudulently by the
and financiers of the complainants in purchasing about five (5,000) thousand shares of the capital stock of the Florida Central Railroad and in the purchase of what was the Pensacola, Georgia & Tallahassee Railroads, now known as the Jacksonville, Pensacola & Mobile Railroad.

Pending these suits and the latter part of the year 1876 the governor of the State of Florida, upon the petition presented in the name of G. M. Boissevain, A. J. Milders, Joseph Zaddocks, Adrian Stoop, and others by Frank R. Sherwin and Charles D. Willard, alleging themselves to be the agents and attorneys of the petitioners, the governor of Florida was requested to seize and take possession of the corporation defendants, the Jacksonville, Pensacola & Mobile and Florida Central Railroads, upon the alleged ground among others that the State of Florida and its governor ex officio was the trustee of the petitioners, and required by law to seize and take possession of the railroad of said corporation defendants, for the benefit of their petitioners and other holders of certain alleged bonds of the State of Florida described in the pleadings.

That pursuant to this petition the governor of Florida, the defendant, George F. Drew, deeming it his duty to take possession of said roads as requested by said petition ordering the seizure of the same, and advertising them for sale at a time named as shown by the pleadings.

I further state that such seizure of said roads and advertising them for sale threatened at once to destroy all the rights and interests of the complainants, and their large amount of capital so fraudulently invested in said roads as aforesaid.

That believing such seizure and sale was not authorized by law, and that the complainant had rights and equities paramount to the petitioners

represented by said Willard and Sherwin, I deemed it my duty to take steps to resist the same, and for that purpose sought the official representatives of the said corporation defendants, to urge them to make such defence to said seizure and proposed sale as might be authorized by law, but I could find no one who had connections with said companies, or either of them, who were willing or disposed to make such defence, or indeed to take any steps whatever in the premises. Replying to my urgency, generally, by saying that they felt no particular con-
1386 cern in the matter, and did not feel it their duty to act as I desired in the premises.

I then endeavored to find or to get possession of the books and records of the Florida Central Railroad Company so as to better advise myself of its condition, but was wholly unable to find the books, or any one who could give me any reliable information as to who had possession of them. That in pursuing this investigation I procured the assistance of Samuel B. Stephens, esq., a counsellor-at-law of standing and experience, who had long had connection in some of the litigations involving the corporation defendants, and being informed that the books were in the custody of some one in Tallahassee, we called upon all persons whom we supposed able to give us any information.

That while we were conducting this investigation it was ascertained that there were two or more boards of directors or parties alleged to represent or who should represent the Florida Central Railroad Company; that among these was a board of which one Robert Walker, of Tallahassee, was alleged to be president, and who it was alleged had charge of the books while acting as receiver of the Florida Central Railroad. That upon calling upon said Walker we were told that he did not claim to represent the company. That he did not know where the books were to a certainty, but that he believed that they were in custody of a person named Taylor, then employed or residing in Savannah, Georgia; so that the result was I could neither find any one who deemed it their duty to defend said company, or even get possession of the books, or access to the same, so as to advise myself of the condition of its affairs.

That not being able to find any one who felt it their duty or was authorized to defend said company, its property, franchise, and estate, against the seizure and proposed sale, at the instance of said Boissevain and others, known as the Dutch bondholders, I saw no other alternative but to file a bill on the part of the complainants, seeking to enjoin said proposed sale and asserting what I believed to be the prior rights and equities of the complainants in the premises. And hence, for this reason, and actuated by this necessity, I filed the bill praying the relief shown by the pleadings filed in this cause.

I will further state that after filing the petition first above mentioned by said Sherwin and Willard on the part of said Boissevan and others, that said Willard filed a further petition on the part of J.
1387 Fred Shutte, Jans Prins, Adrianus Prins, Henrich Ulrice and others, which was sworn to on the 31st day of March, 1877, further praying the seizure and sale of the roads of the said corporation defendants, to which petition and documents exhibited therewith I refer as part of my deposition.

(Signed) JOS. B. STEWART.

No other witness being offered, an adjournment is ordered until Sept. 26th, at 10 o'clock a. m.

(Signed) JOSEPH H. DURKEE,
Examiner.

THURSDAY, *Sept. 26th.*

Met pursuant to adjournment. Present, Joseph B. Stewert, esq., solicitor for complainants; S. B. Stephens, esq., solicitor for J., P. & M. R. R. Co.

S. B. STEPHENS offered as a witness on the part of the complainants; and the said S. B. Stephens, being duly sworn, deposes and says:

1. Ques. State your name, age, residence and occupation.

Ans. Samuel B. Stephens; I am over 50 years of age; I reside in Quincy, Florida; I am an attorney at law.

2. Ques. Are you or not acquainted with the corporation defendants, the Jacksonville, Pensacola & Mobile R. R. Co. and the Florida Central R. R. Co.?

Ans. I have been acquainted with both of said companies since their organization, and have had more or less to do with them as an attorney and otherwise.

3. Ques. Were you or were you not at any time requested to be present at a meeting before the governor of Florida about the seizure and proposed sale of the roads of said companies on the part of the defendants, Boissevain, Mildeus, Zaddock, Stoop, Shutte, and others, called the Dutch bondholders? and, if yea, please state when it was and what occurred, to the best of your recollection.

Ans. In the latter part of January, 1876, I was requested by Col. Joseph B. Stewart, the solicitor for the complainants, to meet him and Judge Baker in Tallahassee, and did so. The object of the meeting was to try and induce the governor of Florida to abandon his seiz-
ure of the roads of the defendant corporations on the part of the
1388 holders of certain Florida State bonds, known as the Dutch bond-
holders, I believe the defendants in this suit, and to force them to contest their rights in the courts. After a protracted discussion with the governor and the attorney-general, the object of the meeting failed, and Col. Stewart declared his purpose to be to seek the aid of a court of equity, by filing a bill to injoin the governor, and test the rights of the Dutch bondholders in the courts. Having determined on this course, the question then arose who represented the Florida Central Railroad Co., which gave rise to an investigation and a search for the books and records of said company, which search, at the request of said Stewart, I joined. We failed to find any one who was willing to go before the courts in behalf of said company, and were equally unsuccessful in finding the books and records of said company. The only information indicating the whereabouts of said books was obtained from Robert Walker, esq., who was alleged to be an officer of the company, in some capacity, who said he thought the books were in possession of an individual named Taylor, then residing in the city of Savannah, and in the employment of the Atlantic & Gulf Railroad Company. We failed to find the books or any person who was willing to defend the said company against the seizure and threatened sale of the road.

4. Ques. Do you know, or can you state, any other matter or thing of benefit to either party, and material to this your examination, beyond what you have been interrogated unto? And, if yea, please state same fully and at large in your answer, as if you were particularly interrogated thereto.

Ans. I know nothing further of importance to either party.

(Signed) S. B. STEPHENS.

No further testimony being offered, an adjournment is ordered until Friday, September 27th, at 10 o'clock a. m.

(Signed) JOSEPH H. DURKEE,
Examiner.

FRIDAY, *September 27th.*

Met pursuant to adjournment.

No witness being offered, an adjournment is ordered until Monday, September 30th, at ten o'clock a. m.

(Signed) JOSEPH H. DURKEE,
Examiner.

1389 MONDAY, *September 30th.*

Met pursuant to adjournment. Present, Joseph B. Stewart, esq., solicitor for complainant.

GEO. P. RANEY offered as a witness on the part of the complainant, and the said Geo. P. Raney having been duly sworn, deposes and says:

1. Ques. Please state your name, residence, age, and occupation.

Ans. Geo. P. Raney; I reside in Tallahassee, Florida; I am 32 years of age; I am by profession an attorney at law.

2. Ques. What office, if any, do you at the present time hold, and how long have you held the same?

Ans. I am attorney-general of the State of Florida. I have held this office since early in January, 1877.

3. Ques. Please look at the paper now shown you, a copy of which is made a part of this question, marked G. P. R. No. 1, and state when you first saw this paper, if at any time, and for what purpose the same was brought to your attention, the said paper being addressed to "His Excellency Hon. M. L. Stearns, governor of the State of Florida," and signed Frank R. Sherwin, and sworn to on the 22d day of September, 1876.

Ans. I first saw it in January, 1877. It was brought to my attention in connection with the application of Mr. Sherwin, who represented himself to be the agent of the holders of the Florida State bonds therein mentioned, to have Governor Drew seize the Florida Central Railroad, and advertise the same, under the provision of the acts of the legislature of the State of Florida relating to the perfecting the public works of the State.

4. Ques. Had or had not a seizure of said road been ordered by M. L. Stearns, late governor of the State of Florida, who preceded Governor Drew in office, according to the prayer of said petition?

Ans. My recollection is that the road was advertised by Gov. Stearns to be sold under the provisions of said acts.

5. Ques. Please look at the paper now shown you, a copy of which is made part of this question, marked G. P. R., No. 2, being in print and addressed to "His Excellency George F. Drew, governor of the State of Florida," and signed J. Fred Schutte, Joan. Prins, merchant;
1390 Adrianus Prins, M. P.; Heinrich Uluici, underwriter; Elias Fuld, J. Baorzo, Edward Isaac Asser, LL. D., Gideon Maria Boissevain, Dr. Nicholas, Jacob Den Tex, by Charles D. Willard, attorney, attorney-in-fact, dated Tallahassee, Florida, March 31st, 1877, and state when you first saw said paper, and what proceedings, if any, were had upon it.

Ans. The J., P. & M. Railroad had also been advertised under said acts, by Governor Stearns, who had received possession of the same from the

Supreme Court of the United States, and Governor Drew had received possession of that road from Governor Stearns. Not deeming the paper marked G. P. R. No. 1 as sufficient evidence of either Mr. Sherwin's agency, or of the fact that there were bona fide holders of State bonds issued in exchange for bonds of the Florida Central Railroad Company, Governor Drew refused to make this paper, or Mr. Sherwin's representations, the basis of action upon his part, and so notified Mr. Sherwin and Mr. Willard, and discontinued the advertisement for the sale of the Florida Central Railroad which had been by Governor Stearns. In March, 1877, the paper marked G. P. R. No. 2 was presented to Governor Drew by Mr. Charles D. Willard, Mr. Willard applying for the seizure and sale of the Florida Central Railroad under said acts, upon the part of the bondholders named therein, and asking that both roads be sold at the same time. This paper and a sworn statement of Gideon Maria Boissevain, and a certificate of Charles Mueller, United States consul at Amsterdam, which are either on file in the Schutte case in this court, or in the secretary of state's office in Tallahassee, and which, presented to the governor, by Mr. Willard shortly before paper marked G. P. R. No. 2 was, but for the same purpose, were deemed sufficient to justify the governor in recognizing Mr. Willard as agent for such bondholders, and to base proceedings for the sale of the Florida Central Railroad upon.

6. Ques. Was or was not any proceedings had in this court wherein said petitions and papers were read in evidence, and wherein you appeared as counsel? and if yea, please state when said proceedings occurred, and whether the same are still pending for final hearing.

Ans. The original papers mentioned were read before Judge Bradley in this case, and the case of the same plaintiff against Gov. Drew and others, involving the Florida Central Railroad upon the application before Judge Bradley, at Tallahassee, in May, 1877, for an injunction
restraining the sale of said railroads by Governor Drew, under
1391, 1392 said acts. I acted with Gen. W. G. M. Davis for the governor
and trustees of the internal improvement fund, in resisting the application for the injunction. This was before the Schutte bill was filed and the holders of a large majority of the bonds of the Pensacola and Georgia and Tallahassee Railroad Companies were in accord with the memorandum plan and favored such sale, and had requested the governor and trustees to make the same. I was not the paid counsel of the governor as trustee, but was merely advising him and representing him in a matter which I considered was to the interests of the cestui que trusts of the trustees of the internal improvement fund aforesaid, and which a majority in amount of the said Pensacola and Georgia and Tallahassee Railroad bondholders were, as the trustees understood, in accord with the holders of the State bonds also.

(Signed) GEORGE P. RANEY.

No other witness being offered, an adjourhment is ordered until Monday, Oct. 7th, 1878.

(Signed) JOSEPH H. DURKEE,
Examiner.

Continued adjournments were had to May 13th, 1879.

1393 MONDAY, *Oct. 7th*, 1878.

Met and adjourned until October 14th, 1878.

JOSEPH H. DURKEE,
Examiner.

MONDAY, *Oct.* 14, 1878.

Met and adjourned until Oct. 21st, 1878.

JOSEPH H. DURKEE,
Examiner.

MONDAY, *Oct.* 21*st*, 1878.

Met and adjourned until Oct. 28th, 1878.

JOSEPH H. DURKEE,
Examiner.

MONDAY, *Oct.* 28*th*, 1878.

Met and adjourned until Nov. 4th, 1878.

JOSEPH H. DURKEE,
Examiner.

MONDAY, *Nov.* 4, 1878.

Met and adjourned until November 11th, 1878.

JOSEPH H. DURKEE,
Examiner.

MONDAY, *Nov.* 11*th*, 1878.

Met and adjourned until November 18th, 1878.

JOSEPH H. DURKEE,
Examiner.

MONDAY, *November* 18*th*, 1878.

Met and adjourned until November 25th, 1878.

JOSEPH H. DURKEE,
Examiner.

1394 MONDAY, *November* 25, 1878.

Met and adjourned until Monday, Dec. 2d, 1878.

JOSEPH H. DURKEE,
Examiner.

On the 22d of February, 1879, the following order was made:

In circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., and The Florida Railroad Company et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., and The Jacksonville, Pensacola and Mobile Railroad Company et al.

And now comes the complainant, by its solicitor, Joseph B. Stewart, 1395 and upon its motion it is ordered that the time for taking testimony in the above causes be and the same is hereby extended until the first Monday in April.

Dated Feb'y 22d, 1879.

(Signed) THOMAS SETTLE, *Judge.*

Under the foregoing order no witnesses were called and no testimony taken before me.

On the 7th day of April, 1879, the following order was made:

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Jacksonville, Pensacola and Mobile Railroad Company, et al.

On motion of John T. Walker, esq., it is ordered that the time for taking testimony in this cause be extended to the third Monday in April, instead April 7th, 1878.

No witnesses were called and no testimony taken before me under the foregoing order, and the time of such extention having expired, the taking of testimony in these cases is closed and the following report submitted:

1396 In the circuit court of the United States, 5th judicial circuit, northern district of Florida.

WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, AND THE Florida Central Railroad Company et al.,

and

THE SAME
vs.
GEORGE F. DREW, COVERNOR, AND THE Jacksonville Pensacola and Mobile Railroad Company et al.

The honorable judge of the circuit court of the United States, 5th judicial circuit, northern district of Florida.

I, the undersigned duly appointed examiner to to take testimony in above-named cases, by an order dated March 3d, 1878, and the several extension of the same which are noted upon this record, beg leave to report that I have taken the testimony herewith submitted and contained in 296 written pages in my own handwriting; and I hereby certify that all erasures, alterations, interlineations or, marginal notes, upon 1397 the testimony of any witness, were made, before the signing of such testimony by the witness, and under his direction.

I submit also Exhibit A, B, C, D, E, F, G, H, I, K, L, M, N, O, and P, filed with the evidence of C. D. Willard; also, Exhibit No. 1, filed with the evidence of J. H. Pann; also, Exhibit Nos. 1 and 2, filed with the evidence of George P. Raney, and appendix A to the testimony of Frank W. Ely.

All of which is respectfully submitted.

JOSEPH H. DURKEE,
Examiner.

JACKSONVILLE, FLA.,
May 13th, 1879.

1398 *Depositions of witnesses, taken on the part of complainant in Asheville, North Carolina.*

United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE JACKSONVILLE, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company, et al.

Opened by order of the court and filed this 19th day of May, 1879.

PHILIP WALTER,
Clerk.

1399 In the United States circuit court, 5th judicial circuit. northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE FLORIDA Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE JACKSONVILLE, Pensacola and Mobile Railroad Company, et al.

To J. E. REED,
Clerk U. S. Circuit C't, Asheville, N. C.:

Know ye, that confiding in your integrity and discression, and by virtue of a special order of this honorable court, a copy of which is hereto annexed, you are hereby appointed, authorized, and empowered to take the deposition of such witnesses in the above-entitled causes, 1400 on the part of and at the instance of either party applying to you therefor, according to the sixty-seventh rule of equity practice proscribed for this court. And you are further directed and ordered that, after taking such testimony, you return the same to this office, duly certified, together with this your commission in the manner prescribed by law. And that this commission be executed and returned on or before the first day of May, 1878.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the court, at the city of Jacksonville, in the dist. and circuit aforesaid, this 16th day of April, 1878, and of our Independence the 102nd year.

{ SEAL U. S. CIR'T C'T, N. DIST. OF FLORIDA. } PHILIP WALTER, *Clerk.*

1401 In United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE FLORIDA Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company.
vs.
GEORGE F. DREW, GOVERNOR, THE JACKSONville, Pensacola and Mobile Railroad Company, et al.

It is ordered this first day of March, 1878, that Mr. Read, clerk U. S. circuit and dist. court at Asheville, North Carolina, and Joseph B. Batchelor, at Raleigh, North Carolina, be, and they respectively hereby are, appointed examiners to take depositions of witnesses in the above-entitled cause in the respective places named, and that the clerk of this court is hereby authorized to issue commissions to them respectively upon the application of the parties plaintiff or defendant in said suit.

1402 It is further ordered that said testimony be taken in the manner prescribed in the 67th rule of equity practise.

(Signed) THOMAS SETTLE, *Judge.*

I, Philip Walter, clerk of the U. S. circuit court, 5th circuit, northern district of Florida, do hereby certify that the foregoing is a true copy of the original order on file in my office.

Witness my hand & official seal, at the city of Jacksonville, in the district and circuit aforesaid, this 15th day of April, A. D. 1878, and of our Independence the 102nd year.

{ SEAL U. S. C'T C'T NORTHERN DIST. OF FLORIDA. } PHILIP WALTER, *Clerk.*

1403 In the circuit of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE FLORIDA Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE JACKSONVILLE, Pensacola and Mobile Railroad Company, et. al.

To George F. Drew, governor of the State of Florida, trustee for Gideon M. Boissevain, Adrian J. Mildus, Joseph Zaddock, and others, holders of Florida State bonds in Holland; and George F. Drew, governor; Walter Gwynn, treasurer; Columbus Drew, comptroller; George P. Raney, attorney-general; and Hugh A. Corley, commissioner of emigration, trustees of the internal improvement fund of the State of Florida, or to George P. Raney, their solicitor; and to Charles D. Willard, attorney in fact, and William G. M. Davis, solicitor for the hold-
ers of the Florida State bonds residing in the Kingdom of Holland
1404 involved in this suit; and to The Florida Central Railroad Company, The Jacksonville, Pensacola and Mobile Railroad Company; and to John A. Henderson, Ann E. Flagg, Rebecca E. Flagg, individually and as guardians, &c.:

You, and each of you, will please take notice, that under and by virtue of an order of the honorable court of the United States for the northern district of Florida, authorizing and impowering Reed, clerk of the district and circuit court of the United States at Asheville, North Carolina, to take testimony to be read in evidence by either party in the above-entitled causes, and by virtue of a commission issued under the seal of said court to said Reed, dated the 16th day of April, 1878, annexed to and made part of said order, so authorizing him to act in the premises, that I shall, on Thursday, the 25th day of April, A. D. 1878, before said Reed, as special examiner, at 10 o'clock a. m., at the
clerk's office of the said United States circuit and district court
1405 at Asheville, North Carolina, proceed to take the deposition of
Thomas W. Patton and other witnesses, to be read as evidence on the part of the complainant in the above-entitled causes, or either of them, upon the trial and hearing thereof, and will continue such taking of testimony from day to day until the same is concluded, subject to such adjournment as may be necessary for the production of witnesses, of all of which you and each of you are hereby warned and notified.

JOSEPH B. STEWART,
Solicitor for Compl'ts.

(Endorsement:)

Served a true copy of the within notice upon Charles D. Willard, att'y in fact, &c.; E. M. L'Engle, pres't of the Fla. Central Railroad

Company; Frank Ely, sec'ty of the J., P. & M. R. R. Company, at Jacksonville, Fla., this the 19th day of April, A. D. 1878.

S. CONANT,
U. S. Marshall,
By TH'S McMURRAY,
Deputy.

Served a true copy of the within notice upon George R. Raney, attorney-general, at Tallahassee, Florida, this the 19th April, A. D. 1878, and upon John A. Henderson, att'y, at Jacksonville, Fla., this the 20th April, 1878.

S. CONANT,
U. S. Marshal,
Per ALONZA FOWLER,
Deputy.

1406 Circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Florida Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Jacksonville, Pensacola and Mobile Railroad Company, et al.

Depositions of witnesses to be read as evidence on the part of the complainant, at the trial of the above cause, taken at Ashville, N. C., before J. E. Reed, esq., special examiner.

UNITED STATES OF AMERICA,
Western District of North Carolina, ss:

Be it remembered that on this 25th day of April, A. D. 1878, and by authority of the order and commission of the honorable circuit court of the United States for the northern district of Florida, hereto annexed, appointing and constituting the undersigned, James E. Reed, clerk of the circuit court of the United States for the western district of 1407 North Carolina, at Asheville, N. C., a special examiner to take depositions of witnesses, to be used as evidence in two certain suits in equity pending in said court, wherein the Western Division of the Western North Carolina Railroad Company is complainant, and George F. Drew, governor of the State of Florida, as trustee for Gideon M. Boissevain, Adrian J. Mildeus, Joseph Zaddock, and Adrian Stoop, and other holders of certain bonds of the State of Florida, residing in and subjects of the King of Holland; and Gerge F. Drew, governor, Walter Gwynn, treasurer, Columbus Drew, comptroller, George P. Raney, attorney-general, and Hugh A. Corley, commissioner of land and immigration, trustees of the internal improvement fund of the State of Florida, and the Jacksonville, Pensacola and Mobile Railroad Company, and the Florida Central Railroad Company, and others in said bill of complaint mentioned, are defendants—copies of which said bills, answers and pleadings being furnished the undersigned for the purposes of this examination, and the undersigned having signified his acceptance of said commission and appointment as such special examiner, and that he would proceed with such examination on this day, and due notice thereof being certified and served on the respective parties, defendants, or their respective solicitors, attorneys-in-fact, and agents, which said notice the evidence of the service thereof is hereto annexed; and that, pursuant to said notice, the undersigned did, at the time and place therein named, convene for the examination of such witnesses as might be presented, and no witness being present, adjourned to the hour of four o'clock p. m.

And now, at the hour of four o'clock p. m., on this 25th day of April, A. D. 1878, at the place aforesaid, comes the complainant, by its solicitor, Joseph B. Stewart, esq., no counsel appearing on the part of the defendants, when—

W. W. ROLLINS was presented as a witness on the part of the complainant, who, being duly sworn, deposes and says as follows:

1. Question. State your name, age, residence, and occupation.

Answer. Wallace W. Rollins; thirty-nine years old; residence, Marshall, N. C.; by occupation a farmer.

2. Ques. What relation have you, if any, with the Western Division of the Western North Carolina Railroad Company, the complainant in the suits in equity mentioned in the caption?

Ans. I am a stockholder and president of said company, and have been a director of the same from its organization, in 1868.

1408 3. Ques. How long have you been president of said company?

Ans. Since October, A. D. 1870.

4. Ques. Beside your relation as stockholder and president of said company, have you occupied any other relation thereto, and, if so, what?

Ans. I was one of the commissioners appointed under an act of the legislature of North Carolina, passed in the early part of the year 1870, to seek to recover the money and assets due to, and belonging to, said company, which had been misappropriated by George W. Swepson and others, while acting as fiduciaries and agents of said company.

5. Ques. Was, or was not, any settlement of the matters referred to arrived at, in whole or in part, with said parties?

Ans. There was a conditional settlement arrived at.

At the request of, and to afford witness an opportunity to examine papers, the examination is adjourned until Friday morning, April 26th, at eight o'clock.

And on Friday morning, the 26th day of April, 1878, at the place above said, I proceeded with said examination, according to previous adjournment, when and where the said Wallace W. Rollins further deposed and said as follows:

6. Ques. When and where did the settlement take place?

Ans. On or about the 16th day of April, 1870, in the city of Washington, D. C.

7. Ques. In what capacity were you acting when said conditional settlement occurred?

Ans. I was acting as one of the commission, under the act of the legislature of the State of North Carolina, before mentioned.

8. Ques. Who, besides yourself, were present at and participated in said settlement?

Ans. Nicholas W. Woodfin, W. G. Candler, W. P. Welch, and myself, on the part of the State of North Carolina, and George W. Swepson and Milton S. Littlefield, as parties representing the fund and assets belonging to the complainant, and which we were seeking to recover.

1409 9. Ques. Please state what was the special object intended by the commission, of which you were a member, in seeking the settlement to which you have referred?

Ans. The first and primary object was to ascertain what amount of money or assets, belonging to the complainant corporation, had come into Swepson's hands while acting as president and fiduciary of the complainant corporation, and then to ascertain, as far as possible, in what manner the same had been used and disposed of.

10. Ques. What amount, if any, of either money or assets, did your commission ascertain had come into the hands of Swepson while acting as president; and state in what capacity, and under what circumstances, and for what purpose he received the same?

Ans. During the latter yart of the year 1868, and until October, 1869, said Swepson was the president, fiduciary, and agent of the complainant company, and, as such president, he received about $6,666,000 of bonds of the State of North Carolina, which were issued and paid by said State, in payment for its capital stock in the complainant corporation. These bonds said Swepson, as such president and fiduciary, but acting upon his own motion, took to New York, and there sold and hypothecated, and otherwise raised on them about $3,000,000. The exact amount we never could ascertain. He received the bonds of the State of North Carolina for the purpose of applying the same, or the proceeds thereof, to the construction and equipping the road of the complainant corporation.

11. Ques. What disposition did your commission ascertain the said Swepson had made of the said assets, or the proceeds thereof, which he had received as president of the complainant company?

Ans. We found from the statements of said Swepson, and from papers shown us by him, that he had paid out a small portion, the exact amount not remembered, in the construction of the road of the complainant company; but that much the larger portion thereof, and, indeed, more than nine-tenths of it, had been used and appropriated by said Swepson for his own purposes; and among others, that he had invested a large portion of the money belonging to the complainant company in purchasing stock and bonds of certain Florida railroads; that is to say, in purchasing the capital stock of the Florida Central Railroad Company, and purchasing bonds of the Pensacola and Georgia and Tallahassee Railroad Companies, which were, by a subsequent sale and purchase, to which said Swepson was a party, organized into what is now the 1410 Jacksonville, Pensacola and Mobile Railroad Company, which, together with the said Florida Central Railroad Company, are parties defendant to this suit.

12. Ques. Had or had not said Swepson any right or authority by reason of his position as president of said complainant company, or otherwise to use, invest, or apply its assets or money in the purchase of the stock or bonds of any company or corporation whatever?

Ans. He had not.

13. Ques. When did it first come to your knowledge, as a stockholder or director, or that of the commission of which you were a member, that said Swepson had used and misappropriated the assets and money of the complainant company?

Ans. Not until April, 1870, about the time of the conditional settlement above mentioned.

14. Ques. Referring now specially to the use and appropriation by said Swepson of the complainant company's money and assets, in purchasing the stock and bonds of the said Florida railroads above mentioned, did or did not your commission ascertain what amount of money had been so used in Florida? And if yea, please state the sum to the best of your recollection.

Ans. The commission did ascertain the amount, which was shown to be about $1,287,436.

15. Ques. Was or was not the terms of said conditional settlement reduced to writing; and if yea, will you produce the same, or a copy thereof, as part of your answer to this question?

Ans. The result of said conditional settlement was reduced to writing in two papers of even date, viz, April 16th, 1870, signed by the parties as interested therein, the originals of which I now present for inspection and comparison, but as I desire to retain the same, as president of said company, for business reasons, I furnish copies thereof, and make the same part of this answer, marked W. W. R., No. 1, and W. W. R., No. 2, respectively.

16. Ques. Was there or was there not any provision made or agreed to be made for receiving and having returned to the complainant company the said $1,287,000, or any part thereof, so appropriated by Swepson in the purchase of said stock and bonds of said Florida railroads? And if yea, please state in what manner the return of said money was proposed to be secured.

Ans. As shown by the two papers of April 16th, 1870, above mentioned,
there was a proposal made by said Swepson and Littlefield,
1411 which was conditionally accepted by said commissioners, for the
return to the complainant company of its said money, so misapplied by said Swepson. By the terms of the proposal so made and accepted, the complainant company was to receive one-half the proceeds of the sale of bonds of the State of Florida, a sufficient amount to return back to the complainant company its said money so illegally appropriated by said Swepson to the amount of $1,287,000, as aforesaid.

17. Ques. Was or was not the terms of said conditional settlement complied with?

Ans. They were not.

18. Ques. You have spoken of bonds of the State of Florida which were to be applied, or the proceeds thereof, in returning the money due the complainant company. Will you please state in what manner the said bonds were to be issued by the said State of Florida, and for what purpose, and in what manner the same were to be obtained, or pass into the hands of said Swepson and Littlefield or either of them, as indicated in the said papers of the 16th of April, 1870?

Ans. I had no knowledge whatever as an individual, or as a member of said commission, or otherwise, of the origin, character and object of said Florida State bonds, or for what purpose they were to be issued, or in what manner they were to come into the hands of, or be subject to the control of, said Swepson and Littlefield or either of them, nor do I believe that either of my associate members of said commission had any knowledge whatever of the origin, character and object of said bonds. I myself had not, nor do I believe that either of my associates had heard of said Florida State bonds till they were mentioned in the conditional settlement above stated, and referred to in one of the papers of the 16th of April, 1870. The action of the commission in making said conditional settlement was based wholly upon the proposition—first, that said $1,287,000 of the complainant company's money had been illegally and fraudulently invested in the purchase of the stock and bonds of the said Florida roads; and second, that the equivalent in value in Florida State bonds were being issued, and would come back into the hands of said Littlefield and Swepson, or one of them, and which he or they could apply and would have the lawful right to apply to restoring to the complainant company its money which had been so illegally used, and acting upon these two propositions, with no other knowledge or information whatever, the commissioners appointed by 1412 the legislature of North Carolina, when so advised of the means of settlement, accepted the same on condition that the same was carried out.

19. Ques. Had you or had you not yourself individually or as a member of said commission, or within your knowledge, information or belief, had, or had not, said commission seen or read, or been advised of, the act of the legislature of the State of Florida under which the bonds of said State were to be issued, or the terms, objects and conditions thereof?

Ans. I certainly had not, myself, ever seen or read the act of the legislature of Florida under which said bonds were then being issued, and I know that the same was not, in any manner, discussed by the members of the commission. As before stated, we were seeking to get the best security we could for the complainant company, in obtaining the restoration of its money so illegally used; that the whole of the $1,287,000 of the complainant company's money had gone into the State of Florida, and been applied to the purchase of said roads, as aforesaid, and represented at par the purchase of the bonds of the said State of Florida, then being issued, and that the State had already received the par value, in money, for its said bonds, or the proceeds thereof, and the commission supposed and believed that the legislature of the State of Florida, whatever it was, was such as to impress proper validity upon said bond issue; and nothing was said or intimated to the contrary, within my knowledge or belief. The State bonds, themselves, were not shown to the said commission.

20. Ques. State what next occurred in reference to said conditional settlement, after the execution of the papers of April 16th, 1870, to which you have referred.

Ans. Nothing occurred. The commission awaited the coming of the money, which did not come. But, about the month of October, 1870, it came to our knowledge that the bonds of the State of Florida, above mentioned, had been disposed of, at the date of said settlement. This information, coupled with other matters, coming to our knowledge, gave rise to certain judicial proceedings which were instituted in New York, about the 3rd of October, 1870, against said Littlefield and Edward Houstoun; and soon thereafter Mr. Nicholas W. Woodfin, chairman of the commission, proceeded to London, to see what possibility there was of obtaining the proceeds of said bonds, as provided in said agreement of April 16th, 1870.

1413 21. Ques. Please state what was the result, if any, of Mr. Woodfin's visit to London; whom did he see there, and what, if anything, did he do?

Ans. The result of said Woodfin's visit to London was the entering into a further conditional agreement, by himself, as chairman of the commission on the one part, and Milton S. Littlefield in conjunction with S. W. Hopkins & Co., on the other part, dated November 10th, 1870, a copy of which said agreement I make part of this answer, marked W. W. R., No. 3. According to the terms of this agreement 800 of the said Florida State bonds of $1,000 each were to be turned over and applied to the use of the complainant company, and an order was given by Littlefield in favor of said Woodfin, as chairman to that effect, on said Hopkins & Co., in London, on or about the 16th day of November, 1870, and was accepted by them of the same date, agreeing to hold said 800 bonds subject to the order of said commission, a copy of which acceptance is made part of my answer to this question, marked W. W. R., No. 4.

22. Ques. Were the terms and conditions of said last-named or modified agreement complied with, and the said bonds, or any of them, delivered as therein provided?

Ans. The said modified conditioned agreement was not complied with in any respect whatever, and not a single one of said bonds ever was delivered under it.

23. Ques. What steps did you next take towards recovering the money due the complainant company, as provided in said agreements or either of them?

Ans. Acting under the advice of counsel, in the city of New York, on or about the 8th day of September, 1871, I, president of the complainant company, brought suit in New York against said Hopkins and Co., to enforce the surrender of said bonds, or the proceeds thereof, and caused the members of said firm, or some of them, to be arrested.

24. Ques. Did said cause come to a hearing in any respect, and if so, what was the result thereof?

Ans. The said cause did come to a hearing, upon a motion made upon the part of the defendants, S. W. Hopkins and Co., to vacate said order of arrest and dismiss the plaintiff's suit, upon the ground, among others, that by the terms of the act of the legislature of Florida, authorizing the issue of said Florida State bonds, that the same were dedicated
1414 to a special purpose and could not be used, transferred or
appropriated to the payment of any money to the complainant company, which could acquire no title to said bonds, or the proceeds thereof, or right of property therein, and upon hearing, the court so held and decided and discharged said order of arrest, and the plaintiff's suit was dismissed.

25. Ques. Previous to the beginning of this suit, had you acquired any knowledge of the facts about the issue of said bonds, or the object for which they were issued?

Ans. We had not, so far as I know or believe. There had been some discussion, but none that led to any conclusion till after the action above taken.

26. Ques. Did you, at any time, receive any money from Hopkins & Co., for or on account of said 800 bonds? And if you say you did, state when it was, and under what circumstances.

Ans. We did receive £10,000 of said Hopkins & Co., by a sixty days draft, dated April 3d, 1871, a copy of which draft is made part of this answer, marked W. W. R., No. 5. The circumstances which give rise to the drawing of said draft were as follows: That after said Woodfin had returned from London we waited for the forthcoming of the proceeds of said 800 bonds till we lost confidence and threatened the bringing of the suit, which we afterwards did bring, at the time wholly ignorant of facts which we subsequently learned, when, to prevent our bringing suit, the said Hopkins & Co. agreed to accept our draft for said sum of £10,000, which we accordingly drew on the 3d day of April, 1871, they assuring us that we should have our money in the future as agreed; but we subsequently became convinced the said draft was designed to throw us off our guard till other things could be accomplished, which being done, all further payments were denied, and we thereupon brought suit on or about the 8th of September, 1871, which resulted in the court holding and deciding that we had acquired no titles to said bonds by any of said agreements, when we abandoned all further effort to realize anything from said bonds, except such as we could effect by negotiation, which amounted to nothing.

27. Ques. Besides the said proposed Florida State bonds, or the proceeds thereof, what other security or means of payment, if any, was provided for in said agreement of the 16th of April, 1870?

Ans. It was agreed that the entire stock, bonds, and interest of every description of the said Florida Central Railroad Company,
1415 and Jacksonville, Pensacola and Mobile Railroad Company,
purchased and acquired by said Swepson and Littlefield, or either of them, should be turned over and invested in the complainant company, or held for its use.

28. Ques. Are you, or are you not, in possession of and holding said stock and bonds of said companies?

Ans. We do hold about 5,000 shares of the stock of the Florida Central Railroad Company, and also claim to hold the entire capital stock of the said Jacksonville, Pensacola and Mobile Railroad Company, and especially certificates Nos. 6, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 25, 27, 30, 33, 34, 35, 36, making a total of 51,668 shares out of the capital stock of 60,000 shares, and also claim that the remainder of said stock is held to the use of the complainant company.

29. Ques. By the concluding paragraph of one of the said agreements of the 16th of April, 1870, it is stated: "It is further understood and agreed by the parties of the first and second parts, that all interest, accrued or claimed by the said parties of the first part, both George W. Swepson and Milton S. Littlefield, or which they, as individuals, have a right to control in the said Florida railroads, are hereby pledged for the faithful fulfilment of this contract, without the right on the part of any party to interfere with our management, or the control of the affairs of the roads." Will you please state for what purpose said clause was inserted, and what control was therein referred to?

Ans. The commission claimed and contended that all the interest in said Florida railroads, purchased by the misappropriation of the complainant company's money, as aforesaid, forthwith and instantly became the property and estate of said complainant company, and in no manner became the property of said Swepson and Littlefield; but as they claimed to have purchased a portion of said property with their own money, but which we did not admit, but claimed the assignment of it, nevertheless, as a part of said security, but agreed not to claim the right to control the working operations of said roads, or the management thereof, by reason of the control of said stock, pending the fulfilment of said conditional settlement, and for this reason, and this only, was said clause inserted.

30. Ques. Was it, or was it not, the intention of the said clause to create or constitute said Swepson and Littlefield, or either of them, the agents to represent the interest of the complainant company in
1416 any respect, or use or pledge the same for any purpose, or encumber or charge the same in any manner?

Ans. It certainly was not. The commission was dealing with reference to the speedy fulfilment of the terms of said conditional settlement, and parted with, and intended to part with, no interest whatever till the same was done; and such not being done, claims that the said stock of the Florida Central Railroad Company, and the entire property and estate of the said Jacksonville, Pensacola and Mobile Railroad Company belongs to the complainant company in this suit, as being acquired and purchased by its assets and money. fraudulently appropriated by agents and fiduciaries.

31. Ques. Besides the papers of the 16th of April, 1870, what other papers, if any, were then transferred to the complainant company, or to said commission for its use?

Ans. We claim that all papers, assignments, and transfers in any manner creating or vesting any right in said Swepson or Littlefield, or either of them, passed to and vested in the complainant company, and especially the assignment in trust of F. Dibble and associates to George W. Swepson, dated April 22d, 1869, conveying to him the purchase and title deeds of F. Dibble and associates, as executed by the trustees of the internal improvement fund, dated April 8th, 1869, conveying what is now known as the Jacksonville, Pensacola and Mobile Railroad, and described as Schedules A, B, and C in complainant's bill, filed in this cause, for the recovery of said Jacksonville, Pensacola and Mobile Railroad, subject to the terms of sale therein provided.

32. Ques. Do you know or can you state any other matter or thing material to the interests of the parties plaintiff or defendant besides what you have stated? If yea, please state the same fully and at large in your answer, as if you had been particularly interrogated thereto.

Ans.. Nothing occurs to me beyond what I have stated in answer to the question propounded.

W. W. ROLLINS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 26th day of April, 1878, before—

[L. S.] J. E. REED,
Special Examiner and Clerk United States Circuit and District Courts, Western District North Carolina.

1417 EXHIBIT W. W. R., No. 1.

DISTRICT OF COLUMBIA,
Washington City:

This agreement, executed on this the 16th day of April, 1870, between N. W. Woodfin, W. G. Candler, W. W. Rollins, commissioners appointed by an act of the legislature of North Carolina, entitled "An act to provide for the completion of the Western Division of the Western North Carolina Railroad," and "ratified March 24th, 1870," which said act has been approved by the stockholders of the said corporation and the said commissioners, now representing the Western Division of the Western North Carolina Railroad Company, of the first part, and George W. Swepson (formerly president of the said Western Division of the Western North Carolina Railroad Company), of the second part, witnesseth:

That whereas a deed of agreement of this date has been made between George W. Swepson, as president of the Florida Central Railroad, and Milton S. Littlefield, in his own right, as president of the Jacksonville, Pensacola and Mobile Railroad, and as majority stockholder in all of these three railroad companies, of the first part, and the aforesaid commissioners, of the second part, which agreement has been signed in triplicate; and whereas, by said agreement, an interest in said railroads, amounting to the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, has been transferred and conveyed to the said Western Division of the Western North Carolina Railroad Company;

And whereas the said George W. Swepson, through his brother Robert R Swepson, has this day paid to the said commissioners the sum of fifty thousand dollars in cash;

And whereas the said George W. Swepson has this day executed and delivered to the said commissioners his obligation, in the form of a draft accepted by M. S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, and endorsed by M. S. Littlefield and George W. Swepson, as president of the Florida Central Railroad Company, for the sum of one hundred thousand dollars, payable four months after date;

And whereas the said George W. Swepson has this day executed and delivered to the said commissioners his other obligation, in the form of a draft accepted by M. S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, and endorsed by M. S. Littlefield and George W. Swepson, as president of the Florida Central Railroad Company, for the sum of one hundred and sixty four thousand dollars, payable twelve months after date, with interest on both said promises at the rate of six per cent.;

And whereas as a security for the payment of the last aforesaid obligation of one hundred and sixty-four thousand dollars, the said 1418 George W. Swepson has agreed to execute a mortgage deed, or deed in trust, with full relinquishment of all rights of dower upon the following lands, viz: The marble and lime lands in Catawba County, North Carolina, owned in copartnership with Dr. A. M. Powell, his interest being one-half; an undivided half of the Eagle Hotel in Asheville, North Carolina; the Dr. Woodfin place in Macon County, about three hundred acres; the Garret place, on the Nantahala River, about four hundred acres—in Cherokee; the Gid. Morriss plantation, about sixteen hundred acres; the Charles Moore place, about six hundred acres; the David Hennessey place, about acres; the Sharp place, about three hundred acres; one-half interest in fifteen tracts bought of Horshard, of Burke County, all on Valley River; one-half interest in about twenty thousand acres in copartnership with M. Fair, also in Cherokee County; all of his interest in about sixty-two thousand acres in Macon County (this land has been paid for, but the grants not yet received); about ninety thousand acres of land in Macon, Cherokee, and Clay Counties, known as the Olmsteads lands; a lot of about fifty thousand acres, held by Joseph Keener in trust for George W. Swepson;

And whereas the said George W. Swepson has agreed that the said mortgage or deed in trust, with relinquishments as aforesaid, shall be executed within the next thirty days;

And whereas R. R. Swepson and R. Y. McAden have agreed that they will guarantee that the said lands so to be mortgaged shall be relieved and discharged of all liens by reason of any judgment against George W. Swepson;

And whereas it is expressly understood that the notes of one hundred thousand dollars, and one hundred and sixty-four thousand dollars, may be paid in railroad iron, delivered at Portsmouth, Virginia, and if so paid before their maturity, the unaccrued interest shall not be charged;

And whereas the said Robert R. Swepson has this day advanced the sum of fifty thousand dollars to aid in this settlement; and whereas it is understood that the directory of the Western Division of the Western North Carolina Railroad Company will resolve that all stock on which five per cent. has not been paid, shall be forfeited to the company, and the stockholders released therefrom, the said commissioners hereby, so far as they have any authority or interest therein, express their consent thereto; and whereas it is further understood that upon the payment upon the note of $164,000 of the sum of five thousand dollars, the Eagle Hotel may be discharged of the trust; upon the payment of twelve thousand dollars, the Gid. Morriss place may be discharged; upon the payment of seven thousand five hundred dollars, the Hennessee lands may be discharged; upon the payment of six thousand five hundred dollars, the Charles Moore place may be discharged; upon the payment of three thousand dollars, the Sharp place may be discharged; upon the payment of two thousand dollars, the Woodfin place may be discharged; upon the payment of five thousand dollars, the Garrett place on Nantahala River; upon the payment of five thousand five hundred dollars, the Horshard lands, and upon the payment of five thousand dollars, the Fair lands may be discharged.

1419 Now, therefore, considering the premises and the consideration of the said interest and security, amounting to the sum of $1,287,436.03 transferred by said agreement of George W. Swepson and M. S. Littlefield, as aforesaid, special reference being here made to said agreement, and in consideration of the further sum of fifty thousand dollars, this day paid in cash as aforesaid; further, in consideration of the two obligations of $100,000 and $164,000, each, respectively, in consideration of the disbursements heretofore made by the said George W. Swepson, for and on account of said railroad company, the said commissioners, in their capacity as commissioners, by authority of the said act of the legislature of North Carolina, and its approval by the stockholders, agree and promise to execute and deliver to the said George W. Swepson a full and final release and discharge, and receipt of all claims, demands, and accounts of the said Western Division of the Western North Carolina Railroad Company against the said George W. Swepson, of any character whatever, when the said Swepson shall have executed the said mortgage or deed in trust with relinquishments of dower, as aforesaid, and the said Robert R. Swepson and the said R. Y. McAden shall have given a satisfactory guarantee that the said lands shall be discharged of any and all judgments as aforesaid, and when the sum of $880,000 of the amount of $1,287,436.03 transferred in Florida railroads shall have been paid or made fully secure; provided, nevertheless, that it shall be determined by N. W. Woodfin and M. W. Ransom, and in case they cannot agree they are to call in an umpire, that George W. Swepson was not authorized to make such investments in Florida by his board of directors of the Western Division of the Western North Carolina Railroad Company; but if it shall be determined by the said referees, or the said referees and umpire, that George W. Swepson was authorized to make such investments, or that the said directors recognized and approved the investment, then there shall be no obligation on Mr. G. W. Swepson to guarantee the said sum of $880,000, but the compliance with the other obligations shall be his receipt and discharge.

It is further understood that the said mortgage or deed in trust will be executed and delivered within ninety days from the date of these presents, unless there should be cause sufficient and satisfactory to the said commissioners to postpone the same at their discretion.

But it is expressly understood that the said commissioners do not approve of the payment of Souter & Co., of the expenses to attorneys, etc., in the university case, but that they protest against the same, and that nothing in this agreement shall be construed to prevent the said Western Division of the Western North Carolina Railroad Company from recovering the same or any part thereof from those receiving the same.

In witness whereof the parties of the first and second parts have hereunto set their hands.

N. W. WOODFIN.
W. G. CANDLER.
W. W. ROLLINS.
GEORGE W. SWEPSON.

Witness:
R. W. PULLIAM.
R. R. SWEPSON.

1420 EXHIBIT W. W. R., No. 2.

Memorandum of agreement and settlement between the Florida Central Railroad Company, George W. Swepson, president, and the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, president, and Milton S. Littlefield, majority owner of the stock of said companies, and also of the stock of the Tallahassee Railroad Company, of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by N. W. Woodfin, W. G. Candler, W. Pink Welch, and W. W. Rollins, commissioners appointed by an act of the legislature of North Carolina, approved by the stockholders of said corporation, of the second part:

Witnesseth, that whereas George W. Swepson, late president of the Western Division of the Western North Carolina Railroad Company, made certain investments of the funds of said company in securities of and interests in the said Florida Central Railroad, Jacksonville, Pensacola and Mobile Railroad, and the Tallahassee Railroad, of the said State of Florida, as per report made by the said George W. Swepson to the said commissioners, amounting in the aggregate to the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, to bear interest from the first day of November, 1869, at the rate of eight per cent. per annum;

And whereas the said George W. Swepson heretofore conveyed to the said Milton S. Littlefield, subject to the payment of the above recited claim, his interest in the above recited railroads;

And whereas the said Littlefield has received authority from the legislature of the State of Florida, and the several railroad companies, to receive bonds to be issued by and for account of the several railroad companies, which bonds are to be exchanged for bonds of the State of Florida, to be issued for the purpose of aiding the finances of said several railroad companies—all of which bonds are now in a state of preparation;

And whereas the said Milton S. Littlefield has made a contract with S. W. Hopkins & Co., No. 71 Broadway, N. Y., for the disposition of said bonds, as the same may be issued, the proceeds of the issue of the bonds of the Florida Central Railroad Company of the State of Florida, amounting to nine hundred and sixty thousand dollars, are to be applied to the payment of the existing liabilities of the said several railroad companies, including the sum of one hundred and fifty thousand dollars, to be paid to the commissioners aforesaid, for the purpose of paying existing liabilities of the said Western Division of the Western North Carolina Railroad Company.

It is understood and agreed by the parties of the first and second parts that the proceeds of the sale of said bonds so to be issued by the said Florida railroad companies and the said State of Florida are to be equally divided, dollar for dollar, between the Western Division of the Western North Carolina Railroad Company and the said Florida railroads; and as the commissioners aforesaid receive by this first sale of bonds only the sum of one hundred and fifty thousand dollars, it is further understood and agreed that out of the proceeds of the sale of the
1421 issue of the bonds of the Jacksonville, Pensacola and Mobile Railroad, there is first to be received by the commissioners aforesaid a sum sufficient to be equal to the amount received by and on account of the said Florida railroads, and then an equal amount is to be received by the said commissioners and the said Florida railroads, dollar for dollar, until the entire amount of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, with interest at eight per cent., as aforesaid, being the sum reported by the parties of the first part as due to the Western Division of the Western North Carolina Railroad, is fully paid.

It is further understood and agreed by the parties of the first and second parts that all the interest owned or claimed by the said parties of the first part, George W. Swepson and Milton S. Littlefield, or which they, as individuals, have a right to control in the said Florida railroads, are hereby pledged for the faithful fulfilment of this contract, without the right on the part of any party to interfere with our management or control of the affairs of the road.

(Signed) GEORGE W. SWEPSON,
President Florida Central Railroad Co.
M. S. LITTLEFIELD.
M. S. LITTLEFIELD,
President J., P. & M. Railroad Company.
N. W. WOODFIN,
W. W. ROLLINS,
W. G. CANDLER,
W. P. WELCH,
Commissioners.

Witnesses:
M. W. Ransom.
R. R. Swepson.

1422 Exhibit W. W. R., No. 3.

Memorandum of an agreement and final settlement made this tenth day of November, A. D. 1870, at London, England, between General Milton S. Littlefield, of the State of Florida, in the United States of America, and the Jacksonville, Pensacola and Mobile Railroad Company, by Milton S. Littlefield, the president thereof, the parties of the first part, and the Western Division of the Western North Carolina Railroad Company, acting through and represented by Colonel Nicholas W. Woodfin, chairman of the commission appointed by the general assembly of the State of North Carolina, by an act ratified the 24th day of March, A. D. 1870, to settle with George W. Swepson, and for other purposes, which act was approved by the stockholders of the said Western Division of the Western North Carolina Railroad Company, of the second part.

Whereas on the 16th day of April, A. D. 1870, at the city of Wash ington, in the District of Columbia, in the United States of America, a contract in writing was made and entered into by and between the Florida Railroad Company, George W. Swepson, president, General Milton S. Littlefield, the Jacksonville, Pensacola and Mobile Railroad Company, by Milton S. Littlefield, the president thereof, as parties of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by Nicholas W. Woodfin, W. G. Candler, W. W. Rollins, and W. P. Welch, commissioners appointed by the legislature of the State of North Carolina, by an act ratified the 24th day of March, 1870, which act was duly ratified, approved, adopted, and made a part of the charter of the said party of the second part, the said corporation, a copy of which contract is attached hereto, and made a part of this contract;

And whereas the said Jacksonville, Pensacola and Mobile Railroad Company have received certain bonds of the State of Florida, under sundry acts of the legislature of said State, which bonds, by the term of the laws authorizing the issue of the same, are made payable, both principal and interest, in the gold coin of the United States, and bearing interest at the rate of eight per cent. per annum;

And whereas by reason of the present war in Europe, all financial operations are more or less restricted, which has, up to this time, prevented the negotiation for the sale of said bonds;

And whereas the said Western Division of the Western North Carolina Railroad Company, through and by its representative, N. W. Woodfin, chairman, as aforesaid, is pressing the immediate payment, by the said party of the first part, of the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, with interest at the rate of eight per cent. per annum since the first day of November, A. D. 1869; to pay or settle the said claim now will cause a great sacrifice to the said party of the first part;.

And whereas the said Nicholas W. Woodfin, as chairman of the said commission for the Western Division of the Western North Carolina Railroad Company, for the purpose of removing embarrassments
1423 out of the way, which, in his judgment, prevented the sale of
said bonds, and to avoid litigation, did, on the 17th of October, 1870, contract with Henry Clews & Co., bankers in the cities of New York and London, to purchase a certain claim held by them against George W. Swepson, amounting to about twenty thousand dollars, lawful money of the United States of America, which contract was made with the knowledge and approval of the said party of the first part, for the reason, it was understood by all parties to the said agreement, that this would secure the full co-operation of the said Henry Clews & Co. to aid in the sale and negotiations of the said Florida bonds.

Now, therefore, be it remembered, that for and in consideration of the premises herein stated, and for various other good and sufficient considerations, and for the further purpose of aiding the said Western Division of the Western North Carolina Railroad Company to complete their road from the junction with the main line, at Asheville, to Paint Rock, at the State line between the States of North Carolina and Tennessee, and to complete their road without delay, on the one hand, and to avoid a hasty sale and sacrifice of the said bonds on the other hand, it is agreed by and between the parties of the first and second parts, that, in full compromise, payment, satisfaction and accord of the obligation of the party of the first part to pay to the party of the second part the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, lawful money of the United States of America, with interest thereon at the rate of eight per cent. from and after the first day of November, A. D. 1869, as per terms of the said contract made and executed at the city of Washington aforesaid, and that the said party of the first part may be fully and finally discharged from all and every liability on account of the terms and conditions of the said contract, hereunto appended, the said party of the first part agree to furnish the iron to the said party of the second part sufficient to lay a single track of railroad from the junction, at Asheville, along the French Broad River, to Paint Rock, at the Tennessee State line, and into the State of Tennessee to the present terminus of the Cincinnati, Cumberland Gap and Charleston Railroad, with turn-outs and side-tracks, provided that the whole railroad shall not exceed, including turn-outs and side-tracks, fifty-three miles in length. The iron shall be of good quality of English iron, weighing not less than fifty pounds per lineal yard, with the necessary chairs and spikes to lay the same; the iron to be shipped in the quantities, and at the times and places, as follows, to wit:

To Norfolk, Virginia, on or before the tenth day of December, A. D. 1870, three hundred tons; to the same place, on or before the first day of April, A. D. 1871, one thousand tons; and the rest to be shipped to New York, in the State of New York, on or before the first day of September, A. D. 1871; but the said party of the first part may ship the iron as fast as he may wish; all duties and freights on the above described iron to be paid by the party of the first part.

And it is further agreed by the party of the first part, that he will ship, in addition to the above mentioned quanitty of iron, one thousand tons of the same weight and quality as the above described iron, with the
necessary chairs and spikes to lay the same, to New York, duties
1421 and freight paid, on or before the 1st day of September, A. D.
1871, the shipping of which iron Messrs. S. W. Hopkins & Co.
are to guarantee.

In additition to the shipment of iron, the said party of the first part does hereby sell and deliver to the said party of the second part, by placing to the order of the party of the second part, with Messrs. S. W. Hopkins & Co., eight hundred bonds of the State of Florida, of the denomination of one thousand dollars each, numbers of said bonds to be designated by the party of the first part; but upon the express stipulation and conditions that the said bonds are to be left with Messrs. S. W. Hopkins & Co. for sale, at such prices as the said party of the second part may direct.

And it is further agreed by the party of the first part, that he will pay to the party of the second part two hundred pounds sterling, the receipt whereof is hereby acknowledged.

And it is further agreed by the party of the first part, to assume and discharge the obligations of the party of the second part to Henry Clews & Co., of about twenty thousand dollars, lawful money of the United States of America.

Now, when the foregoing undertakings and agreements of the party of the first part are fully accomplished and performed, it is to be taken as a full compliance with and final discharge of the parties of the first part to this contract, as well as all parties of the first part to the said contract executed at the city of Washington aforesaid, a copy of which is hereunto annexed; and this shall operate as a receipt and final discharge thereof from all obligations growing out of the same.

MILTON S. LITTLEFIELD.
MILTON S. LITTLEFIELD,
President J., P. & M. Railroad Company.

N. W. WOODFIN,
Chairman of the Board of Commissioners.

1425 EXHIBIT W. W. R., No. 4.

S. W. Hopkins & Co.

58 OLD BROAD STREET,
London, E. C., Nov. 16, 1870.

NICHOLAS W. WOODFIN, Esq.,
Chairman of the Commissioners of the Western Division of the Western North Carolina Railroad Company:

SIR: We are in possession of your favor of this day's date, covering order from M. S. Littlefield, president Jacksonville, Pensacola and Mobile Railroad Company, dated November 16, 1870, for eight hundred Florida bonds.

We accept the said order, and agree to hold the within described bonds as agents for the Western Division of the Western North Carolina Railroad Company, subject to the order of the commissioners.

We remain, sir, your most obedient servants,

S. W. HOPKINS & Co.

1426 EXHIBIT W. W. R., No. 5.

NEW YORK, *April* 13, 1871.

Messrs. S. W. HOPKINS & Co.,
58 *Old Broad St., London:*

GENTLEMEN: We have this day (by our chairman, N. W. Woodfin, esq.) drawn on you, at sixty days' sight, for £10,000 (ten thousand pounds sterling), as an advance against eight hundred (800) Florida State eight per cent. gold bonds, held by you for negotiation for account of the commissioners of the Western Division of the Western North Carolina Railroad Company.

We are, gentlemen, yours respectfully,

N. W. WOODFIN.
W. W. ROLLINS.
J. L. HENRY.

1427 Also, WILLIAM G. CANDLER, a witness on the part of the complainant company, was introduced, sworn, and examined, who deposed as follows:

1. Ques. State your name, age, residence, and occupation.

Ans. William G. Candler; age, forty-four; residence, Hominy Creek, Buncombe County, North Carolina; by occupation, a lawyer.

2. Ques. Please state your relation, if any, with the complainant company—said Western Division of the Western North Carolina Railroad Company?

Ans. I am a stockholder, and was a director, in said company.

3. Ques. Did you, or not, at any time occupy any other relation to the

complainant company than that of stockholder and director? and, if yea, please state what it was.

Ans. I did, at one time, occupy an additional relation to said company, as being one of a board of commissioners appointed under an act of the legislature of North Carolina, approved on or about the 24th of March, 1870, empowered to ascertain what disposition had been made of certain assets of said company by George W. Swepson, while acting as the president thereof, and I accepted and acted as one of said commission.

4. Ques. Did said commission have such settlement, and ascertain the facts authorized by said act of the legislature of North Carolina?

Ans. We did, to the best of our ability.

5. Ques. When did such investigation take place, and where?

Ans. On or about the 16th day of April, 1870, in the city of Washington, District of Columbia.

6. Ques. Did you, or not, arrive at a settlement with said Swepson?

Ans. We arrived at a conditional settlement.

7. Ques. Please state who were present and participated in said settlement?

Ans. On the part of the commission, Nicholas W. Woodfin, Wallace W. Rollins, W. P. Welch, and myself; and the persons with whom we conducted said conditional settlement were George W. Swepson and Milton S. Littlefield.

8. Ques. How, and in what way, did said Littlefield become a party to said proceedings and settlement?

Ans. I only know of his connection by what was developed by 1428 the papers which they exhibited and executed, wherein it appeared he had become connected with the illegal appropriation of the assets and money of the complainant company, which was the subject matter of said settlement, and which had become invested in the purchase of the capital stock of the Florida Central Railroad Company, and of the Tallahassee Railroad Company, which had, by some change of organization, become the Jacksonville, Pensacola and Mobile Railroad Company.

9. Ques. What amount of assets of the complainant company did it appear, or was shown by said settlement, had passed into the hands of said Swepson? In what manner and capacity had he received same, and what disposition had he made thereof?

Ans. It was shown by the papers brought before the commission, that said Swepson, among other things, had come in possession of about $6,600,000 of the bonds of the State of North Carolina, which had been issued to the complainant company by the State in payment for its stock subscription; that at the time this occurred, to wit, in the latter part of the year 1868, till about November, 1869, said Swepson was the president, agent, and fiduciary of the complainant company, and received said bonds in such fiduciary capacity; that he subsequently took said bonds to New York, and by sale or hypothecation of the same, I believe principally through the house of Soutter & Co., realizing therefor in the neighborhood of $3,000,000 (three million of dollars), the exact amount the commission could not ascertain. The disposition made of said money belonging to said complainant company, as shown by the papers brought before the commission, and by the statements of said Swepson, made it appear that a small portion of said money had been applied to the building and equipping of the road of complainant company, but that much the larger portion thereof had been fraudulently misappropriated by said Swepson to his own purposes, including in the amount so misappropriated, about $1,287,000 (one million two hundred and eighty-seven thousand dollars) had been fraudulently used by said Swepson, in conjunction with said Littlefield, in the purchase of said stock of the Florida Central Railroad Company, and the absolute purchase of the Jacksonville, Pensacola and Mobile Railroad Company, so far as payment was made for the same, amounting, I believe, to about nine hundred and sixty thousand dollars; that, in fact, no other payments had been made for said Jacksonville, Pensacola and Mobile 1429 Railroad, except such as had been made with the misuse of the complainant company's money. Such was the information imparted and derived in the course of the settlement referred to, and which I believed, and still believe, to be true.

10. Ques. Was or was not the settlement you referred to reduced to writing; and if yea, will you produce the same, or a copy thereof, as part of your answer to this question?

Ans. The terms of said conditional settlement were reduced to writing, in two papers, simultaneously executed on or about the said 16th day of April, 1870, one of which was signed by N. W. Woodfin, W. G. Candler, and W. W. Rollins, on the part of the commissioners, and by George W. Swepson, for himself, and the other was signed by George W. Swepson, president of the Florida Central Railroad Company, and Milton S. Littlefield, individually, and M. S. Littlefield, president Jacksonville, Pensacola and Mobile Railroad Company, and by N. W. Woodfin, W. W. Rollins, W. P. Welch, and myself, as commissioners, both of which said original papers are now before me, but are not subject to my control. I will, if possible, procure and produce copies of the same as part of my answer to this question; but I am informed that the originals themselves will be before the court on the hearing of this cause, and in that event refer to them.

11. Ques. You have stated that the sum of about $1,287,000 of complainant company's money was shown, by the papers exhibited at the time of said conditional settlement, to have been invested in the purchase of the said Florida railroads. Will you now be so good as to state by what means the return of said money to said complainant company was proposed to be secured and effected?

Ans. The terms were such as were set forth in said papers; that is, it was stated that said Littlefield and Swepson, one or both of them, were about to receive a large number of bonds of the State of Florida, then being issued to said railroads, and that the same, or the proceeds thereof, should be applied in such manner as to secure the return to the complainant company of said sum, of about $1,287,000, which had been so misapplied by said Swepson and Littlefield. The manner in which the same should be done was stated and provided in one of the papers so signed, to which I refer for details.

12. Ques. You have spoken of certain bonds which were being issued by the State of Florida, which said Swepson and Littlefield proposed should be applied to the payment of the money due the complainant company. Will you please state what knowledge or informa- 1430 tion you or said commissioners had or received, at the time of said conditional settlement, about the said Florida State bonds, and especially by what authority or for what purpose the same were being issued, and would be subject to the control of said Littlefield and Swepson, or either of them?

Ans. I myself, either as an individual or as a stockholder and director of complainant company, or as a member of said commission, had not and never had any information whatever on the subject of said Florida

State bonds, or the object for which they were issued, except such as was imparted by said papers. so signed on the 16th of April, 1870; and to the best of my knowledge and belief neither of the other members of said commission had any other knowledge or source of information about said bonds than I had. It was only at the time of said conditional settlement that we learned that any of the money of the complainant company had been so illegally applied by said Swepson in the purchase of said Florida railroads or the stock and bonds thereof; and only at the same time learned anything about the issuing of said bonds on the part of the State of Florida, which, or the proceeds of which, it was proposed to turn over to the complainant company, in reimbursement of its illegally appropriated assets, and the impression conveyed and belief established in the minds of the commissioners were that these Florida State bonds were being issued as the equivalent or consideration of the said $1,287,000 of the complainant company's money, which it was shown had been invested in the purchase of said Florida railroads; and that the authority under which said Florida State bonds were being issued was such as conferred upon said Swepson and Littlefield the right to use the same in the manner proposed in said agreement, but the law itself was not brought before, seen, or considered by the commissioners. The object of the settlement being the return of the complainant company's money, and the terms of the settlement being conditional, whereby the complainant company's money, demand, and equities would only be discharged on such payments being made as proposed, there was no necessity or motive for the commissioners to enquire into the laws of the State of Florida, or to ascertain the relations of Littlefield and Swepson, or either of them, to said Florida State bonds, or for what reason, or by what authority they assumed the control of the same.

13. Ques. Referring to said agreement of 16th of April, 1870, proposing to turn over said Florida State bonds, or their proceeds, to 1431 the complainant company, as therein stated, the concluding paragraph of the same is in the following words: "It is further understood and agreed by the parties of the first and second parts, that all the interest owned or claimed by said parties of the first part, both George W. Swepson and Milton S. Littlefield, or which they, as individuals, have a right to control in the said Florida railroads, are hereby pledged for the faithful fulfillment of this contract, without the right on the part of any party to interfere with our management or control of the affairs of the road." Will you please state, to the best of your knowledge and recollection, what was the reason and object of inserting said clause?

Ans. As soon as it was developed, by the facts shown at the time of said conditional settlement, that the money and assets of the complainant company, to so large an amount, had been so illegally applied in the purchase of the said Florida railroads, the commission claimed the same, as the property and estate of the complainant company, to the exclusion of any right of property in said Swepson or Littlefield; but as said Swepson and Littlefield claimed that they had invested some of their individual money in the purchase of said roads, it was agreed that that interest also, if it existed, should be assigned as part of security for the fulfillment of said conditional agreement, which was so done accordingly; and it was also agreed, that the control and management of the roads should not be interfered with pending the fulfillment of said conditional agreement, for which reason the words in the concluding clause to that effect were added, namely, "Without the right on the part of any party to interfere with our management or control of the affairs of the roads."

14. Ques. Was it, or was it not, the intention of said clause to create said Swepson and Littlefield, jointly or severally, the agent or agents of the complainant company, in the management or direction of the affairs of the said Florida Central Railroad Company, or Jacksonville, Pensacola and Mobile Railroad Company, as bodies corporate?

Ans. Such was not the intention of said clause. The word "company" or "companies" was not used, or intended to be used; it was the management of the "roads," as properties, that said Swepson and Littlefield were permitted to control, and not the exercise of corporate functions, which it was not in the province of the commission to delegate, had they been disposed, and which they did not attempt to do.

1432 15. Ques. Was, or was not, said conditional agreement fulfilled, as provided therein?

Ans. It was not.

16. Ques. What other steps were taken, if any, to secure the return to complainant company of its said money, so misapplied by said Swepson and Littlefield?

Ans. The money agreed in said conditional settlement not being paid, suit was instituted, in the city of New York, in the month of October, 1870. with the details of which I am not familiar; and soon thereafter, Mr. Woodfin, as chairman of commission, by reason of information obtained, proceeded to London, where he met said Littlefield and the firm S. W. Hopkins & Co., which resulted in a modified agreement being entered into, on or about the 10th day of November, 1870, wherein it was agreed that eight hundred thousand dollars of said Florida State bonds should be turned over to the commission for the use of the complainant company; and an order was given by said Littlefield, and accepted by said Hopkins & Co., on or about the 16th day of November, 1870, as I am advised and believe to be true. I never saw said order and acceptance myself, but did see said modified agreement of 10th November, 1870, and approved the same, as a member of said commission.

17. Ques. Was, or was not, the terms of said modified agreement of 10th November, 1870, complied with, and the bonds delivered as therein provided?

Ans. The said modified agreement was not complied with in any respect, nor a single one of said bonds delivered to said commission, or to the complainant company, so far as I have any knowledge or belief.

18. Ques. What further steps, if any, were taken by the commission, or the complainant company, to recover its said $1,287,000, so far as you know or believe?

Ans. There were further suits instituted, in the city of New York and elsewhere, during the years 1871 and 1872, as I have been advised from information and the inspection of papers, but I have no personal knowledge thereof, and did not participate therein. My personal participation ceased after my approval of the contract made by the chairman of the commission, as aforesaid.

19. Ques. Do you know, or can you state, any other matter or thing of interest to the parties complainant or defendant, or material to this, your examination, besides what you have answered? and, if yea,
1433 please state the same fully and at large, as if you were particularly interrogated in reference thereto.

Ans. Nothing that I now remember.

W. G. CANDLER.

Examination taken, reduced to writing, and by the witnesses subscribed and sworn to, this 26th day of April, 1878, before—

J. E. REED,
Special Examiner and Clerk U. S. Dist. Court West Dist. N. C.

I, J. E. Reed, examiner, duly appointed by the circuit court of the United States for the northern district of Florida, in the fifth circuit, do hereby certify, that on the several days named in the depositions hereto annexed, I was attended at my office, viz, at the clerk's office of the United States circuit and district courts for the western district of North Carolina, at Asheville, North Carolina, by the counsel and witnesses aforesaid; that said witnesses were duly sworn and examined, and the depositions reduced to writing and read to the witnesses, and by them subscribed in my presence; and that Exhibits Nos. 1, 2, 3, 4 and 5, appended to the deposition of witness W. W. Rollins, were introduced in evidence in said cause, during the taking of said depositions.

Dated April 26th, 1878.

[L. S.]

J. E. REED,
Examiner and Clerk United States
Circuit and District Courts, Western District
North Carolina, at Asheville N. C.

Received of Jos. B. Stewart, esq., counsel for complainants, thirty-eight & $\frac{40}{100}$ dollars, my fees in taking the above depositions.

J. E. REED,
Examiner.

1434 In the United States circuit court, 5th judicial northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE FLORIDA Central Railroad Company et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE JACKSONsonville, Pensacola and Mobile Railroad Company, et al.

To JOSEPH B. BATCHELOR,
Clerk U. S. Circuit Ct., Raleigh, N. C.:

Know ye that, confiding in your integrity and discretion, and by virtue of a special order of this honorable court, a copy of which is hereunto annexed, you are hereby appointed, authorized, and empowered to take the depositions of such witnesses in the above-entitled causes, on the part of and at the instance of either party applying to you therefor, according to the sixty-seventh rule of equity practice prescribed for this 1435 court, and you are further directed and ordered that after taking such testimony you return the same to this office, duly certified, together with this, your commission, in the manner prescribed by law. And that this commission be executed and returned on or before the first day of May, 1878.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in the dist. and circuit aforesaid, this 16th day of April, 1878, and of our Independence the 102nd year.

[SEAL U. S. C. CT., N. DIST. OF FLA.] PHILIP WALTER, *Clerk.*

1436 In the United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE FLORIDA Central Railroad Company et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE JACKSONVILLE, Pensacola and Mobile Railroad Company, et al.

It is ordered, this first day of March, 1878, that Mr. Read, clerk U. S. circuit and dist. court at Asheville, North Carolina, and Joseph B. Batchelor, at Raleigh, North Carolina, be, and they respectively hereby are, appointed examiners to take depositions of witnesses in the above-entitled cause in the respective places named, and that the clerk of this court is hereby authorized to issue commissions to them respectively upon the application of the parties, plaintiff or defendant, in said suit.

It is further ordered that said testimony be taken in the manner prescribed in the 67th rule of equity practice.

(Signed) THOMAS SETTLE, *Judge.*

1437 I, Philip Walter, clerk of the U. S. circuit court, 5th circuit, northern district of Florida, do hereby certify that the foregoing is a true copy of the original order on file and of record in my office.

Witness my hand and official seal at the city of Jacksonville, in the dist. and circuit aforesaid, this 15th day of April, 1878.

[SEAL U. S. C. CT., N. DIST. OF FLA.] PHILIP WALTER, *Clerk.*

REC. 667—40

1438 In the circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE FLORIDA Central Railroad Company, et al.

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE JACKSONVILLE, Pensacola and Mobile Railroad Company, et al.

To George F. Drew, governor of the State of Florida, trustee for Gideon M. Boissevain, Adrian J. Mildus, Joseph Zaddock, and other holders of Florida State bonds in Holland, and George F. Drew, governor; Walter Gwynn, treasurer; Columbus Drew, comptroller; George P. Raney, attorney-general; and Hugh A. Corley, commissioner of emigration, trustees of the internal improvement fund of the State of Florida, or to George P. Rany, their solicitor; and to Charles D. Willard, attorney in fact, and William G. M. Davis, solicitor, for the holders of the Florida State bonds residing in 1439 the Kingdom of Holland involved in this suit; and to The Florida Central Railroad Company, The Jacksonville, Pensacola and Mobile Railroad Company; and to John A. Henderson, Ann E. Flagg, Rebecca E. Flagg, individually, or as guardian, &c.

You and each of you will please take notice that, under and by virtue of an order of the honorable circuit court of the United States for the northern district of Florida, authorizing and empowering Joseph B. Batchelar to take testimony to be read as evidence by either party in the above entitled causes, and by virtue of a commission issued under the seal of said court to said Batchelor, dated the 16th day of April, A. D. 1878, annexed to and made part of said order so authorizing him to act in the premises, that I shall, on Monday, the 29th day of April, A. D. 1878, before said Batchelor, as special examiner, at 10 o'clock, a. m., at the office of the clerk of the United States court, at Raleigh, North Carolina, proceed to take the deposition of witnesses, to be read as evi- 1440 dence on the part of the complainant in the above entitled causes or either of them upon the trial and hearing thereof, and will continue such taking of testimony from day to day until the same is concluded, subject to such adjournments as may be necessary for the production of witnesses; of all of which you and each of you are hereby warned and notified.

JOS. B. STEWART,
Solicitor for Complainants.

Served a true copy of the within notice upon Geo. P. Raney, attorney-general, at Tallahassee, Fla., this the 19th day of April, A.

D. 1878, and upon John A. Henderson, att'y, at Jacksonville, Fla., this the 20th April, A. D. 1878.

S. CONANT,
U. S. Marshall,
Per ALONZO FOWLE,
Deputy.

Served a true copy of the within notice upon Charles D. Willard, att'y in fact, &c.; E. M. L'Engle, pres't of the Fla. Central Railroad Company; Frank Ely, sec'ty of the J., P. & M. R. R. Company, at Jacksonville, Fla., this the 19th day of April, A. D. 1878.

S. CONANT,
U. S. Marshall,
By THS. McMURRAY,
Deputy.

1441 In the circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., and the Florida Central Railroad Company, and others,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., and the Jacksonville, Pensacola and Mobile Railroad Company, and others.

And now comes the complainant, by its solicitor, Joseph B. Stewart, and upon its motion it is ordered that the time for taking testimony in the above causes be and the same is hereby extended until the first Monday in April.

Dated February 22nd, 1879.

THOMAS SETTLE, *Judge.*

UNITED STATES OF AMERICA,
Northern District of Florida :

I, Philip Walter, clerk of the United States circuit court in and for the northern district of Florida, hereby certify that the foregoing is a true copy of the original order on file and of record in my office.

Witness my hand and the seal of said court, at Jacksonville, in said district, this 8th day of March, 1879.

[SEAL U. S. C. C., N. DIST. FLA.] PHILIP WALTER, *Clerk.*

1442 UNITED STATES OF AMERICA,
State of North Carolina :

Be it remembered that on this the 29th day of April, A. D. 1878, at Raleigh, in the State aforesaid, and by virtue of an order of the honorable circuit court of the United States for the northern district of Florida, dated the first day of March, A. D. 1878, and a commission issued under the seal of the said court pursuant thereto, dated 15th day of April, A. D. 1878, returned herewith, authorizing and appointing the undersigned to act as a special examiner of said court to take depositions in two certain suits in equity pending in said court, wherein the Western Division of the Western North Carolina Railroad Company is complainant, and George F. Drew, governor of the State of Florida, trustee for Gideon M. Boissevain, Adrian J. Mildus, Joseph Zaddock, Adrian Stoop, and others, holders of certain bonds of the State of Florida in Amsterdam in the Kingdom of Holland; and George F. Drew, governor; Walter Gwynn, treasurer; Columbus Drew, comptroller; George P. Raney, attorney general; Hugh L. Corley, commissioner of land and immigration of the State of Florida, and trustees of the internal improvement 1443 fund of The State of Florida, and The Florida Central Railroad Company, Jacksonville, Pensacola and Mobile Railroad Company, and others, are defendants; which said appointment and commission and pursuant to notice duly served on said defendants or their respective counsel, attorneys, and agents, herewith returned that the undersigned at the time and place, and *further* purposes therein mentioned, proceeded to take the depositions of witnesses pursuant to said order, commission, and notice then *then* and there appearing before him, Joseph B. Stewart, esq., solicitor for the complainant, and no counsel then appearing for the defendants.

The witness George W. Swepson, who had been subpœnaed on the part of the complainant, being reported detained by illness, could not appear before the examiner until a later hour in the day, and a telegram being received from the honorable George P. Raney, attorney-general of Florida, requesting a postponement of the taking of testimony till his arrival, the further proceedings were adjourned until four o'clock p. m.

JOS. B. BATCHELOR,
Examiner.

1444 MONDAY, *29th April*, 1878—at 4 o'clock.

The witness summoned not appearing, further proceedings are adjourned until to-morrow morning, Tuesday 30 April, 1878, at 9 o'clock a. m.

JOS. B. BATCHELOR,
Examiner.

TUESDAY MORNING, 30 *April*, 1870—at 10 o'clock.

The witness not appearing, the further proceedings are adjourned until Friday morning, 3d May, 1878, at 10 o'clock a. m., at my office, on Fayetteville street in the city of Raleigh.

JOS. B. BATCHELOR,
Examiner.

FRIDAY, *3d May*, 1878—at 10 o'clock a. m.

The witness not appearing, the further proceedings are adjourned until Friday, 4th Oct., 1878, at 12 o'clock m.

JOS. B. BATCHELOR,
Special Examiner.

FRIDAY, *Oct'r 4th*, 1878—12 o'clock m.

Further proceedings are adjourned until Saturday, fifth Octr., 1878, at 1 o'clock p. m.

JOS. B. BATCHELOR,
Special Examiner.

SATURDAY, *5th Oct'r*, 1878—1 o'clock p. m.

1445 Further proceedings are adjourned until Tuesday 15th Oct'r, 1878, at 1 o'clock p. m.

JOS. B. BATCHELOR,
Special Examiner.

TUESDAY, *15th Oct'r*, 1878—1 o'clock p. m.

Further proceedings are adjourned until Saturday 19th Oct'r, 1878, at

SATURDAY, *October* 19*th*, *A. D.* 1878.

The witness not being present as commanded by the subpœna last issued, the examination is adjourned until the return of the alias subpœna issued to the marshal*l* commanding the presence of the witness.

JOS. B. BATCHELOR,
Special Examiner.

And now on this 22nd day of March, 1879, the marshal*l* having returned the alias subpœna served and duly executed on the witness George W. Swepson, the examination is now resumed pursuant to adjournment as aforesaid. Present, Jos. B. Stewart, solicitor for complainant; no counsel appearing for defendant.

George W. Swepson, a witness summoned on the part of the
1446 complainant, not appearing, the further taking of the depositions is continued until Monday, March 24th, 1879, at the same place.

MONDAY, *24th March*, 1879.

On this day C. M. McLOUD, a witness on the part of the complainant, being duly sworn, deposes and testifies as follows:

1447 Q. 1. State your name, age, residence, and occupation.

1448 A. My name is Calvin M. McLoud; age, 39 years; a lawyer by profession, and reside at Ashville, State of North Carolina.

Q. 2. Do you or do you not know the Western Division of the Western North Carolina Railroad Company, the complainant in this suit? and if yea, state what relation, if any, you hold to said company.

A. I do know the said company as a corporation; am a stockholder of said company; am and have been a director of the same since the fall of 1877, and have also been of counsel for said corporation since the fall of 1869.

Q. 3. Who was president of said company in the years 1868 and 1869?

A. George W. Swepson was its president from October, 1868, to about the 1st November, 1869, and was then succeeded by Milton S. Littlefield, who was its president from about said last-named date till the 1st of November, 1870, when he was succeeded by W. W. Rollins, who has ever since held that position.

Q. 4. During the period you have mentioned, did or did not any bonds come into the hands of said company? and if yea, state what bonds they were, and what amount.

A. During the year 1868, and after the election of the said G. W. Swepson as president as aforesaid, bonds of the State of North Carolina to the amount of six millions six hundred and sixty-seven thousand dollars were received by said company, through its president, George W. Swepson, from the said State of North Carolina, to be used in the construction of said road.

Q. 5. What disposition, if any, was made of the said bonds and the proceeds thereof, and by whom?

A. The said bonds, or the larger portion of them, were sold or otherwise disposed of in the city of New York, by the said George W. Swepson, or those acting for him, and about one million two hundred
1449 and eighty-seven thousand dollars of the proceeds thereof was used in the purchase of stock and bonds in certain railroads in the State of Florida, and this without the knowledge, direction or authority of the said company.

Q. 6. When did the complainant company first learn the fact that the proceeds of its said bonds had been appropriated by said Swepson in the purchase of said stocks and bonds in said Florida railroads?

A. On or about the 15th day of April, A. D. 1870, the fact of such appropriation was first brought to the knowledge of said company, through a board of commissioners appointed by an act of the general assembly of the State of North Carolina, ratified the 24th day of March, A. D. 1870, at a meeting of said commissioners in Washington City, D. C., when and where the said matter was disclosed by facts and papers brought before said commissioners by said Swepson, that he had used exceeding the sum of one million of dollars of the proceeds of said bonds in the purchase of interest in said Florida railroads.

Q. 7. When advised of the use and appropriation of its assets by said Swepson what action, if any, was taken by said company to recover back the proceeds of its bonds?

A. A meeting of the stockholders and board of directors was convened at Warm Springs, in the county of Madison, State of North Carolina, on the 23d day of May, A. D. 1870, and in said directors' meeting the following resolution offered by Gen. T. L. Clingman, one of said directors, was unanimously adopted, to wit:

"Resolved, That the purchase made by George W. Swepson of certain interests in railroads, and bonds and stocks of the same, in the State of Florida was not made by the authority of the stockholders or directors of this company, but was made from all the information given us, and all the facts connected with it, solely as a private investment of Mr. Swepson."

And soon afterwards suits were instituted, and such other
1450 necessary steps taken as were supposed to be most effective in recovering possession of the assets of said company thus misapplied, some of the said suits being still pending and undetermined.

Q. Do you know, or can you state any other matter or thing material to the parties, plaintiff or defendant, to this suit, beyond what you have answered unto? and if yea, please state the same as fully and particularly as if you were specially interrogated in relation thereto.

A. Nothing further occurs to me as material to this suit.

CALVIN M. McLOUD.

Sworn and subscribed before me this 24th March, 1879.

JOS. B. BATCHELOR,
Special Examiner.

1451 **George W. Swepson**, a witness produced on the part of the complainant, being duly sworn, deposes and testifies as follows:

Q. 1. State your name, age, residence, and occupation.

A. George W. Swepson; fifty-nine years of age; Wake County, North Carolina; manufacturer.

Q. 2. Do you, or do you not, know a body politic and corporate called the Western Division of the Western North Carolina Railroad Company, the complainant in these suits; and if yea, please state when said company was organized and under and by virtue of what law and authority to the best of your knowledge and belief?

A. I do know such a company; it was organized in the latter part of the summer or early fall of 1868; it was organized by authority of an act of the general assembly of North Carolina, ratified the 19th day of August, 1868, a copy of which I hereto annex, marked S, No. 1.

Q. 3. Were you or were you not at any time connected with said complainant company in any capacity; and if yea, please state what your relation was, when it commenced, whether the same still exists, or has terminated, and when it did so terminate, if you say it has?

A. I was elected president of the complainant company when it was organized, and ceased to be president at the next annual meeting, about October, 1869.

Q. 4. Who, if any one, succeeded you as president of the complainant company when you retired from that position?

A. Milton S. Littlefield.

Q. 5. As such president, did you or not receive any bonds as the property of said company; and if yea, please state what bonds they were, the amount thereof, and the purposes for which you received them.?

A. I received bonds of the State of North Carolina to the amount of upwards of six millions of dollars to be used in the construction of the road of said company.

1452 Q. 6. Did you, or did you not, as such president, dispose of said bonds; and if yea, please state where and through whom you disposed of the same?

A. I did dispose of said bonds, or a larger portion of them, through the house of Soutter & Co., in the city of New York.

Q. 7. Have you, or have you not, been examined as a witness, or given any depositions or affidavits in any suit or suits in reference to your dealings and transactions as president of the complainant company respecting said bonds; and if yea, please state in what suit or suits and by whom and when and where the same were instituted?

A. I have made affidavits in two separate suits brought by the complainant company in the supreme court of the State of New York, one of which suits was commenced in October, 1870, by the complainant against Edward Houstoun and Milton S. Littlefield, and the other suit was commenced by the complainant company about September, 1871, against Sidney W. Hopkins and others; both of said suits had reference to transactions made by Milton S. Littlefield and myself as president of the complainant company.

Q. 8. Please look at the papers now shown you, made part of this question, marked A and G respectively, and certified by the clerk of the United States circuit court for the northern district of Florida. and state whether or not you recognize the contents of said papers; and if yea, please state what they are respectively, according to the best of your knowledge and recollection?

A. I have examined said papers A and G, and believe them to be correct copies of the affidavits made by me in the two suits above mentioned.

Q. 9. Please read said two affidavits and state whether or not the matters and facts therein stated are true, to the best of your knowledge and belief; and are you willing to affirm and make the same part of your present examination, so far as the matters inquired about are involved in this suit?

1453 A. I have read said two affidavits marked A and G respectively, and state that the same do set forth correctly both my then and present recollection and belief as to the matters and facts therein stated, and do adopt said two affidavits as a part of my present examination marked S No. 2 and S No. 3, respectively.

Q. 10. Previously to your giving of the said affidavits or to the bringing of the said suits therein mentioned, did you or did you not have any settlement in whole or in part with the complainant company or with any one acting in its behalf respecting the use of its bonds and assets as mentioned in said two affidavits; and if yea, please state where and with whom such settlement was made?

A. A settlement was had on or about the 16th day of April, 1870, in the city of Washington, D. C., between myself and Milton S. Littlefield, on the one part, and a board of commissioners appointed on the part of the State of North Carolina, under a special act of the general assembly, passed, I believe, on the 24th day of March, 1870.

Q. 11. Was or was not said settlement reduced to writing?

A. It was.

Q. 12. Please look at the two papers now shown you, and made part of this question, one dated April 16th, 1870, and signed "N. W. Woodfin, W. G. Candler, W. W. Rollins," and "George W. Swepson," and the other signed "George W. Swepson, president, Fla. Central R. R. Co.," and "M. S. Littlefield, president, J. P. & M. R. R. Co., N. W. Woodfin, W. W. Rollins, W. G. Candler," and "W. P. Welch," and, witnessed by "M. W. Ransom" and "R. R. Swepson," and state whether or not you recognize said papers as the original writings so executed at the time of the settlement above mentioned?

A. I have examined said two papers and recognize the same as the original papers executed at the time of said settlement.

Q. 13. In the execution of one of said papers it is signed
1454 "George W. Swepson, president Fla. Central R. R. Co.," and "Milton S. Littlefield, president J. P. & M. R. R. Co.;" please state whether or not such signing was done by the knowledge or authority of said railroad companies or either of them?

A. I had not, myself, any authority for using the name of the Florida Central Railroad Company for such purpose, and am not aware of any authority said Littlefield had for using the name of said J. P. & M. R. R. Company for any such purpose, but as we owned a large majority of the stock of said roads, we assumed the authority to act as we did.

Q. 14. Please look at the papers now shown you numbered from 1 to 52 inclusive, and signed "E. Houstoun, agt.," and bearing date from February, 18th, 1869, to March 23d, 1869, and state what knowledge, if any, you have respecting said several papers?

A. I have examined said several papers, and recognize the same to be a portion of the original drafts drawn by said Edward Houstoun as my agent on Soutter & Co., of New York, in payment for a part of the stock of the Florida Central Railroad Company, and Pensacola and Georgia, and Tallahassee Railroad bonds mentioned in my two before mentioned affidavits in the aforesaid suits in the supreme court of New York, and were paid out of the funds arising from the sale of the bonds belonging to the complainant company.

Q. 15. Have you or not in your possession other or similar drafts or checks or papers drawn upon and paid out of the complainant's money for like purposes, as stated in your last answer, and if yea, will you produce the same as part of your answer, or if you know of any such papers, not in your possession, will you please state where they are?

A. There was a much larger number of similar drafts, checks, and orders, or acceptances, paid out by myself or by my orders, through my agents, in the purchase of the stocks and bonds of said Florida railroads, but I do not believe they are now in my possession; my intention was to turn over all such papers to said Littlefield, as belonging
1455 to the complainant company, when he became the president of said company in October, 1869.

Q. 16. Please look at the two papers now shown you and made part of this question, one dated March 26th, 1869, signed by "Frank Dibble (seal) for himself and associates (seal), and "George W. Swepson (seal)," and the other dated April 22d, 1869, signed "Frank Dibble for himself and associates (seal)," conveying the Pensacola and Georgia Railroad and the Tallahassee Railroad to George W. Swepson, and state what, if anything, you know about said two papers, or either of them; state, to the best of your recollection, the origin and object of said papers.

A. I have examined said two papers, and know all about their origin and execution of the same; the paper dated the 20th of March, 1869, is the agreement by virtue of which I paid the $960,700 in the Pensacola and Georgia and Tallahassee Railroads bonds for the purchase of the said two roads of like name by said Dibble and associates on the 20th of March, 1869, and defining the interests reserved to me as therein provided. At the date of this agreement it was not understood or agreed that I would invest any further in the purchase of said railroads, but that the remainder of the purchase money bid at said sale, and mentioned in said paper, amounting to about $472,065, whether paid in bonds or money, would be provided for by said Dibble and associates when the deeds of conveyance would be executed by the trustees of the internal improvement fund of the State of Florida in consummation of the purchase and sale of said two roads on the 20th of March, 1869, as aforesaid.

But such payment not being so made by said Dibble and associates the purchase was completed by my agreeing to provide the means for completing the same by a check for the said sum of $472,065, being placed in my hands by said Dibble, drawn on Dibble, Worth & Co., of New York, which was to be treated, for the time being, as money, but in reality to be provided for by the use of the bonds agreed to be
1456 issued and delivered to me under said agreement of March 26th, 1869. That acting upon this understanding between the parties, the trustees of the internal improvement fund were requested to execute the deeds conveying said two roads to said Dibble and associates, which was done on the 8th day of April, 1869, and are the same deeds which are made Schedules B and C in the bill of complaint touching the Jacksonville, Pensacola and Mobile Railroad. I have examined the printed copies in said bill, and believe them to be correct. The consideration—and the only consideration—paid for the execution of said deeds being the said $960,700 in the said Pensacola and Georgia and Tallahassee Railroad bonds, and the said check of said Dibble which was treated as money in my hands and my receipt taken therefor by the trustees of the internal improvement fund.

The payment of the said $960,700 in said Pensacola and Georgia and Tallahassee Railroad bonds by me, and giving my receipt for the check of said Dibble, which was treated as money by said trustees to the amount of said $472,065, placed the whole burden of the purchase of said two roads on me, not a dollar of which purchase money or means had been paid or provided for by said Dibble and associates, or any other party.

In order to protect and reimburse me, as provided in said agreement of the 26th of March, 1869, the second paper named in the question was executed; that is, the deed dated April 22d, 1869, executed by F. Dibble and associates to myself, conveying to me the said Pensacola and Georgia and Tallahassee Railroads, and delivering to me the two deeds conveying the same to said Dibble and associates, to be by me held for the purposes mentioned in said deed of trust of the 22d of April, 1869; that is to say, first, to provide for and pay the said $472,065 unpaid purchase money due to the trustees of the internal improvement fund; and, second, to secure and pay back to me the $960,700 in Pensacola and Georgia and Tallahassee Railroad bonds paid by me in the purchase of said roads; and until these payments were made nobody but
1457 myself had any vested interest in the purchase of said two railroads or title thereto. But when the terms of said agreement of the 26th of March, 1869, and the said deed of conveyance to me of the 22d of April, 1869, were fully complied with it devolved on me to convey said two railroads to such company as should be incorporated by the legislature of Florida, with said Dibble and associates as corporators, to receive and hold the same as provided in said papers, copies of which I make part of this answer, marked S No. 4, and S No. 5, respectively.

Q. 17. Was or was not an act incorporating said Dibble and associates into a body politic and corporate obtained from the legislature of Florida; and, if yea, were or were not the said bonds executed and delivered to you, and did you or not make the conveyances of said Pensacola and Georgia and Tallahassee Railroads to said newly incorporoted company as provided in said agreement of the 26th March and said deed of trust of 22d April, 1869, aforesaid?

A. An act incorporating said F. Dibble and associates into a body politic and corporate was passed by the legislature of the State of Florida on the 24th day of June, 1869, styled the Tallahassee Railroad Company; that by the sixth section of the said act of incorporation the bonds to be issued to me and the lien created in my favor was fully provided for, and subsequent thereto bonds to the amount of $1,500,000 were prepared and partly executed and placed in my hands, but the same were never fully executed or made satisfactory to me, and I never made the conveyance to said new Tallahassee company, as provided in said deed to me of the 22nd of April, 1869; the only conveyance or transfer of any sort I ever made was to M. S. Littlefield about the month of November, 1869, as stated in my said depositions in the New York suits, who received the whole of said Florida railroad interests purchased by me as aforesaid, in trust, and as the property of the complainant company, as also stated in my said affidavits given in
1458 the said suits in the supreme court of New York, but I am willing to make or cause to be made the conveyance of said Pensacola and Georgia and Tallahassee Railroads to the said new Tallahassee Company, or to its successor, the said Jacksonville, Pensacola and Mobile Railroad Company, whenever the terms of the said trust are complied with.

Q. 18. Has or has not the said sum of about $472,065, the balance of said purchase money mentioned in said deed of the 22d of April, 1869, ever been paid or discharged in any respect to the trustees of the internal improvement fund or in any manner provided for?

A. Said $472,065 has never been paid or discharged; as stated, it was intended to be paid out of the proceeds of said $1,500,000 in new Tallahassee bonds so partly executed and placed in my hands as aforesaid, and was for that reason specially provided for in said deed to me of the 22d of April, 1869, and constituted and still constitutes part of the consideration therefor, and was hence provided for therein, and when said money is paid it will entitle me to the return of my receipt covering the said check of the said Dibble for said $472,065 delivered to and held by the trustees of the internal improvement fund, as aforesaid.

Q. 19. You have spoken of the $1,500,000 in the bonds of the said Tallahassee Railroad Company, as incorporated on the 24th day of June, 1869; have you or have you not said bonds in your possession, and, if yea, will you produce the same as part of your answer to this question?

A. I have, I believe, about $724,000 of said bonds in my possession, and I produce the same as a part of my testimony, and will furnish a list of the numbers thereof to the commissioners as a part of this deposition, marked with my initials, "G. W. S." I supposed, until I was served by the marshall with a subpœna duces tecum in this case, that I had the whole of said bonds in my possession, as I should have, but failed to find them, and I now doubt whether the whole of them 1459 were returned to me by said Littlefield; I will look further, and if I find the remainder of the said bonds I will deliver them to the court as part of my examination. I state positively, however, that I have never disposed of said bonds in any manner except so far as they were included in my transfer made to said Littlefield to the use of the complainant company and as part of its assets.

Q. 20. Do you or do you not know what disposition was made of the said $960,700 in said Pensacola and Georgia and Tallahassee bonds paid by you in the purchase of said railroads in March and April, 1869, and do you know the numbers thereof and the amount of the coupons attached to the same? If yea, please state the same to the best of your recollection.

A. I delivered the whole of said bonds into the hands of R. H. Gamble, comptroller of the State of Florida and ex-officio member of the board of trustees of the internal improvement fund for the State of Florida, and I was informed that the whole of said bonds and coupons attached thereto were destroyed by being burned on the 26th day of February, 1872; the list of said bonds and coupons hereto attached, marked S, No. 6, I believe to be a true list and schedule of said bonds and coupons.

Q. 21. Besides the said $960,700 in said bonds and the check of said Dibble, covered by your receipt for $472,065, was there or was there not, within your knowledge, information or belief, any other consideration whatever paid for the purchase of said Pensacola and Georgia and Tallahassee Railroads, sold on the 20th day of March, 1869?

A. I know there was no other consideration paid, and have heard it intimated or pretended that there was.

Q. 22. When did you first advise or inform the directors of the complainant company of the use you had made of its assets in the purchase of said stock and bonds in said Florida railroads?

A. I believe the first time I imparted the information was to the commissioners appointed by the said act of the legislature at or about the time said settlement was made, to wit, the 16th day of April, 1870.

1460 Q. 23. In making said settlement and executing said papers of the 18th of April, 1870, was it or was it not agreed or intended as part of said settlement that the said commissioners appointed under said act of the legislature or the directors of the complainant company should have the right to control or direct the affairs of said Florida railroads mentioned therein, and did or did not said complainant company within your knowledge, information, or belief ever attempt to exercise such control?

A. There was no such right to control said Florida railroads asked, assumed or conceded; the commissioners acting for the State of North Carolina, as authorized by law, only inquired after the use and disposal made by the six millions of dollars and upwards of State bonds I had received of the complainant company and what disposition had been made thereof; their efforts were to secure and collect the money due the complainant company, and they did not attempt to do anything else; the allusion in the papers to the Florida State bonds was merely and entirely an incidental matter or source from whence the money might be derived, but it was money the commissioners were to receive and not Florida State bonds.

Q. 24. Were or were not the Florida State bonds mentioned in said papers of 16th April, 1870, or the law authorizing the issue of the same present or considered by said commissioners and yourself at the time said settlement was made?

A. There were no Florida State bonds or any other bonds or any law authorizing the issue of said bonds presented to or considered by said commissioners at the time said settlement was made; as stated, the terms of said settlement were wholly for the payment of specified sums of money and not for the delivery to or receipt of bonds by the commissioners, and there was no necessity for considering the character or validity of any bonds or the law authorizing their issue, and there was nothing whatever mentioned on the subject.

1461 Q. 25. Do you know or can you state any other matter or thing material to this, your examination, beyond what you have answered unto; and, if yea, please state the same fully and at large in your answer.

A. The matters testified to by me took place nine or ten years ago, and nothing else material occurs to me at present; if any other matter pertinent to this inquiry shall be asked I will cheerfully answer the same.

GEO. W. SWEPSON.

Sworn and subscribed before me this 24th day of March, 1879.

JOS. B. BATCHELOR,
Special Examiner.

I do hereby certify that the foregoing depositions of Calvin M. McLoud and Geo. W. Swepson were taken before me at the time and place before mentioned, the said witnesses being first duly sworn on Holy Evangelist of Almighty God to tell the truth, the whole truth, and nothing but the truth, and by me reduced to writing, and signed, said witnesses in my presence, and that I am not of counsel or attorney for either of the parties, and am not interested in the event thereof.

JOS. B. BATCHELOR,
Special Examiner.

1462 S. No. 1.

AN ACT to amend the charter of the Western North Carolina Railroad Company

The general assembly of North Carolina do enact:

§ 1. That the Western North Carolina Railroad shall consist of two separate and distinct divisions; one called the Eastern Division, and shall embrace the said road from Salisbury to the French Broad River, near Asheville; and the other, called the Western Division, which shall embrace the said road from the French Broad River to Ducktown and Paint Rock, on the Tennessee line.

§ 2. The property, appropriations, and subscriptions of stocks heretofore made by the State and private stockholders for the Eastern Division of said road, as provided in section 1 of this act, shall be used only for the purpose of the completion and operation of said Eastern Division of said road, and shall be managed, and controlled and directed by a board of directors, as now provided by law.

§ 3. The Western Division of said road, as provided in section 1 of this act, shall be managed, constructed, and controlled by a board of directors separate and distinct from the board of directors of Eastern Division, which board of directors shall consist of twelve; eight on the part of the State, to be appointed by the governor, and four, on the part of the private stockholders, shall be elected by the stockholders of their divisions respectively.

§ 4. The board of directors of each division shall have the selection of its own officers and agents, a distinct treasurer, and otherwise independent of the other.

§ 5. For the purpose of securing the completion of the Western Division, the capital stock of the Western North Carolina Railroad 1463 Company is hereby increased to a sum sufficient to attain that object, not to exceed twelve millions of dollars, and the public treasurer is hereby authorized and required to make subscriptions from time to time for two-thirds of the stock and make payment as heretofore provided by law.

§ 6. Upon the completion of the two divisions, as provided for in section 1 of this act, the whole road and property may be consolidated on such terms as are agreed between the stockholders of the respective divisions.

§ 7. The provisions of the above act to be in full force and operation upon condition that the Western Division of said road shall be put under contract before the State shall be called upon for its subscription to said road.

§ 8. The said Western Division of the Western North Carolina Railroad shall be completed within four years from the time that the said road shall be put under contract.

In general assembly, read three times, and ratified this 19th day of August, 1868.

RALEIGH, 22*d March*, 1879.

STATE OF NORTH CAROLINA,
Office of Secretary of State:

I certify the above to be a true copy of the original act on file in this office.

[L. S.] W. L. SAUNDERS,
Secretary of State.

Exhibit S. No. 1, filed with deposition of Geo. W. Swepson.

J. B. BATCHILOR,
Special Examiner.

1464 S. No. 2.

SCHEDULE A.

Summons for relief.

New York supreme court, city and county of New York.

THE WESTERN NORTH CAROLINA RAILROAD Company for the western division of said road, plaintiff,
against
E. HOUSTON AND MILTON S. LITTLEFIELD, defendants.

To the defendants above named:

Your are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county of New York, and to serve a copy of your answer to the said complaint on the subscriber at his office, No. 29 Wall street, New York City, within twenty days after the service hereof, exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated New York, October 3d, 1870.

ALGERNON S. SULLIVAN,
Plaintiff's Attorney, 29 *Wall street, New York City.*

1465 S. No. 2.

STATE AND COUNTY OF NEW YORK:

Supreme court.

THE WESTERN NORTH CAROLINA RAILROAD Company (for the western division)
against
E. HOUSTOUN AND MILTON S. LITTLEFIELD.

CITY AND COUNTY OF NEW YORK, *ss:*

George W. Swepson, of Alamance County, in the State of North Carolina, makes oath and says:

From October, 1868, to October, 1869, I was president of the Western North Carolina Railroad for the western division. As president and for said company, I received possession of over six millions of the bonds of said State. I hypothecated said bonds in the city of New York, and out of the proceeds I purchased and paid for about three thousand shares of stock of the Florida Central Railroad Company. I did this through my agent, Mr. Edward Houstoun, who is defendant in this action. He knew from my telling him that I obtained the funds for said purchase, as above stated, and that in fact and in equity, said Western

Division of said Western North Carolina Railroad Company were the owners of said stock. About October, 1869, I ceased to be president of said company, and Milton S. Littlefield became the president, as my successor.

In negotiating and making settlements as retiring president, with said
Littlefield as incoming president for said railroad company, I
1466 passed over as assets for said company said three thousand shares
of Florida Central Railroad Company stock; said Littlefield said
he would receive it and account to said company, he being the president thereof. At his request I transferred said stock to him in his individual name, but it was for said Western Division North Carolina Railroad Company, and it was so received by said Littlefield, president of said company.

This settlement was in November, 1869. About May, 1870, said Houstoun had negotiations with said Littlefield individually, to sell to said Littlefield his (Houstoun's) stock in the Florida Central Railroad, and also some bonds of the Tallahassee Railroad Company and the Pensacola and Georgia Railroad Company.

On that transaction there remained due to Houston about $160,000, and an agreement was made that Houston should take as collateral security a pledge from Littlefield of said three thousand shares of Florida Central Railroad stock. Subsequently said Florida Central Railroad Company issued one million dollars of their bonds, and agreed with Harrison Reed, then governor of the State of Florida, to make as the law allowed an exchange of said railroad bonds for an equal amount of the bonds of the State of Florida.

But said Governor Reed refused to deliver said State bonds, unless as an additional security they should with said three thousand shares of stock be placed in the hands of said Houstoun to secure payment of said debt due by said Littlefield, to said Houstoun, as well as some other private debts of said Littlefield. That in accordance with said requirement of said governor, and the agreement to that effect between said governor and said Houstoun, said one million dollars of State bonds were so placed in the hands of said Houstoun. Affiant says he is informed by said Littlefield, and verily believes, that said arrangement to that effect between said Houstoun and Governor Reed.

Affiant further says that he was informed by said Governor
1467 Reed that he, the said governor, was personally and pecuniarily
interested with said Houstoun in a portion of the profits which
Houstoun might make on the purchase and sale of a portion of the stock of the Florida Central Railroad Company which Houstoun had bought at twenty cents on the dollar, and that under the agreement and sale to Littlefield of the said stock, Littlefield was, as I learned, to pay par.

Affiant further says that previous to this delivery of stock and State bonds to said Houstoun by said Littlefield, he, said Littlefield, both in his individual capacity and as president of the Jacksonville, Pensacola and Mobile Railroad Company, pledged the whole interest and portions held by him, said Littlefield, of every kind and nature, in said railroad in Florida, or in any or all of them, to secure to said Western North Carolina Railroad Company all moneys due to said company from this affiant, as aforesaid, and that pledge covered the very securities pledged subsequently, as above stated, by said Littlefield to said Houstoun.

Affiant further says that throughout all said transactions said Houstoun knew and was fully notified that all of said interest purchased by affiant in said Florida railroad were purchased with funds raised in the city of New York by the hypothecation of the bonds which belonged to the Western North Carolina Railroad Company.

Affiant further says he is informed and believes that said Houstoun intends to sell said three thousand shares of stock in New York City on the 4th of October, instant, at No. 111 Broadway, at 10½ o'clock a. m., and affiant has received from said Houstoun a written notice to that effect, of which a copy is hereto annexed, marked Exhibit No. 1.

Affiant further says he is informed and believes that the intention of the said Houstoun is to sell said stock separately, subject to said mortgage bonds, and afterwards to sell said State bonds. And he is by law, as owner of said State bonds, entitled to exchange them for said railroad mortgage bonds, so he can become, by said sale, owner of the majority of stock of said company, and also owner of its mortgage debt.

1468 Affiant further says that a knowledge of said facts above stated has become public to a great extent, and that has produced doubts and clouds upon the title and value of said stock and securities, and if allowed to be sold as proposed, they will yield scarcely anything, and said Western North Carolina Railroad Company will be defrauded and lose their entire claim, or nearly so; that it will be irreparably injurious to said Western North Carolina Railroad Company and to their just rights, and affiant knows that all of said securities represent the money and funds of said Western North Carolina Railroad Company.

Affiant further says that neither said Littlefield nor said Houston resided in the State of New York, but they reside in Florida, as affiant is informed and believes, but affiant is informed that said Houstoun is now in New York City.

Affiant says he is informed and believes that said Houstoun had said State bonds and said certificates of stock in the city of New York a few weeks ago, but affiant does not know where they are.

GEORGE W. SWEPSON.

Subscribed and sworn to before me this 3d day of October, A. D. 1870.

W. E. CARPENTER,
Notary Public, New York City.

UNITED STATES OF AMERICA,
Northern Dist. of Florida:

I, Philip Walter, clerk of the circuit court of the United States, in and for the northern district of Florida, do hereby certify that the foregoing is a true copy of the original deposition as exhibited with the bill in equity on the part of the Western Division of the Western North Carolina Railroad Company against George F. Drew, governor and trustee, and the Florida Central Railroad Company and others, on file in my office.

Witness my hand and the seal of said court, at Jacksonville, in said district, this 7 day, A. D. 1879.

[L. S.] PHILIP WALTER, *Clerk.*

Exhibit S. No. 2 filed with deposition of Geo. W. Swepson.

JOS. B. BATCHELOR,
Spec'l Examiner.

1469 S. No. 3.

SCHEDULE G.

New York supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
SIDNEY W. HOPKINS ET AL.

CITY AND COUNTY OF NEW YORK, *ss:*

GEORGE W. SWEPSON, having first been duly sworn, makes oath and says:

That he was, from October, 1669, to October, 1869, president of the company (the plaintiffs in this action), and during the period from the spring of 1869 until the summer of 1870 he was the president of the Florida Central Railroad Company.

Affiant further states that, as president of the plaintiff, he came into possession of about six millions of dollars in bonds of the State of North Carolina, said bonds being received by affiant for the account of said plaintiffs and in payment of a portion of the capital stock of said company.

Affiant further states that he held such bonds to be used for the purpose of constructing the railroad of said plaintiffs. Affiant further states that after receiving the said bonds he brought them to the city of New York and there pledged a large portion of them, that is, nearly all of them, as collateral security for money then and afterwards borrowed from time to time by this affiant. Affiant further says that he used about $150,000 of said money to purchase in Florida a quantity, 1470 being more than half of the capital stock in the Florida Central Railroad Company, which company then had no mortgage debt upon its line of railroad, which was sixty miles long, completed, and in good running order. Affiant says that other portions of said money, to wit, about $720,000, was expended in buying first-mortgage bonds of the Pensacola and Georgia Railroad Company and of the Tallahassee Railroad Company, said mortgage bonds amounting to about $1,000,000, and also in buying some stock in said company and in paying expenses incidental to said purchase. Affiant further says he purchased and held said railroad interest above named in his own name. Affiant further says that about the month of March, 1869, the trustees of the internal improvement fund of the State of Florida, having authority to do so, caused to be sold at public sale the Tallahassee Railroad and the Pensacola and Georgia Railroad to pay the first-mortgage bonds thereof.

Affiant further says that Mr. F. Dibble, of Jacksonville, and associates, became the purchasers of both of said roads at said sale, they having bid the amount of the whole mortgage indebtedness of said railroads, amounting in all to over $1,400,000.

Affiant further says that said F. Dibble and associates were not able to pay the said trustees the amount of said bid, the larger portion of which would have been due to this affiant, and therefore said Dibble and his associates proposed to this affiant that if this affiant would relinquish his claim to payment under said sale they would cause a new company to be organized to own both of said railroads (sold as afore-

said), and that this affiant should be associated therein, and should own one-third of the capital stock in said new company; and further, that a new mortgage should be made on the new consolidated railroad and the bonds thereof should be sold for one purpose only, to wit, to pay the affiant the entire amount of his investment and outlay in purchasing said railroad interest, and a further sum of $150,000, and also to pay
to said trustees of said internal improvement fund the amount of
1471 the remaining outstanding bonds for which said railroad was
sold, said remaining bonds amounting to over $400,000.

Affiant further says that he agreed to said proposal, and a written memorandum of said agreement was duly executed by said Dibble and his associates and this affiant, and this affiant surrendered his bonds to said trustees of said internal improvement fund.

Affiant further says that said written agreement was drafted by M. D. Papy, esq., and J. P. Sanderson, esq., attorneys, &c., in Florida, and said agreement was transferred by this affiant to Gen. Milton S. Littlefield, after he became the president of said W. D. W. N. C. R. R. Co. Affiant further says that subsequently a supplemental agreement was made by him with said F. Dibble and a majority of his associates, whereby the latter agreed that in consequence of the payment of $25,000 (which was duly paid) by affiant, he should receive about 60 per cent. of the capital stock of said consolidated company, instead of one-third thereof, as originally agreed.

Affiant further says that part of said money expended as above for said railroad companies, was about $7,000 for two locomotives, and the purchase money for a lot of land in Jacksonville, said lot having cost the sum of $5,000.

Affiant further says that he assigned and transferred said agreement with F. Dibble and associates and all affiant's interest in and claims upon said Florida Railroad to said Gen. Milton S. Littlefield, he being the president of the Western Division of the Western North Carolina Railroad Company, and said assignment was so made upon the express understanding and agreement that he would apply said property to reimburse said railroad company the full amount (with 8 per cent. interest) of all their money which affiant had invested and expended as above stated, in said Florida railroads.

Affiant further says that out of the sum of $720,000 invested
1472 as above, in said Florida Railroads, about $120,000 was so ex-
pended for affiant through the agency of Milton S. Littlefield, in
person.

(Signed) GEO. W. SWEPSON.

Subscribed and sworn to before me this 8th day of September, 1871.

JAMES W. CONNOLLY,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA,
Northern District of Florida:

I, Philip Walter, clerk of the circuit court of the United States in and for the said district, do hereby certify that the foregoing is a true copy of the deposition as exhibited with the bill in equity, on the part of the Western Division of the Western North Carolina Railroad Company against George F. Drew, governor and trustee, and the Jacksonville, Pensacola and Mobile Railroad Company, and others, on file in my office.

Witness my hand and the seal of said court, at Jacksonville, in said district, this 7th day of March, A. D. 1879.

[L. S.] PHILIP WALTER, *Clerk.*

Exhibit S. No. 3, filed with deposition of Geo. W. Swepson.

JOS. B. BATCHELOR,
Sp'l Examiner.

1473 S. No. 4.

[5-cent revenue stamp cancelled.]

Whereas at a sale by the trustees of the internal improvement of the State of Florida, on the 20th day of March, 1869, of the Pensacola and Georgia and Tallahassee Railroads, F. Dibble in behalf of himself and his associates became the purchaser thereof, bidding for the Pensacola and Georgia Railroad $1,220,000, and for the Tallahassee Railroad $195,000;

And whereas George W. Swepson is the holder of a large amount of the first mortgage bonds of the Pensacola and Georgia and the Tallahassee Railroad Companies, and whereas said parties desire to come to an accommodation respecting their interests, the one through said purchase, and the other as the holder of said bonds:

Now, therefore, it is hereby agreed between said F. Dibble, on behalf of himself and his associates of the one part, and said George W. Swepson of the other part, in manner and form following, that is to say:

First. That said George W. Swepson shall deliver, as he shall come into possession of them, to be surrendered to the trustees of the internal improvement fund aforesaid by said F. Dibble, in behalf of himself and his associates, as part of the purchase money for said roads respectively the first mortgage bonds of said roads purchased by him amounting to about nine hundred thousand dollars of bonds of the Pensacola and Georgia Railroad Company, and to about one hundred and fifty thousand dollars of the Tallahassee Railroad Company, the bonds of the Pensacola and Georgia Railroad to be surrendered at par, and those of the Tallahassee Railroad to be surrendered at their pro rata of the amount bid for said said road at the said sale, and the balance or remainder of the purchase money to be supplied by said F. Dibble and his associates.

1474 Second. As soon as may be after the title is acquired by F. Dibble, in behalf of himself and his associates, from the trustees of the internal improvement fund, first mortgage bonds are to be issued in such form and to be executed in such manner as may be devised to make them legal and binding as an obligation on said roads, their equipment, workshops, depots, and franchise; said bonds shall bear interest at the rate of six per cent. per annum, payable in New York, semi-annually, princip*le* and interest to be paid in gold, and having not more than thirty years to run. To secure said bonds a proper deed of trust is to be executed by said F. Dibble in behalf of himself and associates to Calvin B. Dibble and George W. Swepson, as trustees with the ordinary conditions in such cases, and shall contain a provision that on default in the non-payment of any instalment of interest for sixty days the principal shall become due, and that on such default the trustees shall enter upon and take possession of said railroads, their equipments, workshops, depots, and franchise, without any legal process whatever, and advertise the same for sale, and sell the same at public outcry, for cash, the proceeds of which shall be applied to the payment of said bonds, principal and interest, and if a sufficient amount shall not be realized at such sale, then to apply the same pro rata in the payment of said bonds.

Third. The bonds to be thus issued shall be delivered to Calvin B. Dibble and George W. Swepson, to be sold or negotiated, and the money realized on them, or a sufficient amount thereof, for that purpose shall be paid to George W. Swepson, to reimburse him for the amount of money he has paid out in purchasing the first mortgage bonds aforesaid. and all amounts paid or to be paid by him for commissions and attorneys' fees in connection with his business with said roads, together with interest on said amounts from the time they were paid out by him
1475 until the date of his reimbursement, and also to pay him the additional sum of one hundred and fifty thousand dollars.

Fourth. The stock is to be divided and owned in the following manner: George W. Swepson is to own and have one-third; Calvin B. Dibble is to have and own an amount of stock which, in connection or united with the stock of said Swepson, shall constitute a majority of the whole, and F. Dibble and his associates are to have and to own the remainder, to be subdivided among themselves as they shall determine.

Fifth. Said Swepson is to have the right to appoint four directors of said roads, F. Dibble and his associates are to have the right to appoint four, and Calvin B. Dibble shall be appointed by both parties the ninth director. This provision is to expire as soon as said Swepson is reimbursed and paid the amounts hereinbefore mentioned, with interest as provided, and thereafter the stock shall stand on a common footing as in all other cases.

Sixth. Until the title is acquired from the trustees of the internal improvement fund, the roads are to remain as they are, and to be operated as they are.

Seventh. None of the stock shall be transferable for the space of two years from this date, except as may be necessary to qualify the persons to be appointed as directors to be such directors.

Eighth. The roads are to protect the outstanding transportation notes or tickets of the Tallahassee Railroad Company to an extent not exceeding twenty-eight thousand dollars, and shall receive the same as usual for transportation, freight, or fare.

Ninth. F. Dibble is to be the president until the stock becomes transferable.

1476 In testimony whereof the said parties have hereunto set their hands and seals this twenty-sixth day of March, A. D. 1869.

FRANKLIN DIBBLE, [L. S.]
For Himself and his Associates.
GEORGE W. SWEPSON. [L. S.]

Witnesses:
M. D. Papy,
A. R. Meek.

5-cent revenue stamp, cancelled.

Exhibit S. No. 4, filed with deposition of Geo. W. Swepson.
JOS. B. BATCHELOR,
Sp'l Examiner.

1477 S. No. 5.

Whereas George W. Swepson has paid to the trustees of the internal improvement fund of the State of Florida, for and on account of F. Dibble and his associates, in payment for the Pensacola and Georgia and the Tallahassee Railroads, sold to F. Dibble and his associates by said trustees on the 20th of March last, bonds of said roads amounting at their face to nine hundred and sixty thousand and three hundred ($960,300) dollars, and has also paid to said trustees for the same parties the sum of four hundred and seventy-two thousand and sixty-five ($472,065) dollars, being the full amount due said trustees for said roads.

And whereas said F. Dibble, for and on behalf of himself and his associates, has obligated himself and them, and does hereby obligate himself and them, to cause bonds upon said road as now completed, as soon as further legislative authority from said State of Florida shall be obtained therefor, to be issued, the same to be secured and in every respect to be as stated in an agreement executed and dated the twenty-sixth day of last March, between said F. Dibble, on behalf of himself and his associates, and said George W. Swepson, which bonds when executed are to be and shall be placed as provided in said agreement, for the purposes therein set forth, and for the further purpose of enabling said Swepson to be reimbursed the said sum of four hundred and seventy-two thousand and sixty-five dollars:

Now, therefore, this indenture made and entered into between F. Dibble, on behalf of himself and his associates, party of the first part, and George W. Swepson, party of the second part, witnesseth, that said party of the first part, for and in consideration of the premises, has granted, bargained, conveyed and confirmed unto said party of the second part, all that property of whatever name, nature, and description conveyed to said party of the first part by said trustees of the internal improvement fund of the State of Florida by 1478 two separate deeds of conveyance, each dated April 8th, A. D. 1869, which deeds for full description of property are hereby made part and portion of this instrument. The said property hereby conveyed to be held by said party of the second part in trust, for the express purpose of enabling said party of the second part—which he hereby agrees and binds himself to do—to convey the same to that incorporation, consisting or to consist as incorporators of said F. Dibble and his associates. As soon as said Dibble and his associates shall have granted to them such or similar relief as the legislature of the said State of Florida granted to Wm. E. Jackson and his associates by act for relief of William E. Jackson and his associates, approved July 29th, 1868, and also for the further purpose of securing said party of the second part in all advances made as specified and agreed upon in the said agreement between these parties, executed and dated March 26th, 1869, and the advancement as aforesaid of said sum of four hundred and seventy-two thousand and sixty-five dollars, until such time as said relief shall have been granted, and said party of the second part shall have conveyed said property to said incorporation as hereinbefore provided. To have and to hold said property to said party of the second part for the purposes and trust herein declared.

In testimony whereof, said party of the first part has hereunto signed his name and affixed his seal this day of 22d April, A. D. 1869.

F. DIBBLE, [L. S.]
For Himself and Associates.

Signed and sealed and delivered in presence of us—
W. J. WOODWARD.
JESSE CARTER.

No stamps being present, Geo. W. Swepson is authorized to stamp.
F. D.

Exhibit S. No. 5, filed with deposition of Geo. W. Swepson.
JOS. B. BATCHELOR,
Sp'l Examiner.

1479 S. No. 6.

List of bonds of the Pensacola and Georgia and Tallahassee Railroads, placed in my hands by G. W. Swepson, to be paid into the internal improvement fund on account of the sale of said roads, sold on the 20th March, 1869.

(Proper signature) R. H. GAMBLE.

Bonds of the Pensacola and Georgia Railroad.

No. 22 for $500	$500 00	
" 16, 17, 18—3 bonds of $250 each	750 00	
" 13 for $200	200 00	
		$1,450 00
" 98, 99, 109—3 bonds of $1,000 each	$3,000 00	
" 213, 215, 217, 218, 219, 220, 221, 222, 214, 212, 293, 292, 291, 368, 371—15 bonds of $1,000 each	15,000 00	
" 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 30—17 bonds of $500 each	8,500 00	
" 8, 22, 23, 24—4 bonds of $250 each	1,000 00	
" 1, 20—2 bonds of $200 each	400 00	
" 15, 16, 17—3 bonds of $100 each	300 00	
		28,200 00
" 120, 122, 123, 124, 125, 126, 127, 128—8 bonds of $1,000 each	$8,000 00	8,000 00
" 285, 286, 287, 102, 103, 140, 141, 274, 276, 273—10 bonds of $1,000 each	10,000 00	
" 30—1 bond of $250	250 00	
" 3—1 bond of $100	100 00	
		10,350 00
" 113, 114, 115, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 142, 143, 144, 146, 147—20 bonds of $1,000 each	$20,000 00	20,000 00
" 42, 43, 44, 45, 46, 47, 48, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 27—20 bonds of $1,000 each	20,000 00	20,000 00
" 88, 168, 169, 270, 342, 347—6 bonds of $1,000 each	6,000 00	6,000 00
" 170—1 bond of $1,000	1,000 00	1,000 00
" 338, 339, 360, 361, 362—5 bonds of $1,000 each	5,000 00	5,000 00
" 153, 154, 158, 159, 161, 162, 163, 164, 165, 166, 167, 338, 340, 341, 345—15 bonds of $1,000 each	15,000 00	15,000 00
" 240, 241, 246, 247, 255, 251, 261, 268, 272, 274, 276, 279, 280, 284, 289, 8, 13, 124, 125, 202, 198—21 bonds of $1,000 each	21,000 00	21,000 00
1480 No. 89, 127, 128, 129, 147, 277, 278, 280, 283—9 bonds of $1,000 each	9,000 00	
" 8—1 bond of $100	100 00	
" 17, 28—2 bonds of $500 each	1,000 00	
		10,100 00

No. 15, 16, 17, 18, 63, 64, 182, 183, 184, 185, 186, 253, 254, 255, 256, 257, 267, 268, 365 —19 bonds of $1,000 each..........	$19,000 00	19,000 00
" 252, 253, 254, 267, 307, 308, 309—7 bonds of $1,000 each.........................	7,000 00	7,000 00
" 78, 79—2 bonds of $1,000 each.........	2,000 00	2,000 00
" 269—1 bond of $1,000.................	1,000 00	1,000 00
" 1, 2, 3, 4, 5, 6, 7, 8, 9, 74, 1, 2, 3, 4, 5, 6, 7, 9, 11, 14, 17, 12, 21, 19, 23, 24, 26, 28, 29, 30, 31, 32, 33, 34, 22, 10, 8, 13, 15, 16, 18, 25, 27, 131, 136, 137, 139, 133, 140, 77, 160, 158, 157, 73, 156, 68, 67, 66, 65, 132, 138, 186, 176, 179, 178, 177, 175, 180, 181, 126, 20, 165, 217, 219, 218, 221, 220, 182, 183, 184, 185, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 150, 151, 152, 159, 197, 211, 141—101 bonds of $1,000 each.......	101,000 00	101,000 00
" 76, 77, 78, 79, 80, 81, 86, 87, 150, 147, 148, 149, 151, 152, 153, 154, 155, 156, 159, 160, 161, 162, 204, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 265, 203—35 bonds of $1,000 each...............	35,000 00	
" 32—1 bond of $500....................	500 00	
		35,500 00
" 152. 153, 154, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174—21 bonds of $1,000 each..................................	$21,000 00	21,000 00
" 72, 73, 145, 155, 156, 157, 160, 210, 222, 223, 234, 240, 241, 242, 243, 248, 252, 254, 256, 258, 310—21 bonds of $1,000 each.................................	21,000 00	21,000 00
" 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 67, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 129, 130—78 bonds of $1,000 each...............	78,000 00	78,000 00
" 26, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 68, 69, 1481 70, 71, 72, 73, 74, 75, 86, 81. 82, 83, 84, 85, 83, 89, 90, 91. 92, 93, 123, 124, 125, 126, 157, 158, 146, 147, 148, 163, 164, 165, 166—55 bonds of $1,000 each....		55,000 00
No. 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472 473, 474, 475, 476, 477. 478. 479, 480, 481, 482, 483, 484, 485—57 bonds of $1,000 each..........		57,000 00
" 95, 113, 114, 117, 177, 178, 178, 179, 180,		

	181, 234, 235, 304, 305, 306, 348, 349, 950, 351, 352, 366, 367, 369, 370, 372, 373, 374—26 bonds of $1,000 each....	26,000 00
No.	11, 19, 20, 21, 22, 23, 24, 25, 10, 121, 131, 134, 137, 138, 139, 140, 141, 153, 154, 130, 133, 134, 135, 177, 178, 179, 180, 181, 192, 221, 222, 223, 224, 225, 226 227, 228, 229, 230, 231, 232, 233, 142—43 bonds of $1,000 each...............	43,000 00
"	216, 217, 219, 220, 229, 231, 331, 232, 232, 233, 233, 234, 230, 235, 236, 237, 238, 239, 240, 239, 238, 237, 236, 235, 250, 251, 255, 256, 257, 249, 248, 247, 246, 34 bonds of $1,000...................	34,000 00
"	77, 78, 79, 80, 81, 82, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 105, 106, 107, 108, 109, 104, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 122, 127, 128, 129, 130, 131, 76—41 bonds of $1,000 each......	49,000 00
"	26, 28, 29, 50, 51, 52, 54, 55, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 149, 150, 151, 233, 237, 375, 376, 377, 378, 379, 380, 381, 385, 384, 386, 382, 383—36 bonds of $1,000 each....	36,000 00
"	27, 28, 29, 30, 31, 32, 33, 36, 35, 37, 38, 59, 60, 61, 62, 63, 64, 65, 66, 101, 102, 120, 121, 103, 144, 145, 387, 388, 389, 390, 391, 392, 393, 394, 305, 396, 397—38 bonds of $1,000 each.............	38,000 00
"	398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420 421, 422, 423, 424, 425, 426, 427, 428—31 bonds of $1,000 each..................	31,000 00
		$800,600 00
1482	13 bonds deposited in safe in comptroller's office, September 2d, 1869, Nos. 12, 200, 244, 245, 275, 278, 283—7 bonds of $1,000 each.............	7,000 00
		$807,600 00

Bonds of the Tallahassee Railroad.

No.	1, 28, 29, 30, 31, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 112, 123, 124, 125, 126, 127, 128, 129, 130, 131, 109, 110, 111—35 bonds of $200 each..................................	$7,000 00
"	29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 39, 40, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181,	

	182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 908, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 43—104 bonds of $100 each	10,400 00	
			$17,400 00
	No. 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 191, 192, 193, 194, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273—38 bonds of $500 each	19,000 00	19,000 00
	" 18, 19, 20, 21, 22, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 96, 97, 98, 100, 76, 95, 99—30 bonds of $200 each		6,000 00
	" 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 21—99 bonds of $100 each		9,900 00
1483	No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 20, 24, 28, 29, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 78, 76, 73, 79, 80, 86, 87, 82, 83, 241, 242, 243, 244, 246, 247, 248, 249, 250, 251, 252, 88—63 bonds of $500 each		31,500 00
	" 279, 280, 281, 290, 291, 292, 293, 294, 295, 296, 297, 298, 290—13 bonds of $500 each		6,500 00
	Coupons due July 1, 1869:		
	" 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 404, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130—40 bonds of $500 each		20,000 00
	Coupons taken off to July 1, 1869:		
	" 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 206, 207, 208, 209, 210, 211, 203, 204, 205, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226,		

227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 277, 278, 282, 283, 384, 285, 286, 287, 288, 289, 300—66 bonds of $500 each		33,000 00
No. 30, 14, 15, 22, 26, 27—6 bonds of $500 each	3,000 00	
" 23, 24, 25, 26, 52, 54, 55, 56, 57, 58, 60, 61, 62, 64, 65, 68, 69, 70, 71, 73, 101, 102, 103—23 bonds of $200 each	4,600 00	
		7,600 00
" 114, 115, 133, 134—4 bonds of $200 each.		800 00
" 105, 106—2 bonds of $200 each.........		400 00
" 168, 169—2 bonds of $500 each.........		1,000 00
		$153,100 00

1484 Memorandum of amount of coupons attached to bonds of the Pensacola and Georgia Railroad deposited in the comptroller's office by Geo. W. Swepson as part payment on purchase of said road, sold March 20, 1869.

24.810	coupons of	$35.00	each..............	$868,350 00	
418	"	17.50	"	7,315 00	
176	"	8.75	"	1,540 00	
66	"	7.00	"	462 00	
88	"	3.50	"	308 00	
					$877,975 00

1485 Memorandum of amount of coupons attached to bonds of the Tallahassee Railroad deposited in the comptroller's office by George W. Swepson as part payment on purchase of said road, sold March 20, 1869.

2,128	coupons of	$17.50	each.............	$37,190 00	
882	"	7.50	"	6,615 00	
1,316	"	7.00	"	9,212 00	
2,942	"	3.50	"	10,297 00	
					$63,314 00

RECAPITULATION.

Pensacola and Georgia Railroad bonds....	$807,600 00	
" " coupons..	877,975 00	
		1,685,575 00
Tallahassee Railroad bonds	153,100 00	
" " coupons	63,314 00	
		216,414 00
		$1,901,989 00

1486 COMPTROLLER'S OFFICE,
Tallahassee, Fla., March 13th, 1879.

I, Columbus Drew, comptroller, do hereby certify that the foregoing is a true and correct list of the bonds and coupons of the Pensacola and Georgia and Tallahassee Railroads paid into the internal improvement fund as part of the purchase-money for which said roads were sold for

March 20, 1869, as shown by the records of this office, the same paid to R. H. Gamble, late comptroller, as evidenced by the records of this office.

Given under my hand and official seal the day and date above written.

[SEAL.] C. DREW,
Comptroller.

Exhibit S. No. 6, filed with deposition of Geo. W. Swepson.

JOS. B. BATCHELOR,
Sp'l Examin'r.

Stipulation admitting certificates of comptroller and the secretary of the trustees of the I. I. fund as to fact and amount of P. and G. bonds and Tallahassee bonds paid in by Swepson in the purchase of the P. & G. and Tallahassee Railroads.

List of bonds filed with deposition of Geo. W. Swepson.

JOS. B. BATCHELOR,
Sp'l Examiner.

1487 List of new Florida bonds received of George W. Swepson as part of his deposition in The Western Division of the Western North Carolina Railroad Company against George F. Drew et al.

STATE OF FLORIDA:

The Tallahassee Railroad Company.

From	2	to	224	inclusive	....	223
"	498	"	500	"	....	3
"	1001	"	1466	"	....	466
"	1468	"	1500	"	....	33
Total bonds					....	725

GEO. W. SWEPSON.

1488 G. W. S.

Exhibit G. W. S. filed with deposition of George W. Swepson, being list of new Florida bonds.

JOS. B. BATCHELOR,
Sp'l Examiner.

Opened by order of the court, and filed this 19th day of May, 1879.

PHILIP WALTER, *Clerk.*

1489 *Depositions of witnesses taken before Richard E. Stilwell and James M. Ball, special examiners, appointed under the 67th rule of equity practice, at their office, No. 247 Broadway, New York.*

In the United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant, *vs.* GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, and George F. Drew, governor; Columbus Drew, comptroller; Walter Gwyne, treasurer; George P. Raney, attorney-general; Hugh A. Carley, commissioner of lands and immigration, trustees of the internal improvement fund, &c.; the Jacksonville, Pensacola and Mobile Railroad Company; Milton S. Littlefield, James G. Gibbs, Adolph Engler, trustees for the holders of the alleged bonds of the State of Florida, involved in this suit; Thomas B. Coddington et al., defendants.	Two cases.

(Formal recitals, subpœnas, notices, and adjournments omitted.)

TUESDAY, *October 22d*, 1878.

Present, Mr. Joseph B. Stewart, counsel for complainants.

1490 EPHRAIM D. SLATER, called as a witness on the part of the complainant, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Ephraim D. Slater; age, 43; I reside at 51 East Sixtieth street, New York City; I am a printer.

Q. 2. Are you, or are you not, acquainted with Lucien Birdseye, Frank R. Sherwin, and Charles D. Willard, or either of them; and, if yea, please state when, where, and under what circumstances you made the acquaintance of these gentlemen respectively?

A. I have met all three of the gentlemen on one occasion, at Mr. Lucien Birdseye's office, in Broadway.

Q. 3. State, as nigh as you can, the time.

A. I think it was in the spring of 1877, but am not positive.

Q. 4. Previous to that date and the meeting you refer to, at the office of Mr. Birdseye, had you or not ever met or been acquainted with either of the parties mentioned?

A. Not to my knowledge.

Q. 5. Please state at whose instance you were present at Mr. Birdseye's office, and the object of your being there.

A. I was there at the instance of Moritz Herzberg; object, to sign a bail bond for Frank R. Sherwin.

Q. 6. What was the amount of that bond?

A. I think it was twenty thousand dollars.

Q. 7. Who, besides yourself, if any one, signed that bond?

A. Moritz Herzberg.

Q. 8. Did you, or did you not, before signing said bail bond for said Sherwin, or at or about the time thereof, receive any bond of indemnity, guaranteeing you against loss or ultimate responsibility; and, if yea, please state who, if any one, executed to you such indemnity bond?

1491 A. There were papers drawn in the matter; so far as I was concerned, I had nothing to do with them; they were taken charge of by Mr. Herzberg.

Q. 9. What was the object of such papers signed, and taken possession of, by said Herzberg, at or about the time said bail bond was executed?

I presume they were to indemnify Mr. Herzberg and myself against loss.

Q. 10. As an inducement to sign said bond, did or did not said Herzberg and yourself receive any bond of any company or corporation existing or purporting to exist; and, if yea, please state the name of the corporation issuing or purporting to issue said bonds, and the number thereof that yourself and Mr. Herzberg received respectively, to the best of your knowledge and recollection?

A. I did not.

Q. 11. Did said Herzberg receive any, to your knowledge?

A. Not to my knowledge.

Q. 12. Was there or was there not any proposition or agreement to pay or deliver any bond of any company or corporation existing or purporting to exist in the State of Florida to yourself and said Herzberg, jointly or severally, as an inducement to sign the said bond?

A. I think there was an agreement to deliver to Moritz Hertzberg and myself certain railroad bonds of some company, to be formed in Florida, the details of which agreement I do not know.

Q. 13. Was or was not said agreement in reference to the delivery of said bond to yourself and said Herzberg reduced to writing; and, if yea, please state whether or not you are in possession thereof, and if you will produce the same or a copy thereof as part of this, your examination; and if you are not in possession of said paper, please state in whose possession it is?

A. I think it was reduced to writing; I never saw it or had it in my possession, and do not know into whose possession it now is, but presume it is held by Moritz Herzberg.

1492 Q. 14. State who prepared the papers that were executed the time said bail bond was signed, if you were present, and, if not, state when and where you were advised thereof.

A. I do not know.

Q. 15. What took place, if anything, in reference to signing said bail bond and bond of indemnity, at the office of said Birdseye, the time you met said Willard and Sherwin there?

A. I have no recollection further than that I was notified that the bail bond was ready to sign, whereupon I went to Mr. Lucien Birdseye's office, and from thence to some office in Broadway, which I do not remember, and there executed the bail bond; I have no further knowledge of the indemnity bond.

Q. 16. Who notified you that the said bail bond was ready to sign the office of said Lucien Birdseye?

A. I think Moritz Herzberg.

Q. 17. Do you know or can you state any other matter or thing material to this your examination, of interest to either of the parties, plaintiff or defendants, beyond what you have stated to the questions addressed to you; and, if yea, please state the same fully and at large in your answer?

A. I cannot, except having met Moritz Herzberg in Broadway a few days since; I asked him as to the whereabouts of Frank R. Sherwin, he told me that Frank R. Sherwin was at present in Europe, and together with Mr. Willard was expected to arrive in New York in a few days.

EPHRAIM DEPEY SLATER.

Subscribed and sworn to before us, the 22nd day of October, A. D. 1878.

JAMES M. BALL,
R. E. STILWELL,
Special Examiners.

Adjourned to October 23rd, 1878, at 11 a. m.

1493 WEDNESDAY, *October 23rd*, 1878—11 a. m.

Present, Joseph B. Stewart, counsel for comp.

Adjourned to October 24th, 1878, at 11 a. m.

OCTOBER 24TH, 1878.

Present, counsel as before.

Adjourned to October 25th, 1878, at 11 a. m.

FRIDAY, *October 25th*, 1878—11 a. m.

Present, counsel as before.

Adjourned to October 26th, 1878, at 11 a. m.

SATURDAY, *October 26th*—11 a. m.

Met pursuant to adjournment.

Present, counsel as before.

MORITZ HERZBERG being called as a witness on the part of the complain't, and being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Moritz Herzberg; aged 31; I reside in New York City; I am not engaged for myself in any business.

Q. 2. Are you or not acquainted with one Frank R. Sherwin, one Charles D. Willard, and one Lucien Birdseye? And, if yea, please state when and where you made the acquaintance of these parties respectively.

A. I am; I made the acquaintance at Mr. Birdseye's office about January or February, 1877.

1494 Q. 3. Had you or not ever met said parties, or either of them, previous to that time?

A. No, sir; not to my knowledge.

Q. 4. Who introduced you to said parties, or through whom did you make their acquaintance?

A. I don't remember; several gentlemen were there, but I don't remember which one.

Q. 5. Besides said Sherwin, Willard, and Birdseye, who else was present?

A. I don't remember.

Q. 6. Who requested you to visit the office of said Birdseye on said occasion?

A. I don't remember.

Q. 7. What was the object or inducement for your visiting the office of said Birdseye on said occasion, when and where you say you first met said Sherwin and Willard? And state what, if anything, transpired with said Sherwin and Willard, to which you were a party, if anything, after you were there.

A. I was asked by somebody to go to Mr. Birdseye's office; Mr. Birdseye wanted to see me there; I agreed to go bond for Mr. Sherwin.

Q. 8. For what amount did you agree to go bond for Mr. Sherwin?

A. I had to go bonds for Mr. Sherwin to the amount of twenty thousand dollars.

Q. 9. What consideration or inducement did you receive, or were you to receive, for signing the bail bond for said Sherwin?

A. The bond I signed was a bail bond; I was to receive five bonds of the Jacksonville, Mobile and Pensacola Railroad, which were represented to me to be worth a thousand dollars apiece; I am not positive the exact title of the railroad.

Q. 10. Was any bond or bonds of said railroad company present and exhibited to you at the time of signing said bail bond for Sherwin?

A. No, sir.

Q. 11. Who, if any one else, executed said bond with you?

A. Mr. Ephriam D. Slater.

1495 Q. 12. Within your knowledge, was or was not said Slater to receive the same compensation as yourself for executing the said bail bond?

A. No, sir.

Q. 13. Besides the agreement to pay said bonds to you as a consideration for signing said bail bond, were you or were you not otherwise protected or indemnified for the signing of the same? And, if yea, please state in what manner.

A. I was indemnified by Charles D. Willard and Lucien Birdseye.

Q. 14. Have you in your possession the original or a copy of the several papers so signed at the time you executed said bail bond for said Sherwin; that is, 1st, have you the original or a copy of the bail bond of said Sherwin; 2d, have you or not the original or a copy of the obligation, if any, of said Sherwin, executed to yourself or to yourself and any one else jointly, on or about the twenty-sixth day of January, 1877; 3d, have you or not the original or a copy of any agreement or bond of indemnity executed to you by said Charles D. Willard on or about the said twenty-sixth day of January, 1877; 4th, have you or not the original or a copy of a joint and several bond of indemnity undertaking of Charles D. Willard and Lucien Birdseye, or either of them, indemnifying you in the sum of twenty thousand dollars on account of your signing said bail bond for said Sherwin, dated on or about the said twenty-sixth day of January, 1877; and, if yea, will you please produce said originals or copies thereof, respectively, as part of your answer of this question?

A. 1st, I have neither the original or a copy of the bail bond for said Sherwin; 2d, have neither the original or a copy of the obligation of said Sherwin to myself or myself and anyone else; 3d, I think I have the original or a copy of the agreement or bond of indemnity executed to me by said Charles D. Willard, but I can't say positively without looking at my papers; 4th, I don't know without looking over my
1496 papers whether I have the original or a copy of a joint and several bond of indemnity undertaking of Charles D. Willard and Lucien Birdseye, or either of them, indemnifying me in the sum of twenty thousand dollars on account of my signing said bail bond for said Sherwin. I will produce the originals or copies of the above documents, respectively, if it is in my power to do so.

Q. 15. When did you last see, speak to, or converse with said Willard, Sherwin, and Birdseye, or either of them, on the subject of your signing said bail bond of indemnity or any matter connected therewith?

A. I saw Mr. Sherwin, I think it was about a year and two months ago, and I saw Mr. Willard about six months ago, and I saw Mr. Birdseye about three weeks ago, I should judge, when I inquired if Mr. Sherwin was coming back soon.

Q. 16. Do you or not know where Mr. Sherwin or Mr. Willard are at this time?

A. I was informed that they are in Europe.

MORITZ HERZBERG.

Adjourned to Saturday, November 2d, 1878, at 11 a. m., for this witness.

Adjourned to Monday, October 28th, 1878, at 11 a. m.

MONDAY, *October 28th*, 1878.

Present, counsel as before.
Adjourned to Tuesday, October 29th, 1878.

TUESDAY, *October 29th*, 1878.

Present, counsel as before.
Adjourned to Wednesday, the 30th inst., at 11 a. m.

1497 WEDNESDAY, *October 30th*, 1878—11 a. m.

Adjourned to October 31st, 1878, at 11 a. m.

THURSDAY, *October 31st*, 1878—11 a. m.

Adjourned to Friday, November 1st, 1878, at 11 a. m.

FRIDAY, *November 1st*, 1878—11 a. m.

Present, counsel as before.

LAWRENCE P. BAYNE, a witness for complainant, being duly sworn, in answer to questions by complainant's counsel, says:

Q. 1. Please state your name, age and occupation.

A. Name, Lawrence P. Bayne; age, 64 years; occupation, negotiator and broker.

Q. 2. Do you, or not, know a body corporate called the Jacksonville, Pensacola and Mobile Railroad Company?

A. I do know the Jacksonville, Pensacola and Mobile Railroad Company, existing in the State of Florida.

Q. 3. Did you, or not, at any time undertake or agree to negotiate any securities for or on account of said company? And, if yea, please state when it was, at whose request you acted, and the nature of the securities.

A. I did; it was in the year 1870; I acted at the instance of Milton S. Littlefield, the president of the said company; the bonds were issued or to be issued by the State of Florida to the said company, of which Littlefield was president.

Q. Did you, or not, negotiate said bonds, and were the same ever placed in your hands for delivery?

A. I did make an arrangement for the sale of said bonds, but when I called for them to deliver they were not forthcoming and were never delivered to me; but they were in the mean time and without my
1498 knowledge placed in the hands of S. W. Hopkins & Co., of New York City; Hopkins & Co. have a branch of their house also in London.

Q. 5. During the time you were negotiating said bonds, were there, or not, any question raised about their validity? and, if yea, state what it was, and from what source said report came.

A. When the bonds were first brought to my attention by said Littlefield they were represented as the regular bonds of the State of Florida, issued by authority of law, but it was but a short time before charges of fraud and illegality were circulated about their issue, and it was very difficult to introduce them into the market.

Q. 6. Do you know what became of the said bonds; were they ever sold within your knowledge; and, if yea, at what price?

A. They were, I believe, offered on the London market by John Collison, where they also failed to be accepted, but were subsequently placed on the Amsterdam market at reduced prices; they were eight per cent. bonds, payable in gold, and sold, I think (and so reported by the agents of S. W. Hopkins & Co.), by the company at fifty cents.

Q. 7. Did you, or not, subsequently, or at any time, have occasion to visit Europe, in reference to your dealings concerning said bonds? and, if yea, state when it was, and for what reason.

A. In order to protect my interest and secure the return of the money I had advanced the said company, as well as what was due me for my services, I was compelled to visit London in the summer of 1872.

Q. 8. While in London did you, or not, have any occasion to have any further dealings with or about said bonds? and, if yea, please state to the best of your knowledge what was their general standing in the market as securities.

A. I did have occasion, and was compelled to deal with some of said bonds while in Europe; I found their standing in the market was very bad, because of a general impression that they were not legally issued
1499 and would not be paid by the State of Florida; this impression and current opinion, I perceive, was founded on the same reports of fraud and illegality which had assailed them in New York, and that, in order to meet these reports, a portion of the bonds had to be used to pay the interest on the others before they were sold, so as to hold them up in the market; these charges of fraud and illegality emanated from statements written and published by parties in the railroad interest in the State of Florida; also by some of the officials that no provision for payment would be made of interest; these rumors and reports were very numerous.

Q. 9. State who at that time had the control of the negotiation of said bonds in London and Amsterdam, as far as you know.

A. In London they were controlled by S. W. Hopkins & Co. and John Collinson; in Amsterdam, as I was informed, by one Boissievain and others.

Q 10. Do you know or can you state any other matter or thing of interest to either party material to this your examination besides what you have been interrogated upon? and, if yea, state the same fully and at large in your answer.

A. I do not.

L. P. BAYNE.

Subscribed and sworn to before me this 1st day of November, 1878.

JAMES M. BALL
and R. E. STILWELL,
Special Examiner

Adjourned to Saturday, Nov. 2d, at 11 a. m.

SATURDAY, *Nov. 2d*, 1878—11 a. m.

Adjourned to Monday, Nov. 4th, at 11. a. m.

1500 MONDAY, *Nov. 4th*, 1878—11 a. m.

Adjourned to Tuesday, Nov. 5th, at 11 a. m.

TUESDAY, *Nov. 5th*, 1878—11 a. m.

Adjourned to Wednesday, Nov. 6th, at 11 a. m.

WEDNESDAY, *Nov. 6th*, 1878—11 a. m.

Adjourned to Thursday, Nov. 7th, at 11 a. m.

THURSDAY, *Nov. 7th*, 1878—11 a. m.

Present, J. B. Stewart, counsel for complainants.

HENRY H. THOMPSON, called and sworn as a witness on the part of the complainants, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Henry H. Thompson; fifty-four years of age; residing in the city of New York; and am clerk in the treasurer's office of the Erie Railway Company.

Q. 2. Are you or not acquainted with a corporation known as the Florida Central Railroad Company; and, if yea, were you at any time a stockholder, director, or officer of the same?

A. I am acquainted with such a corporation by repute, but never was a stockholder or director thereof.

Q. 3. Did you at any time sign any bond as treasurer of said company; and, if yea, state under what circumstances you did so?

1501 A. I did sign some bonds as treasurer of said company, and under the following circumstances: In the years 1866, 1867, and 1868 I was cashier of the Newbern National Bank, in Newbern, North Carolina, where I made the acquaintance of Geo. W. Swepson, and soon thereafter of Milton S. Littlefield; they informed me that they were the owners of the Florida Central Railroad, and held other railroad interests in the State of Florida connected therewith, and desired me to organize and take the cashiership of a National Bank at Jacksonville, Florida, together with the treasurership of said railroad, which they said would prove agreeable and remunerative to me financially. Believing in the representations made to me, I was persuaded to agree to do so, and made my arrangements accordingly; after considerable preparation to go to Florida, I was informed by Mr. Swepson that I had been duly elected treasurer of said railroad company, and I believed his statement to be true; about or soon after the time mentioned I was requested by Mr. Swepson, as president of the Central Florida Railroad Company, to sign papers purporting to be bonds of said company, which I did to the number, I believe, of one thousand, not suspecting at the time that I was being imposed upon and deceived, for had I suspected or doubted the truth of said Swepson's statement I never would have signed said bonds as treasurer.

Q. 4. Please state where you were at the time when you were induced to sign said bonds, and whether you had seen them before signing the same, or have seen them since?

A. I was at Littlefield's room in the St. Nicholas Hotel, New York City; the bonds were brought to me by Mr. Swepson, and believing his statement that I was duly elected treasurer of said company, I signed the same as such, and have since become satisfied that I was imposed upon in the manner stated; I never saw said bonds before, and have never seen them since.

Q. 5. Do you know or can you state any other matter or thing amterial to this your examination, of interest to either party, besides 1502 what you have answered in the questions propounded? If yea, please state the same fully and at large in your answer.

A. No; I do not.

H. H. THOMPSON.

Subscribed and sworn to before us, this 27th day of November, 1878.

R. E. STILWELL,
JAMES M. BALL,
Special Examiners.

Adjourned to Friday, Nov. 8th, 1878, at 11 a. m.

FRIDAY, *November 8th*—11 a. m.

Adjourned to Saturday, November 9th, at 11 a. m.

SATURDAY, *November 9th*—11 a. m.

Adjourned to Monday, November 11th, at 11 a. m.

MONDAY, *November 11th*—11 a. m.

Adjourned to Tuesday, November 12th, at 11 a. m.

TUESDAY, *November 12th*—11 a. m.

Anjourned to Wednesday, November 13th, 11 a. m.

WEDNESDAY, *November 13th*—11 a. m.

Adourned to Thursday, November 14th, at 11 a. m.

THURSDAY, *November 14th*—11 a. m.

Adjourned to Friday, November 15th, at 11 a. m.

FRIDAY, *November 15th*—11 a. m.

Adjourned to Saturday, November 16th, at 11 a. m.

SATURDAY, *November 16th*—11 a. m.

Adjourned to Monday, November 18th, at 11 a. m.

1503 MONDAY, *November 18th*—11 a. m.

Adjourned to Tuesday, November 19th, at 11 . m.

TUESDAY, *November 19th*—11 a. m.

Adjourned to Wednesday, November 20th, at 11 a. m.

WEDNESDAY, *November 20th*, 1878—11 a. m.

Present, JOSEPH B. STEWART, for complainant.

MORITZ HERZBERG, a witness for complainant, recalled and sworn, testified as follows:

Q. 17. Are you now ready to produce the papers called for in the previous part of your examination?

A. No, sir; I could not find them.

Q. 18. When and where did you last see said papers?

A. I don't remember.

Q. 19. Have you searched for them?

A. I have.

Q. 20. Where did you search for them?

A. Amongst my papers.

Q. 21. Now state, to the best of your recollection, the contents of said papers; first, state the contents and terms of the papers signed on the 26th or 27th day of January, 1877, by Frank R. Sherwin, at the office of Lucien Birdseye, agreeing to pay you bonds of the Jacksonville & Mobile Railroad Company as compensation for yourself and Ephraim D. Slater signing his bail bond?

A. The contents of the paper was for signing the bail bond; I was to get five bonds of a Florida railroad—I don't remember the name of the road—as soon as they were issued.

(Complainant's counsel requests the examiners to note his objection to the witness being represented by counsel in the person of Lucien Birdseye, or any one else, or as a subsitute for any one else, to interfere with or direct the examination of the witness, and asks the examiners to exclude all such interference, said Birdseye stating here and now that he was present for that purpose, and offered to advise in the examination of the witness. 1504

The examiners hold that the witness is not entitled to counsel, but there is no objection to Mr. Birdseye being here for the purpose of listening to the testimony of the witness, and taking notes or a copy of his testimony, provided he does not in any way interfere with the examination of the witness.

Mr. Birdseye states that he is not here to interfere in any way with the witness' examination, and that he has not interfered by making suggestion or otherwise.)

Q. 22. Was or was not the name of the bonds you were to receive entitled the Jacksonville & Mobile Railroad Company?

A. I really don't remember, but I don't think that was the title.

Q. 23. Since your adjourned examination have you or not consulted any lawyer or counsel about this your examination and the production of said papers, and, if yea, state when it was, or who it was?

A. I won't answer that question unless compelled to do it by the examiners.

(Complainant's counsel requests the examiners to pass upon the quesiton.

Examiners hold that it is the duty of the witness to answer the question.

Witness says he still declines to answer; that it concerns his private business, and he does not believe he need testify as to his private business with his lawyer.

Question reserved for the court.)

1505 Q. 24. Since your adjourned examination have you seen or spoken to, or advised with, or been advised by, Lucien Birdseye, now present, on the subject of your examination or the production of said papers.

A. That is also my private business, and I decline to answer it for this reason.

Q. 25. Did or did not said Lucien Birdseye advise you not to produce said papers?

A. He could not, because I could not find them, and, therefore, had no occasion to consult with anybody on the subject.

(Answer objected to as evasive and argumentative, and question repeated.)

A. Can't give any better answer.

Q. 26. I did not ask you as to the loss of your papers, but did and do ask you to state directly whether you have advised with, or been advised by, Lucien Birdseye about your examination in this cause, and about the production of said papers?

A. No, sir.

Q. 27. Have you not seen Charles D. Willard since your last examination.

A. No, sir.

Q. 28. State who is the private counsel to whom you referred in your previous answer?

A. Judge Cardoza.

Q. 29. Did or did not Judge Cardoza advise you to produce or not to produce said papers?

A. I don't think I ever asked him, because I could not find the papers.

Q. 30. Did you or not request Lucien Birdseye to attend this examination as your counsel, and did you or not come with or appoint to meet him here?

A. I did not.

Q. 31. Do you know at whose instance or request he has offered to act as your counsel on this examination?

A. I have not heard him offer to act as my counsel at this examination.

1506 Q. 32. Did you not hear Lucien Birdseye state, in the early part of this examination, on this day, that he was here as the counsel of Moritz Herzberg, at the request of Judge Cardoza, who was sick? Please give a direct and positive answer to this question.

A. I heard him say that he was here at the request of Judge Cardoza, but did not, as I remember, hear him state that he was here for any purpose.

Q. 33. Do you know where Frank R. Sherwin is at this time?

A. I do not.

Q. 34. When did you last hear of his whereabouts?

A. About two (2) months ago.

Q. 35. Where was said Sherwin at that time?

A. In England, as I heard; I can't state positively.

Q. 36. Who told you he was in England?

A. Judge Birdseye.

Q. 37. Do you know or can you state any other matter or thing material to this your examination beyond what you have answered to the questions propounded to you; and, if yea, please state the same fully and at large in your answer.

A. The only thing: I was asked last time about some bonds; there were no bonds exhibited to me; I was told they were not issued yet, but would get them as soon as issued.

MORITZ HERBZERG.

Subscribed and sworn to before us, the 20th day of November, A. D. 1878.

JAMES M. BALL AND R. E. STILLWELL.
Special Examiners.

Adjourned to 3 o'clock p. m.

WEDNESDAY, *November 20th*—3 p. m.

Adjourned to Thursday, November 21st, 1878, at 11 a. m.

1507 THURSDAY, *November 21st*—11 a. m.

Present, counsel as before.

Adjourned to November 22d, 1878, at 11 a. m.

FRIDAY, *November 22d*—11 a. m.

Adjourned to November 23d, at 11 a. m.

SATURDAY, *November 23d*—11 a. m.

Several adjournments from day to day to Thursday, January 16th, 1879.

THURSDAY, *January 16th*, 1879—11 a. m.

Present, counsel as before.

TIMOTHY H. PORTER, called as a witness on the part of the complainant, being duly sworn, deposes and says:

Q. 1. State your name, age, residence, and occupation.

A. My name is Timothy H. Porter; age, 50 years; reside in Stamford, Connecticut, and am by occupation a banker in the city of New York.

Q. 2. Are you, or are you not, acquainted with the parties complainant and defendant in this suit, or any of them?

A. I know the complainant Western Division of the Western North Carolina Railroad Company, and some of the defendants. I know the Florida Central and Jacksonville and Mobile-Pensacola Railroad as a body corporate. I know M. S. Littlefield and Thomas B. Coddington.

Q. 3. Did you, or did you not, have any dealings with one George W.
Swepson, as president of the complainant company, in reference
1508 to the sale of any bonds? And, if yea, please state when it was,
the character of the bonds, and state fully what transpired.

A. In the latter part of 1868, or early in 1869, Mr. Swepson deposited with Soutter & Co., of 53 William street, an issue of North Carolina State bonds issued to the Western Division of the Western North Carolina Railroad Company, and made arrangements with the said firm (of which I was the senior partner) for the negotiation and sale of the same.

Q. 4. Did you, or did you not, sell said bonds or any portion of them? And, if yea, please state when you commenced making said sale, and what amount, if any, were sold by or before the first day of July, 1869.

A. The sales commenced in the early part of January, 1869, and they continued till midsummer, and possibly after. I don't remember just when they were concluded. Before the first of July the net proceeds of the sales amounted to over one million of dollars.

Q. 5. Was, or was not, any of the money derived from the sale of said bonds paid out by drafts drawn by one Edward Houstoun, as agent, or otherwise?

A. A large amount was drawn upon drafts signed by E. Houstoun, agent.

Q. 6. Please look at the drafts now shown you marked No. 1 to No. 52, respectively, and state whether or not said drafts were paid by your firm; and, if yea, out of what fund they were paid.

A. They were paid by the firm of Soutter & Co. from funds realized by the sale of the North Carolina State bonds above alluded to, or a portion of them.

The counsel for the complainant asks the examiners to compare and append the copies of the original drafts as part of the deposition of the witness, as it is necessary to have the originals on another examination, and which is accordingly done.

Q. 7. Besides the drafts shown you, were there other portions 1509 of the proceeds of the said bonds at and during the period above mentioned drawn by George W. Swepson and Edward Houstoun, or either of them.

A. Other portions were drawn by Mr. Swepson, or his order, and my impression is that additional drafts were drawn by Mr. Houstoun, but the exact amount I cannot state.

Q. 8. Do you know or can you state any other matter or thing material to either of the parties, plaintiff or defendant, beyond what you have stated; and, if yea, please state the same fully and at large, as if interrogated thereto?

A. I will say nothing except the fact that we required that Mr. Swepson should lodge with us (Soutter & Co.) the authority of the board of directors of the Western Division of the Western North Carolina Railroad Company for the payments of the drafts above alluded to, and also for those drawn by himself, personally, which was done.

TIMOTHY H. PORTER.

Subscribed and sworn to before us this 16th day of January, 1879.

R. E. STILWELL AND
JAMES M. BALL,
Examiners.

1510 [2 cent stamp cancelled.]

$3,917.00] JACKSONVILLE, FLA., *Mar.* 23, 1869.

At sight pay to the order of William E. Jackson three thousand nine hundred & seventeen dollars, value received, & charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & CO.,
53 *William st., N. Y.*

(Endorsed:)

Pay J. L. Worth. Cash.

W. E. JACKSON.

(Stamped:) Soutter & Co., bankers, 53 William st., N. York. Mar. 29, 1869.

[25 c't stamp.]

$350.] TALLAHASSEE, *Mar. 20th*, 1869.

Fifteen days after sight pay to the order of John Roth three hundred & fifty dollars, value received, & charge the same to account of—

E. HOUSTON, *Agt.*

To Mess. SOUTTER & CO.,
53 *Wm. st., N. Y.*

Accepted Mar. 29th, 1869.

SOUTTER & CO.

(Stamped:) Soutter & Co., bankers, 53 William st., New York. Apl. 14, 1869.

[Two 50 c. one 25 cent stamps cancelled.]

$2,437.75.] TALLAHASSEE, 20 *Mar.*, 1869.

Fifteen days after sight pay to the order of C. H. Tebautt, M. D.

twenty-four hundred & thirty-seven 75 dollars $^{\underline{75}}$, value received, & charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. st., N. Y.*

Accepted Mar. 29, 1869.

SOUTTER & CO.

(Stamped:) Soutter & Co., bankers, 53 William st., New York. Ap'l 16, 1869.

1511 (Endorsed:)
Pay Bank of New Orleans or order.

C. H. TEBAULT, *M. D.*

Pay F. Schuchardt & Sons or order.

W. AUGUSTEN, *Cash.*

(Endorsed:) F. Schuchardt & Son.

[1.05 stamp.]
$2,928.90.] TALLAHASSEE, *Mar.* 19, 1869.

Thirty days after date pay to the order of Jacob Barrett twenty-nine hundred & twenty-eight $^{\underline{90}}$ dollars, value received, & charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. st., N. Y.*

(Endorsed:) G. W. Swepson.

(Endorsed:)

Pay the within to R. G. Rolston, pres'd't F. L. & T. Co., 26 Exchange place, corner William st., N. York.

JACOB BARRETT.

(Endorsed:) R. G. Rolston.

(Stamped:) Soutter & Co., bankers, 53 William st., New York. Ap'l 1869.

[$15.05 stamps.]
$30,040.00] TALLAHASSEE, *Mar.* 19*th*, 1869.

Thirty days after date pay to the order of Jacob Barrett thirty thousand & forty dollars, value received, & charge same to account of (acceptance waived)—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *William st., N. Y.*

(Endorsed:) G. W. Swepson.

(Endorsed:)

Pay the within to R. G. Rolston, pres'd't F. L. & T. Co., 26 Exchange place, cor. Wm. st., N. York.

JACOB BARRETT.

(Endorsed:) R. G. Rolston.

(Stamped:) Soutter & Co., bankers, 53 William st., New York. Ap'l 21, 1869.

1512 [1.00 stamp cancelled.]

$1,750.00] **TALLAHASSEE,** *Mar.* 19, 1869.

Thirty days after date pay to the order of J. A. Bale seventeen hundred & fifty ^{00} dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *William st., N. Y.*

Accepted.

SOUTTER & CO.

(Endorsed:)
Pay to order of H. K. Thurber & Co.

J. A. BALE.

(Endorsed:) H. K. Thurber & Co.

(Stamped:) Soutter & Co., bankers, 53 William st., New York. Ap'l 21, 1869.

[2 c. stamp cancelled.]

$5,000.00] **TALLAHASSEE,** *Mar.* 18*th*, 1869.

At sight pay to the order of F. H. Flagg, treas., five thousand ^{00} dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. st., N. York.*

(Endorsed:)
Pay B. C. Lewis or order.

F. H. FLAGG, *Treas.*

Also, pay Nourse & Brooks or order.

B. C. LEWIS.

(Endorsed:) Nourse & Brooks.

(Stamped:) Soutter & Co., bankers, 53 William st., New York. Mar. 23, 1869.

[2 c. stamp.]

$280.] **TALLAHASSEE,** *Mc'h* 18, 1869.

At sight pay to the order of Henry Moore, treas., two hundred & eighty ^{00} dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. st., N. York.*

1513 (Endorsed:)
Pay John I. Cohen & Son or order.

HENRY MOORE.

Also, pay Kritland, Hill & Talmadge or order.

JOHN I. COHEN & SON.

(Endorsed:) Kritland, Hill & Talmadge.

(Stamped:) Soutter & Co., bankers, 53 William st., New York. Mar. 26, 1869.

[2 c. stamp cancelled.]

$450.] TALLAHASSEE, *Mar.* 18*th*, 1869.

At sight pay to the order of F. H. Flagg four hundred and fifty ^{00} dollars and charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm, st., New York.*

(Endorsed:)

Pay to order of Schafer Bros.

F. H. FLAGG.

(Endorsed:) Schafer Bros., p'r M. B.

(Stamped:) Soutter & Co., bankers, 53 William st., N. York. Ap'l 2, 1869.

[2 c. stamp cancelled.]

$1,050.00.] JACKSONVILLE, *Mar.* 16, 1869.

At sight pay to the order of L. J. Fleming one thousand & fifty dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *William st., N. Y.*

(Endorsed:)

Pay to the order of Wilson & Bro.

L. J. FLEMING.

Also, pay to the order of W. A. Ransom & Co.

WILSON & BRO.

(Endorsed:) W. A. Ransom & Co.

(Stamped:) Soutter & Co., bankers, 53 William st., N. York. Mar. 22, 1869.

1514 [2 c. stamp cancelled.]

$350.00.] SAVANNAH, *Mar.* 15, 1869.

At sight pay to the order of C. M. Halst, esq., three hundred & fifty dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *William st., N. York.*

(Endorsed:)

Pay to order of D. H. Baldwin.

CH. M. HALST.

(Endorsed:) D. H. Baldwin, by E. Smith, att'y.

(Stamped:) Soutter & Co., bankers, 53 William st., N. York. Mar. 18, 1869.

[2c. stamp.]

0.00.] SAVANNAH, *Mch.* 15, 1869.

At sight pay to the order of J. W. Nevitt three hundred & fifty dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *William st., N. Y.*

(Endorsed:)

Pay to the order of F. S. Lathrop, esq.

JOHN W. NEVITT.

(Endorsed:) F. S. Lathrop.

(Stamped:) Soutter & Co., bankers, 53 William st., N. York. Mar. 18, 1869.

[2 c. stamp cancelled.]

$140.00.] TALLAHASSEE, *Mar.* 13, 1869.

At sight pay to the order of T. J. Perkins one hundred & forty
1515 dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. st., N. York.*

(Endorsed:)
Pay Earle Cunningham & Co., or order.

THOS. J. PERKINS.

(Endorsed:) Check to Earle Cunningham & Co.

(Stamped:) Soutter & Co., bankers, 53 William st., N. York. Mar. 19, 1869.

[2 c. stamp.]

$1,050.] TALLAHASSEE, *Mar.* 13, 1869.

At sight pay to the order of John Macdougall one thousand & fifty dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agt.*

To SOUTTER & Co.,
53 *Wm. st., N. York.*

(Endorsed:)
Pay to the order of Messrs. Nourse & Brooks.

JOHN McDOUGALL.

(Endorsed:) Nourse & Brooks.

(Stamped:) Soutter & Co., bankers, 53 William st., N. York. Mar. 17, 1869.

[2 c. stamp cancelled.]

$7,000.00.] SAVANNAH, *Mar.* 15, 1869.

At sight pay to the order of George W. Anderson seven thousand dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. st., N. York.*

1516 (E'dorsed:) Pay to the order of Kirtland, Hill & Talmadge, for collection.

EDWARD C. ANDERSON, JUN'R.

(Endorsed:) Kirtland, Hill & Talmadge.

(Stamped:) Soutter & Co., bankers, 53 William st., N. York. Mar. 19, 1869.

[2 c. stamp.]

$2,400.] SAVANNAH, 15 *Mar.*, 1869.

At sight pay to the order of Claghorn & Cunningham twenty-four hundred dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *William st.*, *N. York.*

(Endorsed:)

Pay Mess. Howes & Macy, or order.

CLAGHORN & CUNNINGHAM.

(Endorsed:) Howes & Macy.

(Stamped:) Soutter & Co., bankers, 53 William st., N. York. Mar. 19, 1869.

[2 c. stamp.]

$210.] TALLAHASSEE, *Mar.* 12, 1869.

At sight pay to the order of F. H. Flagg two hundred & ten dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. st.*, *N. York.*

(Endorsed:)

Pay B. C. Lewis, or order.

F. H. FLAGG.

Also, pay Nourse & Brooks, or order.

B. C. LEWIS.

(Endorsed:) Nourse & Brooks.

(Stamped:) Soutter & Co., bankers, 53 William st., N. York. Mar. 19, 1869.

1517 [2 c. stamp cancelled.]

$6,650.] TALLAHASSEE, *Mar.* 12, 1869.

At sight pay to the order of J. P. King sixty-six hundred & fifty dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. st.*, *N. York.*

(Endorsed:) Jno. P. King. Pay Nat. Park Bank, N. Y., or order, for collection acc't of Berawsmey.

(Stamped:) Soutter & Co., bankers, 53 William st., N. York. Mar. 19, 1869.

[95 c. stamps cancelled.]

$1,820.] TALLAHASSEE, *Mar.* 9, 1869.

Thirty days after date pay to the order of myself eighteen hundred & twenty dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. st.*, *N. York.*

(Endorsed:)

Pay S. Simkins, or order.

E. HOUSTOUN, *Agt.*

Also, pay B. C. Lewis, or order.

S. SIMKINS.

Also, pay Nourse & Brooks, or order.

B. C. LEWIS.

(Endorsed:) Nourse & Brooks.

(Stamped:) Soutter & Co., bankers, 53 William st., N. York. Apl. 10, 1869.

[16.10 stamps cancelled.]

$32,200.] TALLAHASSEE, *Mar.* 5, 1869.

1518 Thirty days after date pay to the order of myself thirty-two thousand two hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & CO,
53 *Wm. st., N. York.*

(Endorsed:)

Pay A. B. Hawkins, ex't'r, or order, $32,200.

E. HOUSTOUN, *Ag't.*

Also, pay H. L. Ritch & Co., or order.

ALEXANDER B. HAWKINS, *Ex't'r.*

Also, pay to the order of A. Halsey, cash.

H. L. RITCH & CO.

(Stamped:) Received payment. A. Halsey, cash.

[4.30 stamps, cancelled.]

$8,580.00.] TALLAHASSEE, *Mar.* 5, 1869.

Thirty days after date, pay to the order of myself eight thousand five hundred & eighty dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & CO.,
53 *W'm st., N. York.*

(Endorsed:)

Pay W'm Denham, or order.

E. HOUSTOUN, *Ag't.*

Also, pay to the order of Duncan & Johnston.

W. DENHAM.

Also, pay W. H. Cox, cash'r, or order.

DUNCAN & JOHNSTON.

(Stamped:) Paid at the Mechanics' Nat'l Bank.

[1.30 stamps, cancelled.]

$2,600.00.] TALLAHASSEE, *Mar.* 5, 1869.

Thirty days after date, pay to the order of myself twenty six

1519 hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm st., N. York.*

(Endorsed:)
Pay A. B. Hawkins, pres't, or order.

E. HOUSTOUN, *Ag't.*

Also, pay H. L. Ritch & Co., or order.

ALEXANDER B. HAWKINS, *Pr's't.*

Also, pay to the order of A. Halsey, cash'r.

H. L. RITCH & CO.

(Stamped:) Received payment. A. Halsey, cash'r.

[3.50 stamps, cancelled.]

$7,000.00.] TALLAHASSEE, *Mar.* 1, 1869.

Thirty days after date, pay to the order of myself seven thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm st., N. York.*

(Endorsed:)
Pay Henry Moore, or order.

E. HOUSTOUN, *Ag't.*

(Endorsed:) Henry Moore.
Also pay J. L. Worth, esq., cash'r, or order, for account Nat'l Bank of Augusta, Ga.

G. M. THEW, *Cash.*

(Stamped:) Received payment. J. L. Worth, cash'r.

[5.95 stamps, cancelled.]

$11,900.00.] TALLAHASSEE, *Mar.* 1, 1869.

Thirty days after date, pay to the order of myself eleven thousand nine hundred dollars, value received, and charge the same to account of (acceptance waived)— 1520

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm st., N. York.*

Endorsed:)
Pay Bones, Brown & Co., or order.

E. HOUSTOUN, *Ag't.*

Also, pay to order of Mess. Brown Bros. & Co.

BONES, BROWN & CO.
J. W. POST,
For Brown Brothers & Co.

[4.50 stamps, cancelled.]

$9,100.00.] TALLAHASSEE, *Mar.* 1, 1869.

Thirty days after date, pay to the order of myself ninety-one hundred

dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm st., N. York.*

(Endorsed :)
Pay J. & T. A. Bones, or order.

E. HOUSTOUN, *Ag't.*

Also, pay to order of Mess. Brown Bros. & Co.

JOHN & THOS. A. BONES.
J. W. POST,
For Brown Brothers & Co.

[1.25 stamps, cancelled.]

$2,450.00.] TALLAHASSEE, *Mar.* 1, 1869.

1521 Thirty days after date, pay to the order of myself twenty-four hundred & fifty dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm st., N. York.*

(Endorsed :)
Pay Dr. W. S. Jones, or order.

E. HOUSTOUN, *Ag't.*

Also, pay John I. Cohen & Son, or order.

W. S. JONES.

Also, pay to the order of Kirtland, Hill & Talmadge.

JOHN I. COHEN & SON,
Per E. W. BARNES.

(Endorsed :) J. H. Talmadge. Paid.

[2.00 stamps, cancelled.]

$4,000.00.] TALLAHASSEE, *Feb'y* 19, 1869.

Thirty days after date, pay to the order of myself four thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm st., N. York.*

(Endorsed :)
Pay Thos. W. Coskery, or order.

E. HOUSTOUN, *Ag't.*

Also, pay to the order of Mess. Lee, Bliss & Co.

THOS. W. COSKERY.

(Endorsed :) Lee, Bliss & Co.

(Stamped :) Soutter & Co., bankers, Mar. 24, 1869, 53 William st., N. York.

[2.00 stamps, cancelled.]

$4,000.00.] TALLAHASSEE, *Feb'y* 19, 1869.

Thirty days after date, pay to the order of myself four thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *Wm st., N. York.*

1522 (Endorsed:)
Pay Robt. Schley, trustee, or order.

E. HOUSTOUN, *Ag't.*

Also, Robt. Schley, trustee.

Also, pay I. L. Worth, esq., cash., or order, for account Nat'l Bank of Augusta, Ga.

G. M. THEW, *Cash'r.*

(Stamped:) The Nat'l Park Bank of New York. Paid.

[3.20 stamps, cancelled.]
$6,400.00.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date, pay to the order of myself sixty-four hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm St., N. York.*

(Endorsed:)
Pay to A. Gould, prest., or order.

E. HOUSTOUN.

Also, pay Mess. M. & G. Wilkinson or order.

A. GOULD, *Pres't.*

Also, pay E. J. Oakley, cash'r, or order.

M. & G. WILKINSON.

(Stamped:) Merchants' Exc. Nat. Bank. N. Y. Paid.

[1.00 stamps, cancelled.]
$2,000.00.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date, pay to the order of myself two thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *William St., N. York.*

(Endorsed:)
Pay G. P. Curry or order.

E. HOUSTOUN, *Ag't.*

1523 Also, pay to Austell, Inman & Co.

G. P. CURRY.

(Endorsed:) Austell, Inman & Co.

(Stamped:) Soutter & Co., bankers, 1869, 53 William st., N. York, Mar. 24.

[80c stamps, cancelled.]
$1,600.00.] TALLAHASSEE, *Feb'y* 19, 1869.

Thirty days after date, pay to the order of myself sixteen hundred

dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm St., N. York.*

(Endorsed:)
Pay H. H. Hickman or order.

E. HOUSTOUN, *Ag't.*

Also, pay cashier of Nat'l Park Bank of N. York or order.

H. H. HICKMAN.
C. F. McCAY,
Cash'r Sav. B'k of Augusta.

(Stamped:) Received payment. J. L. Worth, cash'r.

[80c stamp, cancelled.]
$1,600.00.] TALLAHASSEE, *Feb'y* 19, 1869.

Thirty days after date, pay to the order of myself sixteen hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm St., N. York.*

(Endorsed:)
Pay Maurice Wilkinson or order.

E. HOUSTON.

Also, M. Wilkinson.
Also, pay E. J. Oakley, cash'r, or order.

M. &. G. WILKINSON.

(Stamped:) Merchants' Exc. Nat'l Bank, N. Y. Paid.

1524 [1.00 stamps, cancelled.]

$2,000.00.] TALLAHASSEE, *Feb'y* 19, 1869.

Thirty days after date, pay to the order of myself two thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm St., N. York.*

(Endorsed:)
Pay Rob't A. Reid or order.

E. HOUSTOUN, *Ag't.*

Also, Rob't A. Reid.
Also, pay J. L. Worth, esq., cash., or order, for account of National Bank of Augusta, Ga.

G. M. THEW, *Cash.*

(Stamped:) The Nat'l Park Bank of New York. Paid.

[6.00 stamps, cancelled.]
$12,000.00.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date, pay to the order of myself twelve thousand

dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *W'm St., N. York.*

(Endorsed:)
Pay Edward Thomas or order.

E. HOUSTOUN, *Ag't.*

Also, pay cashier of National Park Bank of N. Y., or order.

EDW'D THOMAS.

Also, C. F. McCay, cash'r Sav. B'k, of Augusta.
(Stamped:) Received payment. J. L. Worth, cash'r.

1525 [2c. stamp, cancelled.]
$7,350.00.] TALLAHASSEE, *Mar.* 18, 1869.

At sight, pay to the order of Sorrel & Bros. seventy-three hundred & fifty dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
45 *W'm St., N. York.*

(Endorsed:) Sorrel Bros. G. M. Sorrel.
Also, pay to the order of B. Cartwright, esq., cash'r.

T. M. CUNNINGHAM, *Cash.*

(Stamped:) Soutter & Co., bankers, 53 William st., N. York, Mar. 24, 1869.
(Stamped:) Paid at the National City Bank of New York.

[1.00 stamps, cancelled.]
$2,000.00.] TALLAHASSEE, *Feb'y* 19, 1869.

Thirty days after date, pay to the order of myself two thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm St., N. York.*

(Endorsed:)
Pay J. C. Fargo or order.

E. HOUSTOUN, *Ag't.*

Also, pay M. Wilkinson or order.

J. C. FARGO.

Also, M. Wilkinson.
Also, pay E. J. Oakley, cash'r, or order.

M. & G. WILKINSON.

(Stamped:) Merchants' Ex. Nat'l Bank, N. York. Paid.

1526 [5.65 stamps, cancelled.]
$11,600,00.] TALLAHASSEE, *Feb'y* 19*th*, 1869.

Thirty days after date, pay to the order of myself eleven thousand six hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. St., N. York.*

(Endorsed:)
Pay James B. Walker, or order.
E. HOUSTOUN, *Agt.*

Also pay Geo. M. Thew, esq., cash'r, or order, for account National Bank of Augusta, Ga.
JAMES B. WALKER.

Also, pay J. L. Worth, esq., cash'r, or order, for account National Bank of Augusta, Ga.
G. M. THEW, *Cash'r.*

(Stamped:) The National Park Bank of New York. Paid.

[20c. stamps, cancelled.]

$400.00.] TALLAHASSEE, *Feb.* 19*th.*, 1869.

Thirty days after date, pay to the order of myself four hundred dollars, value received, and charge the same to account of (acceptance waived)—
E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. St., N. York.*

(Endorsed:)
Pay James W. Walker, or order.
E. HOUSTOUN, *Agt.*

Also, Jas. W. Walker.
Also, pay J. L. Worth, esq., cash., or order, for account National Bank of Augusta, Ga.
G. M. THEW, *Cash'r.*

(Stamped:) The National Park Bank of New York. Paid.

1527 [80c. stamps, cancelled.]

$1,600.00.] TALLAHASSE, *Feb'y* 19*th*, 1869.

Thirty days after date, pay to the order of myself sixteen hundred dollars, value received, and charge the sam' to account of (acceptance waived).—
E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. St., N. York.*

(Endorsed:) Pay James Miller, or order.
E. HOUSTOUN, *Agt.*

Also, James Miller.
Also, Jas. W. Walker.
Also, pay J. L. Worth, esq., cash'r, or order, for account National Bank of Augusta, Ga.
G. M. THEW, *Cash'r.*

(Stamped:) The National Park Bank of New York. Paid.

[1.40 stamps, cancelled.]

$2,800.00] TALLAHASSEE, *Feb'y* 19*th*, 1869.

Thirty days after date, pay to the order of myself twenty-eight hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. St., N. York.*

(Endorsed:)
Pay B. H. Warren, or order.

E. HOUSTOUN, *Agt.*

Also, pay G. M. Thew, esq., cash'r, or order, for account National Bank of Augusta, Ga.

B. H. WARREN.

Also, Pay J. L. Worth, esq., cash'r, or order, for account National Bank of Augusta, Ga.

G. M. THEW, *Cash'r.*

(Stamped:) The National Park Bank of New York. Paid.

1528 [1.00 stamp, cancelled.]

$2,000.] TALLAHASSEE, *Feb'y* 19, 1869.

Thirty days after date, pay to the order of myself two thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. St., N. York.*

(Endorsed:)
Pay Henry Moore, or order.

E. HOUSTOUN, *Agt.*

Also, Henry Moore.
Also, pay J. L. Worth, esq., cash'r, or order, for account Nat'l Bank of Augusta, Ga.

G. M. THEW, *Cash'r.*

(Stamped:) The National Park Bank, of New York. Paid.

[8.30 stamps, cancelled.]

$17,600.00.] TALLAHASSE, *Feb'y 19th*, 1869.

Thirty days after date, pay to the order of myself seventeen thousand six hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. St., N. York.*

(Endorsed:)
Pay John W. Walker, or order.

E. HOUSTOUN, *Agt.*

Also John W. Walker.
Also, pay J. L. Worth, esq., cash'r, or order, for account National Bank of Augusta, Ga. (no signature.)
(Stamped:) The National Park Bank of New York. Paid.

1529 [1.20 stamps, cancelled.]

$2,400.00.] TALLAHASSEE, *Feb'y*, 19, 1869.

Thirty days after date, pay to the order of myself twenty-four hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *William St.*, *N. York.*

(Endorsed :)
Pay D. R. Wright, or order.

E. HOUSTOUN, *Agt.*

Also, pay to the order of Lee, Bliss & Co.

D. R. WRIGHT.

(Endorsed :) Lee, Bliss & Co.

(Stamped :) Soutter & Co., bankers, 53 William St., N. York, March 24, 1869.

[40c. stamps, cancelled.]

$800.00.] TALLAHASSEE, *Feb'y* 19, 1869.

Thirty days after date, pay to the order of myself eight hundred dollars, value received, and charge the same to account of (acceptance waived) —

E. HOUSTOUN, *Agt.*

To Mess. SOUTTER & Co.,
53 *Wm. St.*, *N. York.*

(Endorsed :)
Pay Mes. M. C. D'Antignac, or order.

E. HOUSTOUN, *Agt.*

Also, H. H. D'Antignac.

Also, pay J. L. Worth, esq., cash', or order, for account National Bank of Augusta, Ga.

G. M. THEW, *Cash'r.*

(Stamped :) Endorsement guaranteed. J. L. Worth, Cash'r.
(Stamped :) The National Park Bank of New York. Paid.

1530 [2.00 stamps, cancelled.]

$4,000.00.] TALLAHASSEE, *Feb'y* 19, 1869.

Thirty days after date, pay to the order of myself four thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm St.*, *N. York.*

(Endorsed :)
Pay Jno. & Thos. A. Bones or order.

E. HOUSTOUN, *A'gt.*

Also, pay to order of Mess. Brown Bros. & Co.

JNO. & THOS. A. BONES.

Also, pay to the order of the Merchants' National Bank.

BROWN BROS.

(Stamped :) Paid at Merchants' Nat'l Bank.

[3.70 stamps, cancelled.]

$7,200.00.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date, pay to the order of myself seventy-two hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm St., N. York.*

(Endorsed:)

Pay Augusta Factory or order.

E. HOUSTOUN, *Ag't.*

Also, pay J. L. Worth, esq., cash'r.

W. E. JACKSON,
Pres't Augusta Factory.

(Stamped:) The National Park Bank of New York. Paid.

1531 **[7.80 stamps, cancelled.]**

$15,600.] TALLAHASSEE, *Feb'y* 19, 1869.

Thirty days after date, pay to the order of myself fifteen thousand & six hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *William St., N. York.*

(Endorsed:)

Pay Wm. E. Jackson or order.

E. HOUSTOUN, *Ag't.*

Also, pay J. L. Worth, esq., cash'r.

W. E. JACKSON.

(Stamped:) The National Park Bank of New York. Paid.

[3.00 stamps, cancelled.]

$6,000.00.] TALLAHASSEE, *Feb'y* 19, 1869.

Thirty days after date, pay to the order of myself six thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm St., N. York.*

(Endorsed:)

Pay John Craig, assignee, or order.

E. HOUSTOUN, *Ag't.*

Also, Jno. Craig, assignee.
Also, pay J. L. Worth, cash'r, or order.

JNO. CRAIG.

(Stamped:) The National Park Bank of New York. Paid.

[10.00 stamps, cancelled.]

$23,450.00.] TALLAHASSEE, *Feb'y* 18, 1869.

1532 Thirty days after date, pay to the order of myself twenty-three thousand four hunderd & fifty dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. Soutter & Co.,
53 *W'm St., N. York.*

(Endorsed:)
Pay Wm. Shear or order.

E. HOUSTOUN, *Ag't.*

Also, pay George T. Jackson or order.

WM. SHEAR.

(Endorsed:) George T. Jackson.

(Stamped:) Paid at the Nat'l Bank of Commerce, New York.

[1.20 stamps, cancelled.]
$2,400.00.] Tallahassee, *Feb'y* 19, 1869.

Thirty days after date, pay to the order of myself twenty-four hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. Soutter & Co.,
53 *William St., N. York.*

(Endorsed:)
Pay W. W. Alexander or order.

E. HOUSTOUN, *Ag't.*

Also, W. W. Alexander.
Also, pay J. L. Worth, esq., cash'r, or order, for account Nati'n'l Bank of Augusta, Ga.

G. M. THEW, *Cash'r.*

(Stamped:) The Nati'n'l Park Bank of N. York. Paid.

[3.00 stamps, cancelled.]
$6,000.00.] Tallahassee, *Feb'y* 19, 1869.

Thirty days aftdr date, pay to the order of myself six thou-
1533 sand dollars, value received, and charge the same to account of
(acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. Soutter & Co.,
53 *William St., N. York.*

(Endorsed:)
Pay John Craig or order.

E. HOUSTOUN, *Ag't.*

Also, pay to J. L. Worth, cash'r, or order.

JNO. CRAIG.

(Stamped:) The National Park Bank of New York. Paid.

[1.00 stamps, cancelled.]
$2,000.00.] Tallahassee, *Feb'y* 19, 1869.

Thirty days after date, pay to the order of myself two thousand dollare, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *W'm St., N. York.*

(Endorsed:) Pay A. Gould or order.

E. HOUSTOUN, *Ag't.*

Also, pay Mr. Maurice Wilkinson or order.

A. GOULD.

Also, M. Wilkinson.
Also, pay E. J. Oakley, cash., or order.

GEO. WILKINSON.

(Stamped:) Merchants' Exc. Nat'l Bank, N. York. Paid.

1533½ Several adjournments from day to day, January 16th, 1879, to Thursday, January 30th, 1879, at 11 a. m.

THURSDAY, *January 30th*, 1879.

Counsel for the complainant present, as before.

THOMAS E. WILLSON, called as a witness on the part of the complainant, being duly sworn, deposes and says:

Q. 1. State your name, age, residence, and occupation.

1534 A. My name is Thomas Edgar Wilson; my age, 34 years; my residence, 129 West Sixty-first street; my occupation is journalist, and my present occupation is day editor of the World.

Q. 2. Within your knowledge, as connected with the World newspaper, published in the city of New York, was there or was there not a communication published with reference to the issue of bonds by the State of Florida, in exchange for any railroad bonds; and, if yea, have you under your control the said article, or a copy thereof, as printed in said journal, and will you produce the same as part of your answer?

A. There was such an article published in the World newspaper, dated Florida, June 10th, 1870, and published in the World June 15th, 1870, the original files containing which I now produce for the examination of the examiners taking the testimony, but as the same belong to the files of the office I cannot part with the same, but produce a copy of the same compared by myself very carefully, and which I make part of my answer, and the same is marked Exhibit A.

Q. 3. Did or did not the editor of the World receive any further communication from the State of Florida in reference to said bond issue, and the character thereof?

A. A further communication was received, dated Tallahassee, June 13, 1870, which was referred to in an editorial in the World, in which its substance was stated, warning capitalists against purchasing the bonds referred to as fraudulent.

Q. 4. Besides publishing the communication you have mentioned, was its character and contents commented upon editorially in the World; and, if so, will you produce the same, or a copy thereof, as a part of your answer?

A. It was noticed editorially in the World, and I produce a copy thereof, marked Exhibit B, and which I make a part of my answer.

Q. 5. Has or has not the New York World, as a public journal, a circulation in Europe; and, if so, to what extent, and had it such circulation in 1870?

1535 A. It has, and in 1870 it had a large circulation, we having an office in London at the time, where it was sold and from which all our European subscribers and correspondents were supplied.

Q. 6. About the time of said publication, to wit, June 1870, and subsequent thereto, did you or did you not hear of other similar publications being made, touching the validity of the said Florida State bonds described in said publication of June 15th, 1870?

A. I did; the article created a good deal of discussion, and was copied in a number of papers through the country, and referred to by others, and became a subject of general notoriety.

Q. 7. Do you know or can you state any other matter or thing of interest to parties complainants or defendants besides what you have answered unto? and if yea, please state the same at large in your answer.

A. I know of nothing.

T. E. WILLSON.

Subscribed and sworn to before us, this 30th day of January, 1879.

R. E. STILWELL AND
JAMES M. BALL,
Examiners.

1536 EXHIBIT A.—*R. E. Stilwell, James M. Ball, examiners.*

(From The World of Wednesday June 15, 1870.)

FLORIDA RAILROAD BONDS.

To the Editor of the World:

SIR: The governor of Florida is reported to have issued, within the last few days, State bonds amounting to about four millions of dollars to the Jacksonville, Pensacola and Mobile Railroad Company, of which General M. S. Littlefield (not altogether unknown, either in Massachusetts, New York City, or North Carolina), is president. Under their act of incorporation, the same company may hereafter claim a further issue of about three millions—making seven millions in all. Other companies already chartered have the privilege under bills, which have become laws, to claim an issue of not less (probably more) than five millions, making a State railroad bond debt of twelve millions of dollars.

Florida, be it remembered, has a population scarcely sufficient to give her one Representative in Congress, and the taxable property constitutes, probably, the poorest Congressional district in the Union.

As the bonds first above mentioned have already been issued, and are on their way to New York, and some of them to Europe (it is said) for negotiation, it is well, perhaps, that capitalists should be put on their guard.

There is not probably an intelligent person in Florida who doubts but that the people of the State, whenever called upon to pay, will repudiate the whole of the indebtedness.

They will deem this not only a necessity, because of their power, but as a right and a duty. To admit the validity of the debt would be to give sanction to a violation of their State constitution, and inducement to corrupt executive and legislative action.

1537 The clauses of the State constitution relating to this matter are the following:

"No tax shall be levied upon persons for the benefit of any chartered company of the State, or for paying the interest on any bonds issued by said chartered companies."

"The legislature shall have power to provide for issuing State bonds bearing interest for securing the debt of the State, and for the erection of State buildings, support of State institutions, and perfecting public works."

Under the concluding words of the second of the foregoing clauses the doubtful right was claimed for the legislature of authorizing the issue of these bonds.

If, as held by the supreme court of Michigan, in the late cases reported in the New York World, the Jacksonville, Pensacola and Mobile Railroad Company (of whose stock the State owns not one dollar), is a private enterprise, and not a public work, the words quoted give no authority for the grant of these bonds. I quote from the report of The World:

"Taxation, said the court, in effect, is the taking of the people's money under the implied condition of using it for the people's good. Where it is not imposed for public, but for private purposes, then it ceases to be taxation and becomes plunder. Such being the case, the question arises whether railroads are public objects, and the answer to this is, no. They are private property whose owners make it their business to transport persons and merchandise in their own carriages over their own land for such pecuniary consideration as may be stipulated. True, as they accommodate a public want they seem to possess a public character, but that character is in nowise different from that attaching to a hotel, a line of stages, or a grist mill—all of which are public because they serve the public, but in the eye of the law mere private enterprises begun and carried on for private gain."

1538 It would seem that some capitalists, whether in New York, London, or Frankfort, before determining to sink their money in Littlefield's bonds, would do well to consider the words of the Florida constitution in connection with the Michigan decision.

But, as intimated above, leaving out the question of constitutional power, these bonds are in Florida confidently believed to be the result of corrupt executive and legislative action. A letter from George W. Swepson of North Carolina, a confederate of Littlefield, sent by Littlefield's hands to Governor Reed, has come to light, from which the following are extracts:

"I regret my inability to be in your city during the extra session of the legislature. General Littlefield has the bills, &c., and will fully explain everything to you. * * * * You will remember when in New York, our agreement was this: You were to call the legislature together, and use your influence to have our bills passed as drawn by us, and if you were successful in this, you were to be paid $12,500 in cash," &c.

The legislature was accordingly convened in extra session only about three months after its regular session, and did not pass the railroad bill required of them. But the majority not then being thoroughly corrupted a clause was inserted in the act authorizing the issue of the bonds after a severe struggle requiring the railroad company to give to the State mortgage security for its protection. This clause, though notoriously adopted by both branches of the legislature, was found to have mysteriously disappeared from the act, as signed by the governor, among the rolls of the secretary of state. A bill in chancery was, therefore, filed to enjoin the issue of the bonds, on the ground that the act authorizing their issue had been fraudulently changed by Littlefield and his associates, or by their procurement, and for their benefit. The injunction was granted by the court, and no motion was ever made by the parties to have it dissolved. At the next session of the legislature, held in January last, the operations of the railroad ring thus ar- 1539 rested by the court were renewed at the capital, and a bill was actually prepared by these shameless parties, introduced and passed, whereby validity was given to the law pronounced void by the court for fraudulent alteration of it, with authorization for the issue of bonds in immensely augmented quantities. It is not necessary to say by what methods this was brought about. The bill, on its passage, was characterized well and aptly by Mr. Walker, a republican member, as a bill to legalize fraud and pay a premium to rascality.

And it is under this bill, claiming to be a law, that the four millions of Florida State bonds now on their way to Northern and European markets for negotiation have been issued.

FLORIDA, *June* 10th, 1870.

1540 EXHIBIT B.—*R. E. Stilwell*, *James M. Ball*, *examiners*.

(Editorial from the World, June 15, 1870.)

THE FLORIDA BONDS SWINDLE.

We have received a telegram, dated Tallahassee, June 13, and signed by five respectable names, warning capitalists against purchasing the Florida State bonds which have just been issued for railroad purposes. We have also received a letter from a member of the legal profession in Florida, dated June 10, stating the amount of these bonds, exposing their fraudulent character, and narrating the methods by which this corrupt swindle was perpetrated. This letter will be found in another column. We commend it to the perusal of capitalists to whom the bonds may be offered, and also to the attention of citizens who desire information respecting the working of the reconstructed government of that State.

1541 Several adjournments from day to day to Monday, February 10th, 1879, at 11 a. m.

MONDAY, *February 10th*, 1879—10½ *a. m.*

Present, counsel for complainant as before.

SAMUEL M. CHAPMAN, a witness on the part of the complainant, being duly sworn, deposes and says:

Q. 1. What is your name, age, and residence?

A. Name, Samuel M. Chapman; age, thirty-eight years; I reside in the city of New York.

Q. 2. What was your occupation and business connection in the years 1870, 1871, 1872, and 1873?

A. I was connected with the firm of Sidney W. Hopkins & Company.

Q. 3. What business was your firm engaged in, and where?

A. They were engaged in importing and supplying iron to railroads, and negotiating securities in New York, and London, England.

Q. 4. Do you or not know a body corporate and politic styled the 'Jacksonville, Pensacola and Mobile Railroad Company?" And if yea, state when and how you acquired the knowledge.

A. I do know said company. I became acquainted with it in the early part of the year 1870, at which time the firm with which I was then connected entered into an agreement to sell a large amount of bonds for said company.

Q. 5. What kind of bonds, and to what amount?

A. Bonds issued by the State of Florida to said company; the amount offered was four thousand bonds of the par value of one thousand dollars each.

Q. 6. Did or did not said firm sell said bonds in whole or in part, and what amount, if any?

A. They did sell a portion of said bonds, to wit, twenty-eight hundred, numbered from one to twenty-eight hundred, both inclusive.

1542 Q. 7. Did they or not sell more than twenty-eight hundred of said bonds?

A. They did not sell more than twenty-eight hundred.

Q. 8. At what price, if any special price was agreed upon, did said firm of Hopkins & Co. agree to account to said company for said bonds?

A. The price which Hopkins & Co. agreed to pay and did pay for the bonds was, I think, one hundred pounds sterling for each bond of one thousand dollars, or about fifty cents on the dollar.

Q. 9. What, if anything, within your knowledge, caused said bonds to be sold at such a reduced price as, say, of about five hundred dollars for each one thousand dollar bond, and when and in what manner were said purchases and sales made? Please state fully the facts as they occurred.

Q. When the said bonds were first brought to the firm for sale, they expected to get a good market price for them as they were eight per cent. gold bonds of a State, but before any of them were placed upon the market, the newspapers of the State of Florida, and of the city of New York, charged that the issue of said bonds was fraudulent, illegal, and void. In consequence of these publications, and the fact that it was charged that the law authorizing the issue of said bonds was unconstitutional and void, it was not in their power to put them on the market at the price they originally expected. There were verbal reports of the illegal and fraudulent character of the bonds in circulation before the publications I have mentioned, and these rumors were afloat as early as June, in the year eighteen hundred and seventy, but before this time the firm had given credit on the faith of the bonds, and they were forced to sell them at some price to protect themselves. The attention of M. S. Littlefield, the president of said company, was called to these rumors and publications, and requested that they be allowed to take the bonds to account at a reduced price of fifty per cent. or less so
as to be able to hold out special inducements for parties to buy
1543 them, as the only way to make a sale of them at all. Their
proposition to said Littlefield was acceded to by him for the company, and the bonds were taken to account at one hundred pounds per bond, and afterwards disposed of through John Collinson, in London, at or about one hundred and thirty-eight pounds, ten shillings and one pence per pound.

Q. 10. About what time did your firm make the offer to take said bonds at fifty per cent. or less, and at what time were your propositions agreed to, if at all? And if the proposition or acceptance, or either of them, was in writing, please produce such writing and make the same a part of your answer to this interrogatory.

A. Letters were addressed to M. S. Littlefield, as president of said company, under dates of June 16th and 17th, 1870, which I will produce and make part of my answer to this interrogatory. His acceptance was subsequent and made in London November 14th, 1870, which I also produce as part of this answer; and also the acceptance of said firm under date of November 28th, 1870, which I also make a part of this answer (marked, respectively, Exhibits C, D, E, and F).

Q. 10. Who, if any one, to your knowledge or information, besides your firm and said John Collinson were interested in the sale and purchase of said bonds at the reduced prices you have named?

A. Certain parties in Amsterdam, Holland.

Q. 12. Please give the dates of the first and last sale of said bonds, if you can.

A. The first real sale of said bonds was made on or about the 19th day of November, 1870, and the last on or about July 31st, 1871.

Q. 13. Was or was not any portion of the gross proceeds of the sales of said bonds deducted therefrom; and if yea, what amount and for what purpose?

A. A sum amounting to nearly four hundred thousand dollars was deducted from the gross amount of said proceeds, and used for the purpose of paying interest on the bonds so sold and floating them on the market.

1544 Q. 14. Do you know or can you state any other or further matter or thing material or of interest to the parties plaintiff or defendant herein further than you have stated? And if yea, please state the same fully and at large, as if specifically thereunto interrogated.

A. Nothing further occurs to my mind.

S. M. CHAPMAN.

Subscribed and sworn to before me this 10th day of February, A. D. 1879.

JAMES M. BALL,
R. E. STILWELL,
Examiners.

Adjourned to Tuesday, February the 11th, 1879, at 11 a. m.

1545 EXHIBIT C.—*James M. Ball and R. E. Stillwell, examiners.*

[S. W. Hopkins & Co., 71 Broadway, New York; 58 Old Broad street, London.]

NEW YORK, *June 16th*, 1870.

M. S. LITTLEFIELD, Esq.,
President, Washington, D. C.:

DEAR SIR: Your favors of 14th and 15th inst. are received, and we carefully note contents.

In reference to the article on "Florida bonds," we observe that you authorize us to do anything which we may find necessary. We do not know what can be done, or whether anything can be done, but on the arrival of Col. Houstoun here to-morrow, we purpose having him and Col. Holland call at the World office and see what can be accomplished in the way of fixing that paper.

Yours, very truly,

S. W. HOPKINS & CO.
ELLIS.

(Endorsed:) Letter S. W. Hopkins & Co., New York, June 16th, 1870. Propose to send Col. Houstoun and Col. Holland to World office to fix that paper concerning Florida bonds.

1546 **Exhibit D.**—*James M. Ball and R. E. Stillwell, examiners.*

[S. W. Hopkins & Co., 71 Broadway, New York; 58 Old Broad street, London.]

New York, *June 17th*, 1870.

M. S. Littlefield, Esq.,
President, Washington, D. C.:

Dear Sir: In consequence of the articles which recently appeared in the World, as also of the notice in to-day's papers of application for an injunction to prevent sale or negotiation of the $4,000,000 issue of Florida bonds, the success of our negotiations has (as you will readily understand) become so much endangered that it seems absolutely necessary to act on the other side at once before the articles in question shall be copied there, accompanied by the unfavorable comments which it is almost certain will be elicited. And thus it may, at any moment, become necessary for us to cable our Mr. F. H. Collins (who is now abroad, and engaged in the negotiation), instructing him to close at such price as he may at the time be able to command; and on this account we have to request that you will at once forward to us authority to place the bonds (if we should find it necessary to do so) at a minimum of 40 instead of 60, as at present authorized.

In view of the onslaughts which have already been made, and of those which will be almost certain to follow, we think it vitally important that we receive such authorization, and at the earliest practicable moment. Please give us your views in brief by telegraph on receipt of this.

Also please inform us whether the supreme court of Florida has ever rendered any decision bearing on the constitutionality of the act of legislature which authorizes the present $4,000,000 issue, and if such 1547 decision has been made, please advise us fully in reference to it, and also send us a copy, duly attested, at once, as it will be of the greatest importance to us.

Enclosed we hand you copies of our correspondence with Mr. D. J. Pruyn, which will explain itself.

Yours very truly,

S. W. HOPKINS & CO.
ELLIS.

(Endorsed): Letter.—New York, June 17th, 1870.—S. W. Hopkins & Co. In consequence of the article in the World, and the threatened injunction in Florida, ask permission to sell in Europe at a minimum price of 40, if necessary, before publication in Europe; asks for copy of decision of supreme court, if any, on the $4,000,000; encloses correspondence with D. J. Pruyn.

1548 **Exhibit E.**—*James M. Ball and R. E. Stillwell, examiners.*

58 Old Broad Street.
London, November 14th, 1870.

Messrs. S. W. Hopkins & Co., *London:*

Gentlemen: I herewith offer you four thousand (4,000) Florida State 8 per cent. gold bonds, in aid of the Jacksonville, Pensacola and Mobile Railroad Company, for one thousand ($1,000) dollars gold each, at the price of one hundred (£100) pounds sterling for each bond, in the city of London, subject to the commission agreed as per contract dated 13th day of April, 1879, with your good selves.

I remain, gentlemen, yours faithfully,
(Signed) M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

Jacksonville, P. M. & R. R.

1549 EXHIBIT F.—*James M. Ball and R. E. Stilwell, examiners.*

NOVEMBER 28*th*, 1870.

MILTON S. LITTLEFIELD, Esq.,
Pres. J., P. & M. R. R. Co.:

SIR: In reference to your favor dated November 14, 1870, offering four thousand Florida State 8 per cent. gold bonds for one thousand dollars gold each in aid Jacksonville, Pensacola and Mobile Railroad Company, we do hereby accept the said offer at the price named, viz, one hundred pounds for each bond, with any accrued interest added in your favor, of one thousand gold each net, in the city of London.

We remain, sir, your obedient servants,
(Signed) S. W. HOPKINS & CO.

1550 Tuesday, February 11th, 1879, at 11 a. m. Adjourned to Wednesday, February 12th, 1879, at 11 a. m.

Wednesday, February 12th, 1879, 11 a. m. Adjourned to Thursday, February 13th, 1879, at 11 a. m.

Thursday, February 13th, 1879, 11 a. m. Adjourned to Friday, February 14th, 1879, at 11 a. m.

Friday, February 14th, 1879, 11 a. m. Adjourned to Saturday, February 15th, 1879, at 11 a. m.

Saturday, February 15th, 1879, 11 a. m. Adjourned to Monday February 17th, 1879, at 11 a. m.

Monday, February 17th, 1879, 11 a. m. Adjourned to Tuesday, February 18th, 1879, at 11 a. m.

Tuesday, February 18th, 1879, 11 a. m. Adjourned to Wednesday, February 19th, 1879, at 11 a. m.

Wednesday, February 19th, 1879, 11 a. m. Adjourned to Thursday, February 20th, 1879, at 11 a. m.

Thursday, February 20th, 1879, 11 a. m. Adjourned to Friday, February 21st, 1879, at 11 a. m.

Friday, February 21st, 1879, 11 a. m. Adjourned to Saturday, February 22nd, 1879, at 11 a. m.

Saturday, February 22nd, 1879, 11 a. m. Adjourned to Monday, February 24th, 1879, at 11 a. m.

Monday, February 24th, 1879, 11 a. m. Adjourned to Tuesday, February 25th, 1879, at 11 a. m.

Tuesday, February 25th, 1879, 11 a. m. Adjourned to Wednesday, February 26th, 1879, at 11 a. m.

Wednesday, February 26th, 1879, 11 a. m. Adjourned to Thursday, February 27th, 1879, at 11 a. m.

Thursday, February 27th, 1879, 11 a. m. Adjourned to Friday, February 28th, 1879, at 11 a. m.

Friday, February 28th, 1879, 11 a. m. Adjourned to Saturday, March 1st, 1879, at 11 a. m.

Saturday, March 1st, 1879, 11 a. m. Adjourned to Monday, March 3d, 1879, at 11 a. m.

1551 Monday, March 3d, 1879, 11 a. m. Adjourned to Tuesday, March 4th, 1879, at 11 a. m.

Tuesday, March 4th, 1879, 11 a. m. Adjourned to Wednesday, March 5th, 1879, at 11 a. m.

Wednesday, March 5th, 1879, 11 a. m. Adjourned to Thursday, March 6th, 1879, at 11 a. m.

Thursday, March 6th, 1879, 11 a. m. Adjourned to Friday, March 7th, 1879, at 11 a. m.

Friday, March 7th, 1879, 11 a. m. Adjourned to Saturday, March 8th, 1879, at 11 a. m.

Saturday, March 8th, 1879, 11 a. m. Adjourned to Monday, March 10th, 1879, at 11 a. m.

Monday, March 10th, 1879, 11 a. m. Adjourned to Tuesday, March 11th, 1879, at 11 a. m.

Tuesday, March 11th, 1879, 11 a. m. Adjourned to Wednesday March 12th, 1879, at 11 a. m.

Wednesday, March 12th, 1879, 11 a. m. Adjourned to Thursday, March 13th, 1879, at 11 a. m.

Thursday, March 13th, 1879, 11 a. m. Adjourned to Friday, March 14th, 1879, at 11 a. m.

Friday, March 14th, 1879, 11 a. m. Adjourned to Saturday, March 15th, 1879, at 11 a. m.

Saturday, March 15th, 1879, 11 a. m. Adjourned to Monday, March 17th, 1879, at 11 a. m.

Monday, March 17th, 1879, 11 a. m. Adjourned to Tuesday, March 18th, 1879, at 11 a. m.

Tuesday, March 18th, 1879, 11 a. m. Adjourned to Wednesday March 19th, 1879, at 11 a. m.

Wednesday, March 19th, 1879, 11 a. m. Adjourned to Thursday, March 20th, 1879, at 11 a. m.

Thursday, March 20th, 1879, 11 a. m. Adjourned to Friday, March 21st, 1879, at 11 a. m.

1552 Friday, March 21st, 1879, 11 a. m. Adjourned to Saturday, March 22d, 1879, at 11 a. m.

Saturday, March 22d, 1879, 11 a. m. Adjourned to Monday, March 24th, 1879, at 11 a. m.

Monday, March 24th, 1879, 11 a. m. Adjourned to Tuesday, March 25th, 1879, 11 a. m.

Tuesday, March 25th, 1879, 11 a. m. Adjourned to Wednesday, March 26th, 1879, 11 a. m.

Wednesday, March 26th, 1879, 11 a. m. Adjourned to Thursday, March 27th, 1879, at 11 a. m.

Thursday, March 27th, 1879, 11 a. m. Adjourned to Friday, March 28th, 1879, at 11 a. m.

Friday March 28th, 1879, 11 a. m. Adjourned to Saturday, March 29th, 1879, at 11 a. m.

Saturday, March 29th, 1879, 11 a. m. Adjourned to Monday, March 31st, 1879, at 11 a. m.

Monday, March 31st, 1879, 11 a. m. Adjourned to Tuesday, April 1st, 1879, at 11 a. m.

Tuesday, April 1st, 1879, 11 a. m. Adjourned to Wednesday, April 2d, 1879, at 11 a. m.

Wednesday, April 2d, 1879, 11 a. m. Adjourned to Thursday, April 3d, 1879, at 11 a. m.

Thursday, April 3d, 1879, 11 a. m. Adjourned to Friday, April 4th, 1879, at 11 a. m.

Friday, April 4th, 1879, 11 a. m. Adjourned to Saturday, April 5th, 1879, at 11 a. m.

Saturday, April 5th, 1879, at 11 a. m. Adjourned to Monday, April 7th, 1879, at 11 a. m.

Monday, April 7th, 1879. Adjourned to Tuesday, April 8th, 1879, at 11 a. m.

Tuesday, April 8th, 1879, 11 a. m. Adjourned to Wednesday April 9th, 1879, at 11 a. m.

1553 WEDNESDAY, *April 9th*, 1879, 11 a. m.

Present, Joseph B. Stewart, counsel for complainants, and Birdseye, Cloyd & Baylis for defendant Geo. F. Drew and others.

CONVERSE L. CHASE, witness produced for complainants, being duly sworn and examined by complainants' counsel, stated as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is Converse L. Chase; age, 54 years; residence, Lanesboro, Minnesota; occupation, hotel keeper.

Q. 2. Do you or do you not know the body corporate called the Jacksonville, Pensacola and Mobile Railroad Company, a party defendant to this suit?

A. I do.

Upon request of counsel for defendant the further examination of this witness was adjourned to Thursday, April 10th, 1879, at 11 a. m.

THURSDAY, *April 10th*, 1879—11 a. m.

Present, counsel as before.

Examination of CONVERSE L. CHASE continued.

Q. 3. Please state when, how, and in what manner you acquired your knowledge of said company?

A. In 1871, as a contractor for building an extension of said road.

Q. 4. In connection with the building of said road, did you or did you not have anything to do with the negotiation of any bonds used, or proposed to be used, in the building of the road of said company; and if yea, please state what bonds they were, and the amount issued or proposed to be issued for that purpose?

1554 A. I had not at that time anything to do with the negotiation of any bonds; there were bonds of the State of Florida, but I had nothing to do with them at that time.

Q. 5. Was there or was there not, within your knowledge, any one at that time, and if so, who, engaged in negotiating bonds for the building of said road, and where was the same being conducted?

A. There were; Mr. John Collinson, of London, England, and also Hopkins & Company, New York and London, with parties in Amsterdam.

Q. 6. Please look at the paper now shown you, dated London, December 3d, 1871, which I make part of this question, headed "Dr. sir," and signed "Wm. G. M. Davis," and state whether or not you know the handwriting of said letter, and if yea, state by whom the same was written, and in reference to what subject matter?

A. I am familiar with this handwriting; it is in the handwriting of Gen. Davis.

Q. 7. Are you or are you not familiar with the handwriting of General Davis, and have you seen him write?

A. I am familiar with his handwriting, and have seen him write; this letter is in his handwriting.

(Paper marked Ex. C, No. 1.)

Q. 8. Please look at the paper now shown you, dated London, December 28, 1871, addressed "My dear sir," and signed "William G. M. Davis," made part of this question, marked Ex. C. No. 2, and state whether or not you know the handwriting of said letter, and whether the same was received by you, to the best of your knowledge and recollection.

At this stage of the examination Mr. Lucien Birdseye appears in person as of counsel for the defendants, Geo. F. Drew, governor, and Geo. F. Drew, individually, and stated that neither he nor his firm appear or have authority to appear for any other defendants, and that he objects to the present examination, and the commission under which it
1555 purports to be taken, as wholly irregular, unauthorized, void, and inoperative, and to all the testimony taken or to be taken thereunder, as inoperative, irregular, and void, and that the defendant Drew, governor, and Drew does not by this appearance waive any such objection, but hereby enters the same of record for such motion, thereupon to be hereafter made, as may be proper.

Counsel for the complainant now requests the examiners to require the counsel, Lucien Birdseye, who has appeared upon this adjourned examination, and interposed the foregoing objection, in the name of Geo. F. Drew, governor, and George F. Drew, and stated he appears for no other defendant, to show and exhibit his authority from said George F. Drew, governor, and George F. Drew, individually, for such his appearance or interference in this examination.

The examiners note on the record that on the 11th day of February, 1879, a notice was served upon them, a true copy of which is hereto annexed, signed by Birdseye, Cloyd & Baylis, solicitors for George F. Drew, governor, &c., which notice does not state in the body thereof for whom said Birdseye, Cloyd & Baylis appear, or propose to appear, and cross examine witnesses.

The examiners—as the complainant's counsel seems to question the authority of Lucien Birdseye to appear herein—request said Birdseye to show and exhibit to them his authority to appear in this examination, and for whom he appears.

Mr. Birdseye states that he declines to exhibit any authority for his appearance on this examination, claiming that such authority is a matter solely between himself and client, and that his capacity as an attorney and counsellor of the courts of the United States, and of the State of New York, are a sufficient warrant for his appearance in this case.

JOSEPH B. STEWART, being duly sworn, on oath states: That a few days after receiving a notice from Messrs. Birdseye, Cloyd &
1556 Bayliss, which he makes a part of this statement, wherein
they informed me that they were retained by George Y. Drew and others to appear as their counsel in this examination, I visited Florida and exhibited said paper to George F. Drew, governor of Florida, who, in reply thereto, informed me that he had not employed Messrs. Birdseye, Cloyd & Bayliss, or any member of that firm, to appear for him in this or any other suit in which he had no personal interest whatever, but that Charles D. Willard, who had presented to him, as governor, one or more petitions in the name of Gideon Maria Bussevain, Adrian J. Milders, Joseph Zaddocks, Adrian Stoop, and others, claiming to be the holders of certain bonds issued by the State of Florida, involved in this suit, praying the seizure of the Jacksonville, Pensacola and Mobile and Florida Central Railroads, as the trustees of said bondholders, and pursuant to which he did seize and advertise for sale said railroads, and pursuant to which these suits were brought, wherein he is represented by the Hon. George P. Rainey, attorney-general of the State of Florida—said Willard applied to him to employ counsel in New York to represent the interest of the defendants, which he understood to be the defendants in interest, to wit, the Dutch bondholders, and not himself, and told said Willard he could employ such counsel as he chose, at his own expense, to defend such interests, and not otherwise, and that he should reserve, even for that purpose, the right to dismiss such counsel or withdraw such authority whenever he acted to the contrary.

I further state that on or about the 16th day of February, 1879, when I was defending a motion made by said Willard and his associates, in the name of such bondholders, to impose a receiver on the Florida Central Railroad, that said Willard produced and offered to read certain depositions taken under this commission, before the present examiners, and especially the deposition of Timothy H. Porter; that I then and
there arraigned said Willard before the court, and required him
1557 to disclose by what means he got in possession of the depositions
being taken in this cause from the possession of the examiners, before the same were filed and published in due course of law; that said Willard, being compelled by the court to make such disclosure, stated that he had obtained them through Lucien Birdseye, now present, whom he had employed as his counsel in New York by permission of Governor Drew. I then pressed him to state whether he claimed that said Governor Drew had given him any written authority, and if so, to produce the same, when he said he had not as the counsel for Governor Drew, but to act for him as counsel in behalf of the Dutch bondholders, and that upon such authority, and no other, and for such purpose, and through him, had possessed himself of the depositions taken before the present examiners. I then called the attention of the court to the fact that Governor Drew, as governor and trustee, and the

trustees of the internal improvement fund, were represented of record by said Rainey and Walker, and further pressed my objection and for an order condemning the conduct of said Willard and Birdseye in getting surreptitious possession of said depositions before publication, and moved the court to exclude the reading of the same, which order was granted; when said Willard, to meet the strictures of the court upon the conduct of himself and said Birdseye in getting possession of said depositions before publication, stated that it was in the interest of such Dutch bondholders that the same were obtained, who were the moving parties in the motion for a receiver. The court nevertheless refused the reading of said depositions as having been brought into court without right or authority; and when being thus sustained, I consented that the depositions might be read as a matter of propriety and to avoid a suspicion of a desire to exclude anything.

I further state that I subsequently informed Governor Drew of what had occurred in court and what said Willard had stated subsequently, as above stated, when he again repeated that he had not employed
1558 Lucien Birdseye in this or any other cause; that he had paid him no retainer, and had assumed no obligation to pay him any; that his employment, if at all, by said Willard, was at the expense of said Willard and his associates on behalf of the Dutch bondholders, and not otherwise, and not as his, said Drew's, counsel, in any respect or for any purpose.

JOS. B. STEWART.

Subscribed and sworn to before us, this 10th day of April, A. D. 1876.

JAMES M. BALL,
R. E. STILWELL,
Examiners.

Counsel for complainant, upon foregoing statement, and upon the refusal of said Birdseye to produce his authority for appearing in this cause on the part of George F. Drew, governor, or George F. Drew individually, who has no personal interest in the same, respectfully submits to the examiners that the use of the name of said Drew by said Birdseye is a mere cover for interfering in the proceedings and interposing objections and obstructing the business of taking testimony in the real interest of said Dutch bondholders, under the procurement of said Willard, parties, upon the record, he has declared he does not represent, and has no authority to represent, and therefore asks the examiners to make such order and to enforce such rule as will protect this examination from any such intrusion, and refuse the further recognition of said Birdseye as counsel on behalf of any of the defendants in interest in this cause, for the reason stated by himself among others.

Mr. Birdseye, in reply to such application of complainant's counsel, calls the attention of the examiners to the notice of appearance for Governor Drew, mentioned by Mr. Stewart in his sworn statement, and which is the same paper above mentioned by the examiners on this record, although entitled in the suit of the Western Division of the
1559 Western North Carolina Railroad Company against George F. Drew, governor of the State of Florida, George F. Drew, governor, &c., and others, in order to designate the suit, is nevertheless signed by Birdseye, Cloyd & Bayliss, as solicitors for Geo. F. Drew, governor, &c., and does not purport to be a notice on behalf of any other defendant in this action than the said Governor Drew. And Mr. Birdseye

further states and submits that it is no part of the duty or power of the examiners to hear, try, pass upon, or decide any such question as that raised by the application of complainant's counsel, or what attorney or counsel of the court may or shall appear upon this or any other like examination, or for whom or on whose behalf or employment such counsel or attorney does in fact appear.

NOTE BY THE EXAMINERS.—The complainant's counsel having denied that said Lucien Birdseye, counsel for George F. Drew, governor, or George F. Drew, individually, and denied his right to appear and take part in this examination as counsel for said Drew, as governor or individually, and having called upon said Lucien Birdseye to produce his authority to appear and take part herein as such counsel, and said Birdseye having refused to show or exhibit to the examiners his authority to appear as such counsel, the examiners are of opinion that said Birdseye should produce his authority from said Drew, before taking further part in this examination, as counsel for said Drew, as governor or individually, in this proceeding.

Mr. Birdseye asks the examiners to note that the sworn statement of complainant's counsel, on which his application was made, does not deny or disprove, but expressly proves the fact that he, Mr. Birdseye, was retained and employed by and on behalf of said Drew, governor, &c., to attend on this examination, and that no further or other proof on that subject is required, and with entire respect for the examiners and the court, insists that the examiners, on such an application, have neither the duty nor the power to take any proofs, or make any examin-
1560 ation, ruling, or decision as to the authority, retainer, or employment of any counsel who may appear before them claiming the right, power, and authority to appear for or represent any party named as a party in the suit before them, and if examiners have such duty or power in any case, that no sufficient foundation has been laid for that application in this case.

The examiners make the order that the above named Lucien Birdseye has no right to take any part in this examination further, until he shows and exhibits to the examiners herein his authority to appear and cross-examine and take part in this examination on behalf of Geo. F. Drew, governor, and Geo. F. Drew, individually, and that he retire herefrom until he shows and exhibits such authority to the examiners herein.

Said Lucien Birdseye requests the examiners to note his exception to such ruling and order of the examiners on every ground, and particularly that it is made without notice and without proper opportunity given him to call witnesses and adduce proofs against such ruling and order, and he asks the examiners to adjourn all proceedings before them for a reasonable time, to enable him to call and examine witnesses on such application, and prior to such ruling and order.

The counsel for the complainant, before the order asked for by Mr. Birdseye, requests the examiners to require said Birdseye to state the names of his witnesses and where they reside, by whom he expects to prove his authority to appear for said Drew, as governor or individually, and the particular facts he expects to prove by them.

The examiners make such request.

Mr. Birdseye states that he will give such names to-morrow.

The counsel for complainant submits to the examiners that
1561 the witness under examination has journeyed from the State of Minnesota, bringing with him important papers pertaining to this examination, and that he is in delicate health and not able to re-

main from home with convenience or safety; that the time for taking testimony is about expiring, and cannot be renewed or extended; and that the application of Mr. Birdseye to introduce witnesses whose name or residences he is not prepared to give is not made in good faith, but is designed, if possible, to defeat the examination, while pretending to prove authority to appear as counsel in this cause, which, if it exists at all, should be in his possession, and that, too, after the counsel has declined to produce any authority, and has declared he will not do so.

Counsel for complainant, therefore, requests and desires the examiners to proceed with the examination of the witness, which has been obstructed and delayed without right or authority.

Mr. Birdseye, on behalf of Governor Drew, rejects utterly all imputations of bad faith, or of want of good faith, or of any design or authority to obstruct, hinder, or prevent this examination, and says that he deems himself in every way fully authorized to appear on this examination as he has done; that the objection to his appearing is a surprise to him, and that he cannot make the statement of witnesses, &c., requested by the examiners without a reasonable opportunity to consult others whom he cannot to-day have interviews with.

The solicitor for the complainant, in view of the fact that the whole day has been consumed till so late an hour, and in view of the fact that Mr. Birdseye persists in asserting that he has been authorized to act in this cause as counsel for and by George F. Drew, governor, and George F. Drew, individually, although refusing to produce any authority therefor, and declaring that he would not, but in order to
1562 avoid real or pretended excuses for not being permitted to further participate in this examination without the production of such authority requests the examiners to adjourn this examination till eleven o'clock to-morrow, in order to afford said Birdseye an opportunity to prove his authority from said Drew to appear in this cause as his counsel, and to file the same as record.

Accordingly examination adjourned to Friday, April 11th, 1879, at 11 o'clock.

FRIDAY, *April* 11*th*, 1879—11 a. m.

Present, Joseph B. Stewart, counsel for complainant; Lucien Birdseye, claiming to represent George F. Drew, governor, &c., as his counsel.

Lucien Birdseye states, that having waited from 11 to 12 o'clock, and complainant's counsel not being present until 11.45, he now moves to adjourn the examination till to-morrow, at 11 o'clock.

Examiners refuse the adjournment, as the complainant's counsel is here with his witness ready to proceed, and Mr. Birdseye has not satisfied the examiners that he is entitled to appear as counsel herein.

Mr. Birdseye takes an exception to this refusal and the reason for it.

Complainant's counsel now asks the examiners to require Mr. Birdseye to produce the evidence of his authority to appear for George F. Drew, governor, or George F. Drew, individually, as counsel in this cause, to afford him *with* which the examination, upon motion of complainant's solicitor, was adjourned till to-day.

The examiners accordingly require Mr. Birdseye to produce the evidence asked for by complainant's counsel.

1563 Mr. Birdseye states that he proposes and offers to prove such his authority by the examination or affidavits of the following persons, among others: Mr. Coyne, of Jacksonville, Florida; Charles

D. Willard, of Washington, D. C.; and he states that he offers the affidavits or examination of other parties resident in Florida to the same effect, but, not having foreseen this application, he had not provided himself with definite information as to the names and residences of such parties, and has not been able to obtain such information since the adjournment yesterday.

Complainant's counsel now asks to exhibit to the commissioners and file with them the notice he received from Birdseye, Cloyd & Bayliss for the appearance as solicitors for Geo. F. Drew, &c., in this proceeding, and referred to in his sworn statement of yesterday. Complainant's counsel further states, said notice is 8th day of February, 1879, and purports to be given "pursuant to request this day received," to wit, the 8th day of February, 1879 (Exhibits R. E. S).

That complainant's counsel, regarding the words "George F. Drew, &c." to mean the other parties defending in the cause, to wit, the so-called Dutch bondholders, and that the words "&c." were used merely as descriptive of that class of persons, he deemed it his duty to recognize the notice, and to notify Mr. Birdseye of the further taking of testimony, as complainant's counsel would have done at any earlier stage of the cause had such notice been given, because the said Geo. F. Drew, governor, being ex-officio the trustee of the so-called Dutch bondholders in this suit, had a right to represent them by counsel, they being the real parties in interest, said Drew himself having no personal interest in it whatever, against whom no relief is asked, and only being sued as trustee; but that had complainant's counsel supposed that Mr. Birdseye meant to attempt to limit himself to Geo. F. Drew individually, who being but a mere nominal party, he would neither have accepted
1564 his notice, or notified him of this proceeding, or permitted
him to appear, without objection, to ask questions or perform acts in this examination which bound nobody. Complainant's counsel further states, and respectfully insists, that the pretended giving of names of witnesses, by whom to prove his authority here, to wit, Mr. Coyne, who is the telegraph operator at Jacksonville, Florida, a distance some thousand four hundred miles away, and Mr. Charles D. Willard, who is to-day in Amsterdam, Holland, as I am informed and believe, seeking testimony in this cause for the defendants, or the names of other parties yet to be ascertained, is a mere sham and pretence to embarrass and delay this proceeding.

That the time for taking testimony in this cause has been extended to next Monday week, to wit, the third Monday of this month, by special order of the court, to close this and one other commission on the part of the complainant, and that the taking of testimony on the part of the defendants also closes within two weeks, when publication of testimony must occur, and that Mr. Birdseye cannot fail to know that it is tantamount to abandoning and defeating this examination, which I believe to be the object of this interference.

I further respectfully submit to the examiners that after the adjournment yesterday, and in view of the positive assertions made by Mr. Birdseye that he had been authorized by George F. Drew to appear for him as George F. Drew, governor, and George F. Drew individually, and not otherwise, thus assuming to contradict my sworn statement, I deemed it my duty to telegraph Governor Drew, and did so by addressing to him the following inquiry:

"To GEORGE F. DREW,
"*Governor, Ellaville, Fla.:*

"Did you employ Lucien Birdseye to appear for you as governor or individually, in taking testimony here in the railroad suits in Florida?
(Signed) "JOS. B. STEWART"—

desiring an answer early in the day. That shortly after eleven o'clock this morning, and the awaiting of which detained me from being present at an earlier moment, I received from Governor Drew the following telegram, which reads as follows:

1565 "ELLAVILLE, FLA., *April* 11*th*, 1879.

"To JOSEPH B. STEWART, *New York*:

"Mr. Willard asked the privilege of employing an attorney to represent me as gov., as trustee ex-officio for the foreign bondholders. I claim the privilege of revoking order at any time. Is he conducting the case satisfactorily?
(Signed) "GEO. F. DREW."

I request the examiners to inspect the original telegram and see that it is genuine.

NOTE.—The examiners have inspected the said telegram and it has every appearance of being genuine. The said telegram is on a blank of the Western Union Telegraph Company; is numbered five, and purports to have been received in New York, at the office of said company, April 11th, 1879, and is dated at Ellaville, Fla., 11th, and the language quoted above is correct. It also came in an envelope of said company, No. 24 L, addressed to Jos. B. Stewart, 35 Broadway, and the examiners have personal knowledge that a boy from the Western Union Telegraph Company called at the office where the examiners are now taking testimony and inquired for Jos. B. Stewart and stated that he had a telegram for him, and left a notice to that effect.

The complainants' counsel further asks to read and file with the examiners the affidavit of Milton S. Littlefield showing the relation of Lucien Birdseye to the material defendants, to wit, the Dutch bondholders in this suit, and in whose behalf he is really acting, marked Exhibit J, M. B.

Complainants' counsel now and further respectfully states to the examiners that when he recognized and gave notice to Mr. Birdseye, as solicitor for Geo. F. Drew, &c., he did so expecting him to appear for the real defendants in interest, or for Geo. F. Drew, trustee, which
1566 is exactly the same thing, and supposing such to be his relation
to the parties, consented to the adjournment of April 9th at the request of his firm on the 9th inst., but that when Mr. Birdseye appeared in person on the 10th and asked the examiners to record the fact that he only appeared for Geo. F. Drew individually, who in truth is not a party to this suit as such, and for no other person or defendant whatever, and complainants then as now knowing he was employed in no such capacity made the objection he did, and which is fully supported by proof.

Complainants' counsel now and finally respectfully submits to the examiners that if Mr. Birdseye is prepared to proceed in the examination as the counsel for G. M. Boissevain, Adrian J. Milders, J. Fred. Schutte, Jans Prins, Adolph Engler, and others, known as the Dutch bondholders, or as the counsel of Geo. F. Drew, trustee, as described in the bill of complaint in these suits, which constitute and represent precisely the same interests, then, in that event, the complainant's counsel has no objection to his doing so, but if Mr. Birdseye still persists to represent George F. Drew individually, or as governor, then he has no right to further interfere in this proceeding, and the examiners are respectfully asked to enforce their order made yesterday to exclude him therefrom, and that he (complainants' counsel) may proceed with the examination of the witness without further delay.

Mr. Birdseye, as counsel for Geo. F. Drew, &c., asks the examiners to make the following note on the record: He refers to the notice of appearance offered on the part of complainants as showing distinctly that it purports to be an appearance only for George F. Drew, governor, &c., and not for any other defendant in the action; that limitation being contained, not only on the face but on the endorsement on the notice, he is not responsible for any misapprehension or failure to understand the notice on the part of any other person. He refers to the examiners' record as stating specifically for whom he (Mr. Birdseye) undertook to appear and did appear on this examination, and denies the
1567 correctness of the statements of such entry of appearance contained in the remarks this day made by complainants' solicitor. He also states that neither he nor his firm was ever authorized, employed, or requested to appear, or did appear, or do appear as counsel for G. M. Boissevain, or any other person mentioned, called, or known as one of the Dutch bondholders, or otherwise than as stated in the said notice of appearance, namely, Geo. F. Drew, governor, &c. He also states that the time asked to enable him to procure either the affidavits or the personal attendance of the witnesses previously named by him to prove his authority was and is necessary, because of the fact that such witnesses were and are absent from the State of New York, and that until yesterday he had no reason to believe and did not expect that any testimony or any affidavit from any of said witnesses would be required or received, or be in any way material. He further states that, as he is informed and believes, said C. D. Willard is now at sea, on his voyage to New York, and can be produced on this examination within eight or nine days from this time, but cannot be communicated with earlier than that time; and that time, to that extent, to procure that examination is material if the objection on the part of complainants' counsel to the appearance of him, said Birdseye, as counsel or solicitor for said Governor Drew only is persisted in. He further states that, as he is informed and believes, none of the said persons above mentioned by complainants' counsel as the Dutch bondholders have ever been served with process in this action, or served with process in this cause, or appeared therein; and that he, said Birdseye, was never authorized to, and does not appear for them or any of them, and said Birdseye and his firm were and do not appear for them or any of them. He further admits to the examiners that the proofs this day introduced on the part of complainants establishes affirmatively that he, said Birdseye, was and is duly retained and employed by and on behalf of said George F. Drew, governor, &c., and that no further proof on that point is required, but
1568 that if the examiners hold differently on this point then reasonable time to prove such should and must be given him.

Note by the examiners.—Mr. Birdseye stating that he does not appear for the so-called Dutch bondholders, nor any of them, and the complainants' counsel stating that George F. Drew, governor and individually, has no personal interest in this suit, which is not denied or contradicted by Mr. Birdseye; and a telegram, purporting to come from Governor Drew this day, and having every appearance of being genuine, and the authenticity of which is not denied nor contradicted by

Mr. Birdseye, stating that he authorized Mr. Willard to employ counsel to represent him as governor, as trustee ex-officio for the foreign bondholders, and does not state that he employed Mr. Birdseye or any one else to represent him otherwise; and said Birdseye having refused to exhibit his authority to act herein for said Drew, as governor or individually, or Geo. F. Drew, governor, &c., and as the examiners believe the delay asked for may prejudice the complainant as well as the witness, who is now here, and has been for three days, ready to be examined, the examiners adhere to their former rule made herein respecting the right of Mr. Birdseye to appear herein, and deny his application for an adjournment to enable him to procure the witnesses named by him or their affidavits, believing that if he has a right to appear herein, as claimed by him, he will be protected by the court when the testimony of the witness now here, or others taken without his presence, is offered to be read in this case.

Mr. Birdseye requests the examiners to note his exception to the foregoing ruling by the examiners, and each and every part thereof, and the reasons therefor, and the same is noted accordingly; and he further submits to the examiners that said George F. Drew, governor, &c., is named as a defendant in this action, and he has a right to appear 1569 therein and be represented by counsel or solicitors at any stage or proceeding therein; and that it is not for complainants, who have joined him as a defendant, or for the examiners, during this examination, to inquire, determine, or decide by whom, or in what manner, or for what purpose, or to what extent he may or shall appear or intervene in the action; and that the fact being now apparent that he, said Drew, did authorize the employment of Mr. Birdseye, the examiners have no right, power, or authority to exclude said Birdseye, to wit, as counsel on this examination.

By examiners. Witness will now answer the question.

Mr. Birdseye, claiming to act for George F. Drew, governor, &c., here offers to interpose an objection to said question, already put and not answered, as to the form and substance thereof, and also to questions Nos. 6 and 7, and to the exhibit marked Exhibit C No. 1, mentioned in the answer to questions 7, as irrelevant, immaterial, and incompetent.

The examiners refuse the offer of Mr. Birdseye, for the reason that his right to appear herein, as claimed by him, has been denied by complainants' counsel, and he has not satisfied the examiners that he has such right.

Mr. Birdseye further claims the right, as counsel for said George F. Drew, governor, &c., to attend the rest of this examination, and to cross-examine complainants' witnesses, and to interpose objections, and exercise all the rights of cross examining counsel.

Application denied by examiners, for the reason last above stated by them.

Thereupon, Mr. Birdseye withdraws from the examination, protesting that any further proceedings therein, after such exclusion from further participation in the examination, are irregular, unauthorized, and void, and that all further testimony taken herein will be irregular and void, and should be suppressed and excluded by the court.

1570 Witness CHASE now answers the 8th interrogatory:

A. I am familiar with the handwriting; it is that of William G. M. Davis; yes, it was received by me.

Q. 9. Please look at the paper now shown you, dated London, February 3d, 1872, and made part of this question, "marked C No. 3," addressed "D'r sir," and signed "W. G. M. Davis," and state in whose handwriting the same is, and whether the said letter was addressed to and received by you?

A. The letter is in the handwriting of G. W. M. Davis, written to and received by me.

Q. 10. Please state in what capacity you were acting at the date of the three papers or letters C No. 1, C No. 2, and C No. 3, and where?

A. In the capacity of trustee of the Jacksonville, Pensacola and Mobile Railroad Company in Florida.

Q. 11. Where was the said W. G. M. Davis at the date of these letters?

A. In London, England.

Q. 12. Do you or not know, and, if yea, please state in what capacity, if any, said Davis was acting at the date of said letters?

A. He assumed to act for the Jacksonville, Pensacola and Mobile Railroad Company.

Q. 13. Under and by virtue of what authority, if any, did he so assume to act within your knowledge?

A. I don't recollect.

Q. 14. Do you, or do you not, know of the issue of any bonds by the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company in or about the *the* year 1870?

A. I know there was some bonds issued about that time to said railroad company

Q. 15. Please state to the best of your recollection about the amount or number of bonds were so issued?

A. I think about three thousand, according to my recollection.

Q. 16. At or about the time of the issue of said bonds were there, or were there not, any questions raised about the validity of the same; and, if yea, please state, to the best of your recollection, what was said or stated, and in what manner?

1571 A. There was quite a controversy at that time about the constitutionality of the issuing of those bonds; I, of course, know that from reading it in the public press and by hearing it.

Q. 17. Did you, or did you not, as trustee of said Jacksonville, Pensacola and Mobile Railroad Company visit Europe in reference to said bonds or the sale and disposition thereof; and, if yea, please state at and about what time you made said visit?

A. I did visit Europe in June, July, August, and September, 1872; my visit was with reference to that business.

Q. 18. On your arrival in Europe whom, if any one, did you find engaged in handling said bonds, and in what capacity?

A. I found the bonds being handled by one John Collinson and by a Dutch syndicate composed of the persons named in the title of this action; I am not good at pronouncing Dutch names.

Q. 19. The persons named in the title of this action, among others, are G. M. Boissevain, A. J. Milders, J. Zaddock, A. Stoop, and others.

Q. 20. Are, or are not, these among the names, if any, that you heard mentioned or who, within your knowledge, were or were not identified with the syndicate in handling said bonds in connection with John Collinson of which you have spoken?

A. They were among the names that I recollect.

Q. 21. Please state, to the best of your recollection, what number, if any, of said bonds were in the possession of or had been disposed of by said syndicate at the time of your arrival in Europe?

A. Twenty-eight hundred, I believe.

Q. 22. Were you, or were you not, advised by whom said bonds were held, if any one, and in what amount; and state from whom and in what manner you obtained such information, to the best of your ability?

A. In course of conversation with Mr. John Collinson I learned that a few hundred of those bonds were scattered about, one or more in a place among the Dutch farmers; my inference was that the syndicate held a balance of two thousand or thereabouts.

1572 Q. 23. From the statements or conversation of whom, if any one, were you led to form the inference or conclusion that 2,000 or more of said bonds were held by said syndicate; give the details of the conversation if you can, and, if not, the substance?

A. The substance of the conversation is this, and was with, first, Frank Collins and with John Collinson, also one of the Dutchmen, brother-in-law of John Collinson, whose name was, I think, Mangaz, or some such name, who was connected with the syndicate, and others, members of the syndicate, and was to the effect as I have before stated; my recollection now is that about 500 were outside of the syndicate.

Q. 24. You have stated that about the time of the issue of said Florida State bonds to said railroad company during the year 1870, that charges and allegations of their being illegal and unconstitutional were circulated in print and otherwise; will you please state whether or not said statements and publications, or any of them, were or were not in circulation in Europe at the time of or preceding your arrival there; and if yea, state at what places said publications and statements were made or spoken of in Europe?

A. There were damaging reports in circulation in Europe; I learned them first from Mr. John Collinson in person on the 4th day of July, 1872, in London, and the reports were published in a Dutch paper in Amsterdam, as I was informed at the time, although I could not read the paper; in consequence of these reports I was requested by John Collinson to procure from the attorney-general of Florida, the judge of Florida, and the governor of the State of Florida, statements to counteract these damaging reports; they desired the statements for publication in Holland; the object of the publication of these statements or reports was to publish them in Amsterdam to advance the market in such bonds.

Q. 25. Under dated of June 15th, 1872, is a paper purporting to be a telegram, which reads as follows: "Collinson cables Davis filed

1573 bill restraining Kleinwort paying me coupon money; State and company hopelessly discredited unless Littlefield immediately telegraph me Davis dismissal railroad agency; this matter requires instant attention." Please look at said telegram or paper, and state if you have any knowledge of the same, and, if so, state what?

A. This telegram was received before I left to go to Europe; I received it in New York; it caused me to leave for Europe much sooner than I expected; a telegram of which this is a copy was received, and handed over to me by Barlow, Larocque & MacFarland.

Q. 26. This telegram among other things states in substance that Collinson had sent a cable to Barlow, Larocque & McFarland, that Davis had filed a bill restraining Kleinwort from paying him (Collinson) money for the payment of interest on coupons, and that the State and company were hopelessly discredited; do you, or not, know, and if yea, please state what Davis is referred to, and what coupon money was enjoined?

A. William G. M. Davis; it was coupon money to pay interest on the July Florida State bonds.

Q. 27. Was it or was it not the same William G. M. Davis who wrote the letters C No. 1, 2, and 3, about which you have testified, and were or were not the Florida State bonds the same 2,800 bonds in the hands of said syndicate in London and Amsterdam, of which you have spoken?

A. It was the same Mr. Davis, and the same 2,800 Floriday State bonds mentioned in my former answer.

Adjourned to 11 a. m. the 12th inst.

1574 SATURDAY, *April* 12*th*—11 a. m.

Present, Joseph B. Stewart, counsel for complainant.

Examination of CONVERSE L. CHASE continued.

Q. 28. You have stated that as trustee and representative of the Jacksonville, Pensacola and Mobile Railroad Company you visited Europe about the month of June, 1872, to look after the disposing of certain bonds of the State of Florida, issued to said company, and that you ascertained that about 2,800 of said bonds had been disposed of by and through a syndicate composed of persons in London and Amsterdam, or were in part held by them. Will you now please state whether or not you know for what price said bonds had been disposed of, and in what manner, and if yea, please state the same to the best of your knowledge and ability, and by whom?

A. There was an optional sale from Littlefield to W. S. Hopkins & Co. at one hundred pounds per bond, or fifty per cent. of the face of the bonds, and a commission of ten per cent., leaving a net of about forty per cent.

Q. 29. Do you know or did you ascertain of any reason, if any, that caused said Florida State bonds to be parted with at such a reduced price as less than fifty per cent. of their par value, as you have just stated; if yea, please state the same to the best of your recollection?

A. I don't know any reason.

Q. 30. Did you know, or ascertain, of any questions being raised as to their security and validity in the market?

A. Only from common report.

Q. 31. That was the common report?

A. What parties in Florida had written letters and published the same to the effect that the bonds were unconstitutionally issued, and that the State of Florida never would pay them.

1575 Q. 32. Were or were not the charges of illegality and unconstitutionality in the issue of the Florida State bonds of which you have spoken a matter of common report and remark in the money markets of Amsterdam and London?

A. There had been attacks made upon the bonds to that effect, but suppressed as far as possible by the syndicate. So far as I heard in London and Amsterdam, their illegality and unconstitutionality were spoken of.

Q. 33. Please look at the telegram now shown you, dated New York, December 17th, 1872, addressed to M. S. Littlefield, and which reads as follows: "Before anything can be completed, the mortgage to the State, sent down by Mr. MacFarland for execution last year, must be executed and recorded in each county through which the road runs; answer immediately; send Henderson here immediately," and signed "C. L. Chase, trustee," and state whether you wrote or sent said dispatch, and if yea, the reason therefor?

A. I wrote and sent this dispatch because Mr. MacFarland, the attorney for John Collinson, required it. He said the mortgage would not be valid unless the mortgage was recorded in each county through which the road run'. In other words, he said the lien on the road was worth nothing without the mortgage.

Q. 34. Please look at the paper now shown you, made part of this question, marked "Ex. C. No. 4," which reads as follows: "Before anything can be completed, the mortgage to the State sent down by Mr. MacFarland for execution last year must be executed and recorded in each county through which the road runs; also statement of facts and opinion must be given (by Mr. John A. Henderson), and endorsed by the governor, that the old P. and G. bonds are no longer a lien upon the road, and this must positively be done before the first day of January next," signed "John Collinson," under which is written as follows: "Gen.: The above was just received from Collinson. You see I have made arrangement for him to advance a large amount of money, and he desires this to enable him to raise money from his Holland friends, 1576 who hold the 2,800 bonds. I know John Henderson's opinion on the subject, consequently do not hesitate to ask it of him on paper; wish Henderson would come here; Dec. 17th, 1872," signed "C. L. Chase," with envelope attached addressed, "Gen. M. S. Littlefield, Jacksonville, Florida, and please state what, if anything, you know about the origin of said paper, and the object for what it was written?

A. The first part of this paper was written by John Collinson and sent to me, and I wrote the last clause and forwarded it to Gen. Littlefield in Florida; the address on the envelope is in my handwriting; I wrote it; the letter itself states its object; the object of this paper was to satisfy the Amsterdam people that the P. and G. bonds were not a lien on the road ahead of theirs, and Collinson wished to raise money from them to pay interest on the Florida State bonds accruing due January 1st, 1873.

Q 35. While in Amsterdam, if you were there during your visit to Europe, did you or did you not have any conversation with the persons composing the syndicate, or any of them of whom you have spoken on the subject of the money being provided from the proceeds of the sale of said bonds for paying the interest thereon?

A. I was not in Amsterdam; I met parties connected with the syndicate in London about August, 1872; they said they wanted the interest on the State bonds which they held provided for out of the proceeds of the sale of the same.

Q. 36. Please look at the paper now shown you, dated "11 Old Broad street, E. C., London, August 13, 1872," and addressed, "Gen. M. S. Littlefield, Jacksonville, Fla.," and signed "C. L. Chase," which, together with the envelope appended thereto, I make part of this question, marked Ex. C., No. 5, and state whether or not you wrote and addressed said letter, and to what subject it refers?

A. Yes; I wrote this letter and sent it to Gen. Littlefield; it is in reference to my negotiations and trusteeship for the Jacksonville, Pensacola and Mobile Railroad Company while in Europe.

1577 Q. 37. Please look at the letter now shown you, headed "50 Old Broad street, London, August 30, 1872," addressed "C. L. Chase, esq.," "Dr. Sir," and signed "John Collinson," which I make part of this question, marked Ex. C., No. 6, and state whether or not you know the handwriting of said letter; and, if yea, by whom it was written, and whether you received the same?

A. This letter was received by me; it is in the handwriting of John Collinson, and addressed to me at the Langham Hotel, London.

Q. 38. The concluding paragraph of said letter reads as follows: "Will you be good enough to sign and return to me the inclosed note; it refers to your letter, signed here to-day. People in Holland are very particular about publishing another person's letters without full authority. Yours, truly, John Collinson." Will you please state what publications are referred to, if any, and for what purpose the same were desired to be made in Holland?

A. The best of my recollection is, it was a damaging letter or article which had been published in Holland, which it was desired to contradict or correct.

Q. 39. Please look at the paper purporting to be a cablegram, now shown you, received at Jacksonville, July 31st, 1872, addressed, "Litchfield, Jacksonville, Florida," which reads as follows: "Telegraph immediately; appointed Jay Cooke, McCullough, fiscal agents," signed "Chase," and state whether or not you know anything about said paper; and, if yea, state what it is, to the best of your knowledge and recollection.

A. This is a cablegram I sent to Gen'l Littlefield; the word "Litchfield" there is a mistake of the telegraph operator; I had arranged with Jay Cooke, McCullough & Co., of London, to become the fiscal agents of the State of Florida, and also the agents of the Jacksonville, Pensacola and Mobile Railroad Company, for the future negotiating of the bonds of the State of Florida, and the object of this cablegram was to have Littlefield appoint Jay Cooke, McCullough & Co., fiscal agents, by cable.

1578 Q. 40. Please look at the paper now shown you, headed "50 Old Broad street, London, July 11, 1872," and signed "John Collinson," which I make part of this question, marked Exhibit C, No. 7, and state whether or not you know the handwriting of said letter, and whether or not you received the same, and to what subject it refers?

A. Yes; I received this letter; I know the handwriting; it is that of John Collinson; it refers to the returning of the coupons which had been paid in London the 1st of July, 1872.

Q. 41. You have stated that Littlefield agreed to let Hopkins & Co. take the Florida State bonds at one hundred pounds, or fifty per cent. of the face of the bonds, less a commission of some ten per cent., and that at these rates about two thousand eight hundred of said Florida State bonds had been taken by said firm; will you now please state, it you know, and, if yea, please state to the best of your recollection, the numbers of said bonds?

A. I meant by my former testimony that the commission to go to Hopkins & Co. was ten per cent. of the face of the bonds, and not ten per cent. of the amount they were sold for; that is, about fifty per cent. of their face; these bonds which were so disposed of to Hopkins & Co. were numbered, I believe, from 1 to 2,800, both inclusive.

Q. 42. The price of the two thousand eight hundred bonds at fifty per cent. would be about fourteen hundred thousand dollars, and the ten per cent. commission, as shown by your last answer, would be about two hundred and eighty thousand dollars, leaving the net proceeds of the said bonds at these rates, about twelve hundred and twenty thousand dollars; do you or do you not mean to say that such is a correct statement of the disposal of said bonds to Hopkins & Co.?

A. Yes; as I understood it at the time.

Q. 43. You have stated that from the net proceeds of said bonds a deduction was made therefrom to pay the interest on the same; do you or not know, and, if yea, please state, what was the total amount so deducted to the best of your recollection?

1579 A. They took out the payment for three coupons on two thousand eight hundred bonds, which amounted to about ninety-five thousand four hundred pounds, or about four hundred and sixty-one thousand seven hundred and thirty-six dollars in gold.

Q. 44. Besides the twenty-eight hundred Florida State bonds of which you have spoken, was there or was there not an additional number of said bonds which went to Europe? If yea, please state the number, to the best of your recollection and belief.

A. There were twelve hundred more of said State bonds, numbering from 2,800 to 4,000, including the number 4,000.

Q. 45. Were you or were you not, among other things, charged with the duty of negotiating said bonds numbered from 2,800 to 4,000?

A. I was.

Q. 46 At the time referred to, were or were not said bonds the subject of litigation both in New York and London?

A. Yes.

Q. 47. Do you or not know, and, if yea, please state, whether or not said bonds numbered above 2,800 were charged with the payment of any particular debts? If yea, please state to the best of your recollection and to what parties.

A. Yes; but I cannot state from memory all the amounts or parties.

Q. 48. Please look at Schedules D, E, and F, filed with the bill of complaint in this suit, respecting the Florida Central Railroad now shown you, and state whether or not the amounts so to be paid, and to whom to be paid, are mentioned in said exhibits to the best of your recollection and belief?

A. Yes; Schedules D, E, and F correctly describe the amounts to be paid, and whom to be paid, so far as private parties are concerned.

Q. 49. You have stated that you were charged among other things to participate in negotiating the bonds of the State of Florida, numbered above 2,800 where you found said bonds the subject of litigation, will you now please look at the several papers as follows: 1580
"50 Old Broad street, London, July 2d, 1872," addressed "C. L. Chase," and signed "John Collinson," made part of this question and marked Exhibit C, No. 8, and another letter headed "50 Old Broad street, London, July 3d, 1872," addressed "C. L. Chase, esq.," and signed "John Collinson," made part of this question, marked Exhibit C, No. 9; another letter dated "50 Old Broad street, July 4th, 1872," addressed "C. L. Chase, esq.," and signed "John Collinson," made part of this question, marked Exhibit C, No. 10; another letter dated "50 Old Broad street, London, 5th July, 1872," addressed "C. L. Chase," signed "John Collinson," made part of this question, marked Exhibit C, No. 11; another letter dated "50 Old Broad street, London, July 9th, 1872," addressed "C. L. Chase," signed "John Collinson," made part of this question, marked Exhibit C, No. 12, and state whether or not you know the handwriting of said letters, by whom they were signed, and whether or not they were received by you, and to what subject matter they relate?

A. They are all signed by John Collinson; I know his signature; some are in his own handwriting and some in that of his clerk; they were addressed to and received by me; they relate to the negotiation of the twelve hundred Florida State bonds numbered above 2,800.

Q. 50. Will you please look at the several papers now shown you headed "1st Florida State loan, and Jacksonville, Pensacola and Mobile Railroad," made part of this question, and marked Exhibit C, No 13; "2d, Florida State loan, and Jacksonville, Pensacola and Mobile Railroad," made part of this question, and marked Exhibit C, No. 14; 3d, a paper headed "July 5th, 1872," made part of this question, and marked Exhibit C, No. 15; 4th, "Florida State loan, and Jacksonville, Pensacola and Mobile Railroad," which is made part of this question, and marked Exhibit C, No. 16, and state whether or not you know of 1581 said papers, by whom prepared, and whether or not the same were delivered to you? and, if yea, state to what subject matter they relate.

A. I know of those papers; am familiar with them; they were delivered to me by John Collinson; that is, they were sent to me by John Collinson through the mails; they relate to the negotiation of the twelve hundred bonds numbered above 2,800, and the settlement of the difficulties then existing, and the cancelling of all former contracts for the sale of Florida State bonds.

Q. 51. Please look at the paper now shown you headed "50 Old Broad street, London," dated December 30th, 1871, addressed "W. W. McFarland, esq.," and made part of this question, marked Exhibit C, No. 17, and state what, if anything, you know about said paper, and how you derived your knowledge, and whether the same was or was not ever delivered to you; and, if yea, by whom, and for what purpose?

A. This paper was delivered to me by Mr. W. W. McFarland in person, for the purpose of showing me Mr. Collinson's objections to the proposed settlement; I carried the same letter to London with me and showed it to Mr. Collinson, and he admitted to me that he wrote it.

Q. 52. Please look at the letter now shown you headed "Old Broad street, London, July 26th, 1872," addressed "C. L. Chase, esq.," and made part of this question, and marked Exhibit C, No. 18, and state what you know about said letter, and whether the same is addressed to and received by you, and to what subject the same relates.

A. This letter was addressed to and received by me and relates to the location of 210 Florida State bonds in London, and therein described.

Q. 53. You have spoken of certain suits in litigation pending in London in reference to said Florida State bonds numbered above 2,800; will you please state whether there was or was not a compromise decree entered into in the court of chancery in England thereto?

A. There was.

1582 Q. 54. Will you now please look at Schedule H, in complainant's bill, respecting the Florida Central Railroad, headed the "In chancery, Vice-Chancellor Wickens, Collinson vs. Collins; Jacksonville, &c., Company vs. Collinson," and signed by John Collinson and several other parties, and which is referred to and made part of this question, and state, to the best of your recollection and belief, whether the same is or is not a correct copy of said decree?

A. I have examined said schedule and believe the same to be a correct copy of said decree.

Q. 55. Subsequent to the date of said decree, did you or did you not, as trustee of said Jacksonville, Pensacola and Mobile Railroad Company, enter into a memorandum of agreement with John Collinson for the disposal of the Florida State bonds numbered above 2,800 and others therein specified?

A. I did.

Q. 56. Will you please look at the paper now shown you, headed "An agreement made this 29th day of August, 1872, between Converse L. Chase of the first part," &c., and made part of this question, and marked Exhibit C, No. 19, signed "C. L. Chase, on behalf of F. H. Flagg; John Collinson," and state whether the said paper is or is not a correct copy of the agreement mentioned in your last answer?

A. I have examined the paper and it is a correct copy.

Q. 57. Were or were not the terms of said decree and said agreement ever fulfilled and complied with by the parties thereto?

A. No, sir; the same never was complied with.

Q. 58. Please state whether within your knowledge, information and belief, the said Florida State bonds numbered above 2800 ever were disposed of otherwise than as provided in said consent, decree, and agreement last above mentioned?

A. No; they were not to my knowledge.

Q. 59. You have stated that you resided in Florida and was connected with the Jacksonville, Pensacola and Mobile Railroad Company, both as a contractor and as a trustee; will you please state whether or
1583 not within your knowledge and information a consolidation was
entered into between the said Jacksonville, Pensacola and Mobile Railroad Company and the Florida Central Railroad Company?

A. Not to my knowledge.

Q. 60. Do you or do you not know of a body corporate styled the Florida Central Railroad Company, and if yea, was or was not the same within your knowledge, owned, worked and managed as a distinct corporation?

A. I do not know such company; it was kept distinct and separate, and separate books, and a distinct and separate corporation, and managed by its own board of directors.

Q. 61. Do you know or can you state any other matter or thing material to this your examination of interest to parties, complainant or defendant, and if yea, please state the same fully and at large in your answer, as if fully interrogated thereto.

A. Nothing occurs to me.

C. L. CHASE.

Subscribed and sworn to before us, this 12th April, 1879.

R. E. STILWELL,
JAMES M. BALL,
Examiners.

Adjourned to Monday, April 14th, 1879, 11 a. m.

MONDAY, *April 14th*, 1879—11 a. m.

Adjourned to Tuesday, April 15th, 1879, 11 a. m.

TUESDAY, *April 15th*, 1879—11 a. m.

Present, Joseph B. Stewart, counsel for complainant.

CONVERSE L. CHASE, being recalled by complainant's counsel, after being duly sworn, says:

Q. 62. In your previous examinations you spoke of being au-
1584 thorized, as trustee for the Jacksonville, Pensacola and Mobile
Railroad Company, to negotiate certain bonds of the State of Florida issued to said company and certain bonds of said company when you visited Europe in 1872; did you or did you not attempt to make such negotiation?

A. I did.

Q. 63. What was the result of your effort to negotiate said bonds?

A. I found that the Florida State bonds had no market value, consequently could not dispose of any of them excepting through the agency in London of the Holland syndicate.

Q. 64. What, to the best of your recollection and knowledge, did you find to be the reason of obstruction, if any, to the finding of a market for said Florida State bonds?

A. The first reason was the bad reputation of the bonds questioning their legality, and, second, the said Holland syndicate and London agency had it so arranged that no Florida State bonds or Florida railroad bonds could be put on the market at all without hav' the stamp of the syndicate on the bonds; consequently I was obliged to resort to the contract, such as was made, marked Exhibit C, No. 19, referred to in my previous examination.

Q. 65. Do you know of any other matter or thing material to the issues in this cause and to the parties thereto, beyond what you have been questioned as to? If yea, please state the same now fully, as if specifically interrogated thereunto.

A. Nothing further, to my recollection.

C. L. CHASE.

Subscribed and sworn to before us, this 15th day of April, 1879.

JAMEL M. BALL AND
R. E. STILWELL,
Examiners.

1585 **EXHIBIT C, No. 1.**—*R. E. Stilwell and Jamas M. Ball, examiners.*

LONDON, *Dec. 23d*, 1871.

DEAR SIR: I have been here one week, but as yet have done nothing. Collinson is not in favor of the compromise, but as yet he has not determined. He is waiting the arrival of his counsel, Benjamin and others. I do not know that he will decide not to sign the agreement and take the bonds. He has obtained an order from the vice-chancellor to have the January interest paid, which I hope will be done, and thus the credit of the bonds saved. Although McFarland has told Collinson frankly that he thinks Barnett a rogue, yet C. is, I fear, disposed to deal with him. We consider him, as he is, a smart fellow, and besides, as being a rich man—this, of course, has weight. I told C. what I thought of Barnett—told him the facts as to his company being bogus—without capital—and the object of the contract, viz, to fix a levy of ten per cent. on cost of road, and on all through freight, &c. He may or not take notice of this. I fancy Collinson would not be disturbed if the road was sold out. He does not seem to care whether it is pushed into Mobile at once or not. He does not claim that the 1,200 bonds are to be devoted to building, so far as it will go. I think it likely he and Barnett has a plan of their own. He receives letters and telegrams from Barnett all the time. Barnett notified him not to sign the settlement. He also notified him that he has a contract for all the bonds yet to be issued. I fear Collinson and he are in league together, for with all that McFarland and I said, he defended Barnett; yet he has a copy of steamship contract, and is informed of its object. I see no prospect of getting any money, at once, out of the 1,200 bonds, in case Collinson does not agree to the settlement, as, even if the bonds are put in the hands of a receiver, the money would not be applicable to building the road 1586 for some time. I do not know that Collinson means to take them or not under his contract. In fact, until I see him with his counsel, I cannot tell what he is after. He asked me a question about the mode of selling the road, if the interest was not paid, which, I think, shows he was thinking of it. I will be able, I hope, in a day or two, to know more fully how he stands.

I think our injunction against the Gulf Stream Co. is all important, as also a proceeding to forfeit the charter. Can't you get Barnett in Florida on some matter and serve him personally, and also set aside the villainous steamboat contract? If Littlefield does not give up Barnett, he will eat him up. The trustees or any stockholder can file the bill.

Collinson seems to ignore the deed of trust. He does not allude to it. He has not spoken of naming a trustee. I will know his views when I come to ask him to do so. He is very reticent, and not at all cordial, but polite. He only seems to care for the payment of the interest and to secure the 1,200 bonds. He has found them tied up, 178 out of the 400 known to be here, and hopes to get hold of the balance.

I have not had a letter from Florida yet, and do not know what is going on, but hope all things are serene, as should anything serious have happened, I think Collinson would have known.

If Collinson is not influenced by Barnett, and is entirely free from any entanglement of the kind, I think he might be induced to advance money to retire the old P. & G. bonds, and also construct the road to a point at which the company will be entitled to receive the bonds provided to be issued at rate of 14,000 per mile. This he could do on such assurance as would satisfy him that the bonds would issue, and that he would get them. He seems to think that there has been a larger over issue than for fourteen miles—that 100 miles need to be completed to cover the bonds issued. I do not know how he got the idea; he only mentioned it in passing over the whole matter in a rapid way.

1587 I have not said anything to him about the land grant bonds. I defer that until I see what he means to do about the 1,200. He is very hostile to Hopkins & Collins; he says they have property enough in England to secure what they owe the Jacksonville, Pensacola and Mobile road. I am going to consult Benjamin, and if possible to do so I will try and tie them up so as to force them to disgorge. I do not know that my authority is sufficient for such purpose. You had better get a new power of attorney made out, much fuller, covering authority to settle with Collinson, Hopkins, Collins, to negotiate sale of bonds, obtain money to be applied by trustees in construction of road, negotiate sale of land grant bonds, &c. This would have to be authenticated more fully—have certificate of secretary of State, &c., &c.

I came here with little money, trusting to get what I wanted from Collinson in case he signed the agreement. If he does not, I shall not have money to get along with. I wish you would try and have me a credit given in New York, and also telegraphed to me here, care John Collinson, No. 50 Old Broad street. I shall be in a bad fix if I do not have money to pay expenses.

I suppose Mr. Chase is with you by this time, but as he may not have arrived, I write you this letter, which, if he is in Florida, hand him, it being designed to give you both all I have heard and what I think for your mutual information. I hope you and Mr. Chase may be able to pull together and lift the road out of the mud. I think Mr. Chase can manage Littlefield and keep him from giving up to Barnett. I suppose Mr. Littlefield expects to hear from me. Tell him as much of the contents of this as you may deem proper (you and Mr. Chase), and say I will write him in a day or two, when I learn precisely what are Collinson's views, that I and Collinson are on good terms, &c., &c.

If the compromise falls through Collinson must aid to continue the road, either upon land grant bonds or upon State bonds, to be issued.

The safest thing would be to provide by law (with assent of road)
1588 that the bonds shall be delivered to the contractors. Collinson could then deal with them, and all risk of conflict avoided, assent of some State official to be necessary to contract, he could be got to recognize Chase, and in this Barnett's tail would be cut off.

Write me as often as you may deem important. I have not heard from you since I left. I desire to be kindly remembered by yourself and wife. Please give kind regards for me to all my friends in Florida —the Gambles, Potter and others.

Yours truly,
(Signed) W. G. M. DAVIS.

P. S.—I have not seen the sun for ten days, except for twenty minutes.

Tell Bettiline and Toqui I called on their friends in Havre, Ancel, Pere et Fils, and assured them Bettiline and Toqui were all right. I hope you were able to put off the cases of Bettiline.

1589 EXHIBIT C, NO. 2.—*R. E. Stilwell and James M. Ball, Examiners.*

LONDON, 28*th Dec.*, 1871.

MY DEAR SIR: I wrote Henderson a day or two since, with request to show you the letter. I also wrote Rogers, with same request. I did not know where you might be.

I am satisfied Collinson will not sign the agreement; he has not given his decision; he says he must consult his counsel, who are out of town, and will not be here until next Wednesday, when we are all to meet. McFarland wrote requiring him to sign, but Barnett had previously sent either a telegram or letter (I think both) notifying him not to sign.

He is, I fear, involved with Barnett in some plan to own the stock of the road. Barnett has a contract with Collinson for sale of all bonds. This Littlefield did not tell us. This was done in New York, and Barnett expects his commissions, &c. You see he is the archdevil who is in the way of any one who will not let him steal all the road. I wrote Henderson to file bill, &c. It ought to be done, and injunction granted, and copy of all sent me to serve on Collinson; also all Barnett's contracts ought to be set aside, and the money he has got out of the road claimed back. Either this must be done or we must all submit to his demands. Barnett has his money here in hands of Baring Brothers & Co. The money he got from the sale of the bonds he got illegally, and the State has the right to compel repayment. This could be done by a stockholder, or by the railroad and the State jointly, if Littlefield could be got to agree. The money which Barnett got for the bonds is, I am told, still here. It will not do to tell Littlefield. If Collins comes here, or has any means here, I can, I think, take such proceedings against him as will compel him to disgorge. I will have a legal opinion in a day or two, and be confirmed, I think, in my views. What I want is a power of attorney to sue Collins—Hopkins & Co., and to treat
1590 with Collinson, made out with great care, signed by president and secretary, with corporate seal, and with the certificate of the secretary of State to the power of attorney, and copy of charter with like certificate; also resolution of board of directors appointing me the attorney to act in England and on the continent of Europe, &c., &c.

Collinson says he will not touch the land grant bonds. Now, I feel sure he had agreed to take them. He showed to me, but did not read to me, a paper sent by McFarland, signed by , stating the plan for building the road, reasons for making the agreement, &c., &c. This he said spoke of the land grant bonds, and then he made use of the expression that they were "worthless." If he did agree, at one time, to take them, his present attitude is attributable to Barnett. You can easily find out. You know McFarland spoke of them as being in contemplation of Collinson. He said to me, "they must not be issued until you and I have agreed on a friend; it has been submitted to Collinson." This indicated a previous understanding. Get all papers you can on the subject and send me, and also send me copy of Barnett's agreement with Collinson, and all agreements made by Barnett with Littlefield. Be careful to note all I ask for, as I write in a hurry, and do not classify.

Collinson claims he has a right to insist that the money arising from the 1,200 bonds shall be applied to build the road. I called his attention to the fact that the deed of trust so provided; he said that was correct, but he seems not to attach any importance to the deed of trust, and declined to suggest a trustee. Here you see Barnett again. McFarland wrote him Barnett was a rogue; he seemed to be offended at it, and said McFarland was too impulsive, and he regretted that he, McFarland, had taken the business of the company, as he was his (Collinson's) lawyer. I have not yet got to the point of ascertaining whether he will do anything to aid in the immediate building of the road, if the agreement falls through, nor have I discussed with him the question 1591 of the delay which will arise before a final decision can be had in the suit for the bonds. I shall reserve what I have to say until his counsel are present—Benjamin and others—who will probably sustain me. He must then show his hand, and if, as I fear, he and Barnett have a plan to place the road in a position that a sale of it must occur, he will refuse any aid and take a course that will cause the construction to stop. He does not seem to feel the slightest anxiety about its being speedily built; he did seem to be pleased to hear that it would soon be at the river. I shall, as I say, discover his views. I think I get on very well with him, have not had an unpleasant word, all is perfectly quiet and polite. I do not think he feels any great disposition to communicate with me, nor has he shown me any more than bare civility. I do not, however, pay any attention to such matters. I mean to try and make him help us if possible. He does not bear a good character here among some men of high standing, but he is well spoken of by others. I shall find out all about him through my friends.

It may be important to have the authority of the State to sue Collins and Hopkins. You can get it I suppose.

Collinson does not speak of his being at all bound to take the bonds, but as though it was optional. Yet at the same time says the proceeds must go to build the road, and that those who bought the 2,800 have a right so to provide.

I suppose Barnett made a positive contract. Of course Barnett's object was commissions. He shall never have a dime if I can help it.

If Collinson will not take the land grant bonds I think I can sell them in Germany. I do not think he would speak of them as he does were it not that he wants to refuse his assent to the agreement. I have a friend here whose agent in Hamburgh made the first negotiation to sell the first-mortgage bonds in Paris, which fell through because of the war; in case of necessity he may be able to place the bonds.

As soon as Collinson says what he will do, I will send you a cable

1592 Bayne gave me two checks, one for $278 and odd cents, and balance of $1,000 in another check. I gave this to my friend Brodie, to buy sterling and send me, but it has not reached me. I have no credit, I suppose, with Collinson, and no money; what little I had is gone, and I do not know what to do. Try and have some sent me.

You had better fix with Littlefield the matter of the agency for sale of the bonds. Yulee was to send me authority to sell his—he has not done so—he asked me to get a bid. Ask him if I must do so, and get him to send me a cable message, but as he has parted with the bonds, he will have to get me the authority from his man.

Rest assured I will do all I can to provide the means to have you paid. Collinson had found $178,000 of the bonds here, and hopes to get the rest. If I can only catch Collins here, and have the proper authority, I can get enough out of him to do some good.

I hope you and family are all well. If I can do anything for you here, et me know. I will attend to anything you may want that is in my power to do.

I am passing a dull time; the sun has not shone out but one day since I came here.

Yours, with kind regards,
(Signed) W. G. M. DAVIS.

(Endorsed:) Davis, W. G. M., London, England. December 28th, 1871. To C. L. Chase."

1593 EXHIBIT R. E. S.—*R. E. Stilwell and James M. Ball, examiners.*

In the circuit court of the United States, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, George F. Drew, governor, &c., and others.

GENTLEMEN: We are informed that a commission had been issued to Messrs. R. E. Stilwell and James M. Ball, of the city and county of New York, as commissioners, to examine orally certain witnesses to be produced before them, on behalf of the complainant in the above-entitled action, and that such examination is now pending and incomplete. Pursuant to a request this day received, you will please to take notice that we will hereafter appear and cross-examine all the witnesses for the complainant who may be hereafter produced for examination under said commission. Please give us seasonable notice of all future sessions or hearings of the commission for the purpose of taking any testimony under the said commission. 1594

Dated New York City, Feb. 8, 1879.

Yours, &c.,

BIRDSEYE, CLOYD & BAYLISS,
Solicitors for George F. Drew, governor, &c.

To R. E. STILWELL, JAMES M. BALL, esqs.,
Commissioners, &c.

JOSEPH B. STEWART, esq.,
Solicitor for Complainant.

(Endorsed:) In the circuit court of the U. S., northern district of

Florida. The Western Division of the Western North Carolina R. R. vs. George F. Drew, governor of the State of Florida, George F. Drew, governor, &c., and others. Copy notice of appearance. Birdseye, Cloyd & Bayliss, sol'rs for George F. Drew, governor, &c., 170 Broadway, N. Y. City. To Joseph B. Stewart, esq., sol'rs for complainants.

1595 EXHIBIT J. M. B.—*R. E. Stilwell and James M. Ball, examiners.*

In the circuit court of the United States for the northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., THE Florida Central Railway Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company
vs
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., THE Jacksonville, Pensacola and Mobile Railroad Company, et al.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Milton S. Littlefield, being duly sworn, deposes and says: That he is one of the defendants in the above-entitled suits; that in the 1596 month of November, 1878, he was requested to visit the office of Lucien Birdseye, 170 Broadway, New York, to see said Birdseye, in company with Charles D. Willard, who is the attorney in fact and solicitor, or claims to be such, for the defendants in this suit, called the Dutch bondholders, that is, the bonds of the State of Florida, issued under the act of January 28, 1870, and held by persons residing in Holland.

That said Willard informed this deponent that said Birdseye was retained on behalf of said Dutch bondholders, and said Birdseye also informed this deponent that he was advising with said Willard all along, and expected to be retained by said Dutch bondholders.

That subsequently thereto, and lately, in Jacksonville, Florida, said Willard informed this deponent that he, Willard, had employed and retained said Birdseye, by authority he had from Governor Drew, to cross-examine the witnesses called by Joseph B. Stewart on the part of complainants herein.

M. S. LITTLEFIELD.

Subscribed and sworn to before me this 11th day of April, 1879.

R. E. STILWELL,
U. S. Commissioner for Southern District of New York.

1597 EXHIBIT C, NO. 3.—*R. E. Stilwell and James M. Ball, examiners.*

LONDON, *Feb'y 3d, '72.*

DEAR SIR: I wrote Bayne by the China, and asked him to send you the letter I rece'd, also telegraphed him with the request to forward to you.

Collinson has not yet returned from the continent; and until he does, nothing can be done about the compromise. Collins is still here waiting.

I have employed counsel to act for the company in the chancery suit brought by Collinson against Collins; it is thought important to do so. Collins admits he has 210 bonds in his possession here, and that he deposited 800 in a bank here, subject to the order of Babcock, of N. Y., security.

He alleges that Spring holds the 190 bonds as trustee for the Wilmington Bank, but that he, Collins, has the bonds in hand. He alleges that he cannot comply with Collinson's demand for the bonds, because of the injunction in Florida and the suits in N. York. He says that Littlefield made the contract to let the bonds go for £100 per bond after he knew that Collinson was to give £138 1 10 per bond—that the £38 1 10 was to cover expenses incurred.

I think I can compel Collins to a settlement if I receive the additional authority. I wrote to Henderson to send me. (That I have answer;) but I would like to have authority to act for the State. I also rec'd money to pay counsel, &c. I cannot get a dollar from Collinson, altho, he wants me to help him in the suits he has commenced, and perhaps to take criminal action against Collins. He and I are both advised we can do so, and that such plan would be sure to compel Collins to settle; yet Collinson refuses to guaranty the expenses of a lawyer. I have employed one through my friends here, who are men of standing, and who are helping me all they can do. I wrote McFarland, and Collinson telegraphed him, to have me supplied with money to carry on our
1598 suit. Collins is aware I have nomoney, and trusts to that to get me to agree to such a settlement as he wants. He has tried to get me to act with him against Collinson. I put a veto on that; I wrote Brodie & sent telegram to be forwarded to you about money, but as my wife writes me you could not furnish her a small sum to enable her to pay expenses, I suppose my telegram is useless. All I can say is, if I fail here to save for the company not only the 1,200 bonds, but the money due by Hopkins & Co., it will be because I am not supplied with the necessary papers. I wrote Henderson to send, and money to carry on a suit or criminal action. I feel sure, and so does Collinson, that the method would be successful. McFarland does not reply to my letter either.

The terms of compromise drawn up by Collins and Collinson and submitted to me were altered by me somewhat, but my changes were not objected to. There are matters proposed by Collins which Collinson flatly refuses to agree to. He will not consent to the claim giving 190 bonds to Spring. I telegraphed Bayne about this, and got a reply of no consequence. I hope to get particulars by letter. Collinson claims things I do not think right, but yet will not refuse if a settlement can be made so as get funds at once to prosecute the work. He claims 15,000 pounds to pay his law expenses, and some money spent to "bull the stock" when bad news came from America and had a depressing effect on the bonds.

He demands that he shall have the right to take the additional issue of bonds at £138 1 10 instead of £143, as agreed on with Hopkins. He asks that he shall keep all the money here in London in his hands, and only pay it out on certificates of construction as the work progresses. He asks that he shall send over an engineer who shall be allowed to inspect the work, and whose salary shall be paid by the company out of the proceeds of sale of bonds.

Collinson refused to sign the N. Y. agreement on the ground that he was advised by his counsel that it would be illegal and dishonor-
1599 able for him to agree to let Bayne and North Carolina receive
the sums stated in the contract. He now agrees they shall do so if his demands are assented. So you see he is governed by his own interest solely, and has no regard for his obligations to the people he sold the bonds to, whom his lawyer said he owed a duty to. I do not let him see that I comprehend this. I keep all my thoughts to myself, never say a word that could offend him, and assure him of my wish to act in perfect accord with him in all things, and have been engaged with his lawyers trying to fix up the affairs.

The contract prepared, if agreed on here by Collins and myself, must go to America, Collinson says, as he will not sign it until all the other parties have done so.

The agreement prepared gives to Bayne and N. Carolina the same amounts as did that rejected by Collinson, but changes is the order of payment, so that the proceeds of first 200 bonds goes to the R. road, and so puts off the payment longer, only not reducing the amount.

Of course the company can refuse to agree to the settlement, as it will not find them unless all are bound. I fear nothing will be done unless Collins can be got to give up the 190 bonds. If I can sustain a criminal charge against him he will do so. My lawyer and Collinson think I can. I will get them.

I am out of money and in debt at my hotel, and but for my being known I should be in a bad fix. I hope to be put in funds, as I wrote to McFarland about it more than a month since.

I will telegraph if any settlement is made, and you will get it before this letter, I suppose.

Yours, with kind regards,

W. G. M. DAVIS.

1600 EXHIBIT C, NO. 4.—*James M. Ball and R. E. Stilwell, examiners.*

Before anything can be completed, the mortgage to the State, sent down by Mr. MacFarland for execution last year, must be executed and recorded in each county through which the road runs.

Also, statement of facts, and opinion by Mr. Jno. A. Henderson must be given and endorsed by the governor, that the old P. and G. bonds are no longer a lien upon the road, and all this must, positively, be done before the first of January next.

JOHN COLLINSON:

GEN: The above was just received from Collinson. You see I have made arrangements for him to advance a large amount of money, and he desires this to enable him to raise money from his Holland friends who hold the 2,800 bonds. I know John Henderson's opinion on this subject; consequently, do not hesitate to ask it of him on paper. Wish Henderson would come here.

C. L. CHASE.

DECEMBER 17TH, 1872.

(ENVELOPE.)

New York.
Dec. 23.
3 p. m.

U. S. postage,
canceled.
Three (3) cents.

GEN. M. S. LITTLEFIELD,
JACKSONVILLE,
Florida.

1601 **Exhibit C, No. 5.**—*James M. Ball and R. E. Stilwell, examiners.*

[Clews, Habright & Co., Henry Clews & Co., New York.]

11 Old Broad Street, E. C.,
London, Aug. 13, 1877.

Gen. M. S. Littlefield,
Jacksonville, Fla.:

Dear Sir: My delays are caused by an injunction of Coddington, which, as yet, I have been unable to remove. Can't do anything with new matters until old matters are out of the way; and Coddington will not *not* let loose until he is secured both for himself and Gambol, both claims amounting to $40,000. If I can get that arranged, the coast is clear, and I shall stick to until I effect the matter, if it takes all summer. One other matter; J. Cook, McCullough & Co. has been receiving some bad reports from some one unknown to me, and they decline to act. When I find some one else that will act, you must make the appointment on a telegram from me. I have tried every firm in London, and they will not act. So you see we are in bad odor over here. I am now trying to get some one to act in New York. We can't bring out a new loan with a first class firm as fiscal agents. We have agreed upon the $20,000 per mile, at six per cent., and bonds contracted at 65 per cent. gold, which will give us at present rates 748 per bond of $1,000 each; that will give $14,950 per mile net in currency.

I shall work this out, but you must be patient, for it takes time; these English are awful slow. I can't see now why the matter can't be a success unless you do some awful thing down in Florida that will knock us all up. Please keep secret what I write you; I have heard from every word I have written you thus far. Secrecy is the best road to success.

1602 I do not know as you can read this awful scratcing. But you can play the Yankee; look and guess. If you write me, direct to care Langham Hotel, London.

Respectfully,

C. L. CHASE.

P. S.—I have met the Holland syndicate, and they are ready to act as soon as I can get ready. Where is Smith and Gardner? I have not heard from them since I left New York. I would write Smith if I knew where he was.

(ENVELOPE.)

London, E. C.
6
Aug. 13, '72.

Three pence,
canceled,
(71.) Post.

New York,
Aug. 24.
Paid.

GEN. M. S. LITTLEFIE'D,
JACKSONVILLE, FLA.,
U. S. A.

1603 EXHIBIT C, No. 6.—*James M. Ball and R. E. Stilwell, examiners.*

50 OLD BROAD STREET,
London, E. C., August 30, 1872.

C. L. CHASE, Esq.:

DEAR SIR: Please obtain copies of the telegrams from General Davis; it is of much importance that we should receive them without waiting until you return to New York.

Will you be good enough to sign and return to me the enclosed note? It refers to your letter signed here to day.

People in Holland are very particular about publishing another person's letters without full authority.

Yours, truly,

JOHN COLLINSON.

1604 EXHIBIT C, No. 7.—*James M. Ball and R. E. Stilwell, examiners.*

50 OLD BROAD STREET,
London, E. C., July 11, 1872.

C. L. CHASE, Esq.:

DEAR SIR: I enclose copy of instructions handed to the Union Bank to-day on Florida coupons of January, 1872. They will be transmitted with the coupons to-day to New York. Perhaps it will be well for you to advise Reed and Littlefield, so that they may facilitate the exchange.

Yours, faithfully,

JOHN COLLINSON.

1605 EXHIBIT C, No. 8.—*James M. Ball and R. E. Stilwell, examiners.*

50 OLD BROAD STREET,
London, E. C., July 2d, 1872.

C. L. CHASE, Esq.:

MY DEAR SIR: I enclose herewith a copy of statement, as promised, of our preliminary negotiations up to the present date.

It has been necessary for me to go fully into particulars respecting all matters, so there may be no misunderstanding hereafter. It, of course, is clearly understood that the terms of the proposed settlement are in no way binding on any of us until finally approved.

Trusting to have the pleasure of seeing you to-morrow,

I am, dear sir, yours, faithfully,

JOHN COLLINSON.

1606 EXHIBIT C, No. 9.—*James M. Ball and R. E. Stilwell, examiners.*

50 OLD BROAD STREET,
London, E. C., July 3d, 1872.

C. L. CHASE, Esq.:

DEAR SIR: Referring to your assurance of to-day, that the suit commenced by General Davis, on behalf of the Jacksonville, Pensacola and Mobile Railroad Company, should be at once dismissed, and my expenses in connection therewith paid, I must point out to you that the course pursued by General Davis (admitted by you to be unjustifiable) rendered necessary the recent application to the court of chancery, on the other suit, for the order on Messrs. Kleinwort, Cohen & Co., and attendant expenses of such application.

It would be useless to renew our negotiations until the suit has been dismissed and the expenses above referred to paid.

I am, dear sir, yours truly,

JOHN COLLINSON.

I made no admissions.

C. L. CHASE.

1607 EXHIBIT C, No. 10.—*James M. Ball and R. E. Stilwell, examiners.*

50 OLD BROAD STREET,
London, E. C., July 4th, 1872.

C. L. CHASE, Esq.:

MY DEAR SIR: I shall be obliged if you will let me know, for the information of myself and friends, whether I have correctly stated below the terms of the proposals made by you, on behalf of the Jacksonville, Pensacola and Mobile Railroad Company, and other parties, for the settlement of the various questions relating to the Florida bonds:

1. All suits, either in America or England, relating to the bonds, to be dismissed, the various parties bearing their own costs, with the exception of mine, which are to be provided for as hereinafter stated.

2. All contracts heretofore entered into with me by the company, yourself, Mr. Flagg, General Davis, Hopkins & Co., and F. H. Collins, or any of them, and all contracts between any of such parties, referring to my contracts, to be canceled, and to be declared null and void.

3. The 1,200 bonds now in dispute to be disposed of as follows:

(*a*) 224 bonds to be canceled and returned to the State against an equivalent number of the railroad bonds deposited with the State, also to be canceled; these bonds representing the overissue heretofore made in respect of deficient mileage of the railway.

(*b*) 976 bonds to be handed over to me within sixty days, with an option to me to purchase the same, or any part thereof, at any time within three months from their receipt, at the price of £   , and accrued interest per bond; such bonds (if any) as remain unsold at the expiration of the term of such option to be returned to   .

(*c*) The proceeds to be applied as follows:

1608 Firstly. A sufficient amount thereof shall be deposited in trust with myself to meet the coupon due January, 1873, on all the then outstanding 8 per cent. bonds.

Secondly. A sufficient sum shall be retained by myself to pay all my legal expenses attending all suits in New York and England, in any way relating to the bonds.

Thirdly. The proceeds of bonds shall be retained by me as compensation for the losses sustained by me, by breach of the contracts entered by Collins and Hopkins & Co. on behalf the company.

Fourthly. The proceeds of bonds to be used to repay the Florida Construction Company for the money expended by them on the works of the Jacksonville, Pensacola and Mobile Railroad.

Fifthly. The balance of the proceeds of the bonds to be applied in satisfaction of the several other claims of all other creditors of the company.

4. You engage within days to obtain the execution of all persons claiming any interest in the bonds or the proceeds or against the railroad company, and all other necessary parties, to a formal agreement for effectuating the above objects.

It seems at present premature to enter into any definite arrangement with regard to the railway bonds, the material for the purpose not being before me, but I understand from you that they will be offered to me for negotiation at a reasonable price.

Yours, faithfully,

JOHN COLLINSON.

In this John Collinson changed fronts again .All the propositions are in Collinson's own handwriting.

C. L. CHASE.

1609 EXHIBIT C, No. 11.—*James M. Ball and R. E. Stilwell, examiners.*

50 OLD BROAD STREET,
London, E. C., 5th July, 1872.

C. L. CHASE, Esq.:

DEAR SIR: I enclose herewith a memorandum of the result of our negotiations of to-day, and shall be glad to hear, at your earliest convenience, such observations as you may have to make thereon.

Believe me yours, truly,

JOHN COLLINSON.

1610 EXHIBIT C, No. 12.—*James M. Ball and R. E. Stilwell, examiners.*

50 OLD BROAD STREET,
London, E. C., July 9, 1872.

C. L. CHASE, Esq., *Florida*:

DEAR SIR: I enclose what I understand to be your definite proposal on this subject.

If correct please return copy to me, signed by yourself, with accompanying letter, which will go to my friends and receive their and my serious consideration at once.

Yours, faithfully,

JOHN COLLINSON.

1611 EXHIBIT C, No. 13.—*James M. Ball and R. E. Stilwell, examiners.*

FLORIDA STATE LOAN, AND JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD.

Memorandum of proposal, herewith submitted for consideration, respecting all outstanding differences.

Preliminary statement.

On the 1st July, Mr. C. L. Chase called on Mr. Collinson, at his office, and proposed to submit to him an arrangement for a settlement of the outstanding difficulties.

Mr. Collinson informed Mr. Chase that it was useless to discuss any question of settlement until the funds to meet the present coupons, due this day, be provided, and the opposition of the company, through their accredited agent, Gen. Davis, to the application of the funds in the hands of Messrs. Kleinwort, Cohen & Co. for that purpose be withdrawn.

Mr. Chase immediately assented to this view, and asserted that both Mr. Bayne and himself were of opinion, and had been so before leaving New York, that, under all circumstances, the coupoun money should be paid out of the funds referred to. He then stated that Mr. Collinson might rely upon the fact that either this day, or on the following day at the latest, the coupon funds should be released, to meet the interest as heretofore.

On this clear understanding, without which Mr. Collinson assured Mr. Chase it would only prejudice his case, either to submit to him or to the Dutch bankers the proposition relating to the other matters of interest between them, he assented to a preliminary opening of the matter, and received a brief outline of what was proposed by Mr. Chase, and which appears more in detail in the proposition of the following day.

1612 In the afternoon Mr. Chase called again with Mr. Bayne, when both gentlemen stated most emphatically that under all circumstances the coupons would be paid over, either that evening or the following morning at the latest, and that thereafter they would place a detailed proposition of settlement before Mr. Collinson.

On the morning of July 2d Mr. Chase called on Mr. Collinson and assured him that it was only through the absence, at the court of common pleas, of Mr. Holland, the solicitor of Messrs. Kleinwort, Cohen & Co., that the coupon has not been paid the previous afternoon, and that General Davis had with his solicitor gone to see that gentleman, and that every moment he expected receiving advices that the funds were now at Mr. Collinson's disposal.

Mr. Chase then reopened the question regarding the settlement, and placed before Mr. Collinson the proposition, of which an abstract is hereto appended.

Shortly after, no advices having been received of the payment of the coupon money, Mr. Chase left to see the matter consummated, and returned shortly, accompanied by Mr. Bayne, and handed to Mr. Collinson the requisite authorities for the payment of the coupon. After which Mr. Collinson assured Messrs. Chase and Bayne that if, on the examination of the details, their scheme appeared feasible, he would endeavor to assist them in having it carried out, and for that purpose would submit the same forthwith to his friends in Holland; without their consent, however, nothing could be finally settled in the premises.

PROPOSED SETTLEMENT.

1. All litigation to be stopped; the various parties to the suits to bear their own costs.

2. Mr. Collinson to surrender all benefit from the contracts heretofore entered into with Hopkins & Co., or railroad company.

1613 3. 224 bonds to be returned to State for cancellation.

4. 976 bonds to be applied as follows:
A to pay Florida Const. Company.
B to pay all other creditors.

5. That first mortgage 7 per cent. gold bonds, at rate of $16,000 per mile, be placed on the entire railroad, the proceeds to be applied as follows:
A to retire issued State bonds.
B to complete construction of road.

6. The negotiation of the railroad bonds to be offered to Mr. Collinson at the price of, say, 65 per cent.

1614 EXHIBIT C, No. 14.—*R. E. Stilwell and James M. Ball, examiners.*

FLORIDA STATE LOAN AND JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD.

Memorandum of compromise proposed by Mr. C. L. Chase to settle all outstanding claims and differences:

1. All suits, either in America or England, relating to the bonds to be dismissed, the various parties bearing their own costs.

2. All contracts heretofore entered into with Mr. Collinson by the company, Mr. Chase, Mr. Flagg, General Davis, Hopkins & Co., and F. H. Collins, or any of them, and all contracts between any of such parties referring to Mr. Collinson's contracts to be cancelled and to be declared null and void.

3. The 1,200 bonds now in dispute to be disposed of as follows:

(*a*) 224 bonds to be cancelled and returned to the State against an equivalent number of the railroad bonds deposited with the State also to be cancelled. The bonds representing the over issue heretofore made in respect of deficient mileage of the railway.

(*b*) 974 bonds to be placed in trust at the Union Bank of London, subject to delivery to Mr. Collinson on the conditions after mentioned, and against payment of an advance thereon of $160,000. These bonds to be so deposited within sixty days from date hereof, with an option to Mr. Collinson to purchase the same, or any part thereof, at any time within three months from their receipt at the price of £130, and accrued interest per bond. Such bonds (if any) as remain unsold at the expiration of the term of such option to be returned to the order of the railroad company.

1615 (*c*) The proceeds to be applied as follows:

Firstly. A sufficient amount thereof shall be deposited in trust with Mr. Collinson to meet the coupon due January, 1873, on all the then outstanding 8 per cent. State bonds.

Secondly. The proceeds of forty bonds shall be retained by Mr. Collinson as compensation for the losses sustained by him by breach of the contracts entered into by Collins and Hopkins & Co., on behalf of the company.

Thirdly. The proceeds of the balance of bonds to be used to repay the Florida Construction Company for the money expended by them on the works of the Jacksonville, Pensacola and Mobile Railroad, and in satisfaction of the several claims of all other creditors of the company.

Fourthly. Mr. Chase will, within sixty days, obtain the execution by all persons claiming any interest in the bonds or the proceeds, or against the railroad company, and all other necessary parties, of a formal agreement for effectuating the above objects; otherwise this agreement to be null and void.

1616 **EXHIBIT C, No. 15.**—*James M. Ball and R. E. Stilwell examiners.*

JULY 5*th*, 1872.

1. All suits, either in America or England, relating to the bonds, to dismissed, the various parties bearing their own costs, with the exception of mine, which are to be provided for as hereinafter stated.

2. All contracts heretofore entered into with me by the company, yourself, Mr. Flagg, General Davis, Hopkins & Co., and F. H. Collins, or any of them; all contracts between any of such parties referring to my contracts to be cancelled and to be declared null and void.

3. The 1,200 bonds now in dispute to be disposed of as follows:

(*a*) 224 bonds to be canceled and returned to the State against an equivalent number of the railroad bonds deposited with the State also to be canceled; these bonds representing the overissue heretofore made in respect to deficient mileage of the railway.

(*b*) 974 bonds to be placed in trust at the Union Bank of London, subject to delivery to me on the conditions after mentioned and against payment of $160,000. These bonds to be so deposited within sixty days from date hereof, with an option to me to purchase the same or any part thereof, at any time within three months from their receipt, at the price of £130 and accrued interest per bond; such bonds, if any, as remain unsold at the expiration of the term of such option to be returned to the order of the railroad company.

(*c*) The proceeds to be applied as follows:

Firstly. A sufficient amount thereof shall be deposited in trust
1617 with myself to meet the coupon due January, 1873, on all the then
outstanding eight per cent. State bonds.

Secondly. A sufficient sum shall be retained by myself to pay all my legal expenses attending all suits in New York and England, in any way relating to the bonds.

Thirdly. The proceeds of 38 bonds shall be retained by me as compensation for the losses sustained by me by breach of the contracts entered into by Collins and Hopkins & Co., on behalf of the company.

Fourthly. The proceeds of bonds to be used to repay the Florida Construction Company for the money expended by them on the works of the Jacksonville, Pensacola and Mobile Railroad.

Fifthly. The balance of the proceeds of the bonds to be applied in satisfaction of the several claims of all other creditors of the company.

4. You will within sixty days obtain the execution of all persons claiming any interest in the bonds or the proceeds or against the railroad company, and all other necessary parties, to a formal agreement for effectuating the above objects, otherwise this agreement to be null and void.

1618 EXHIBIT C, No. 16.—*James M. Ball and R. E. Stilwell, examiners.*

FLORIDA STATE LOAN AND JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD.

Memorandum of compromise proposed by Mr. C. L. Chase, to settle all outstanding claims and differences.

1. All suits, either in America or England, relating to the bonds to be dismissed, the various parties bearing their own costs.

2. All contracts heretofore entered into with Mr. Collinson by the company, Mr. Chase, Mr. Flagg, General Davis, Hopkins & Co., and F. H. Collins, or any of them, and all contracts between any of such parties referring to Mr. Collinson's contracts, to be cancelled, and to be declared null and void.

3. The 1,200 bonds now in dispute to be disposed of as follows:

(*a.*) 224 bonds to be cancelled and returned to the State, against an equivalent number of the railroad bonds deposited with the State also to be cancelled; these bonds representing the overissue heretofore made in respect of deficient mileage of the railway.

(*b.*) 974 bonds to placed in trust at the Union Bank of London, subject to delivery to Mr. Collinson on the conditions after mentioned, and against payment of an advance thereon of $160,000. These bonds to be so deposited within sixty days from date hereof, with an option to Mr. Collinson to purchase the same or any part thereof at any time within three months from their receipt, at the price of £130 and
1619 accrued interest per bond; such bonds (if any) as remain unsold at the expiration of the term of such option to be returned to the order of the railroad company.

(*c.*) The proceeds to be applied as follows:

Firstly. A sufficient amount thereof shall be deposited in trust with Mr. Collinson, to meet the coupon due January, 1873, on all the then outstanding eight per cent. State bonds.

Secondly. The proceeds of 40 bonds shall be retained by Mr. Collinson as compensation for the losses sustained by him by breach of the contracts entered into by Collins and Hopkins & Co., on behalf of the company.

Thirdly. The proceeds of the balance of the bonds to be used to repay the Florida Construction Company for the money expended by them on the works of the Jacksonville, Pensacola and Mobile Railroad, and in satisfaction of the several claims of all other creditors of the company.

4. Mr. Chase will within sixty days hand to Mr. Collinson a written certificate from Messrs. Barlow, Larocque and MacFarland that he has obtained releases in favor of the railroad company from all parties having any legal claim against the proceeds of the sale of the State bonds, or who shall have any claim which in law will have priority before the first mortgage bonds of the railroad company as a lien on the property of the company, otherwise this agreement will be null and void.

1620 EXHIBIT C, No. 17.—*James M. Ball and R. E. Stilwell, examiners.*

Florida State bonds.

50 OLD BROAD ST., LONDON, E. C.,
Dec. 30th, 1871.

W. W. MACFARLAND, Esq.:

MY DEAR SIR: After careful perusal of the "compromise" forwarded to me by you, regarding this matter between the Western Division of the Western North Carolina Railroad Company, the Jacksonville, Pensacola and Mobile Railroad Company, D. H. Ambler, F. H. Flagg, and C. L. Chase, L P. Bayne, L. B. Bayne & Co., and S. W. Hopkins & Co., to which I am requested to give my consent, I am compelled to decline the same on the following grounds:

1st. The "compromise" proposes that the proceeds of the sale of the 1,200 bonds therein referred to, shall be principally applied in the payment of claims of certain parties against the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company.

2nd. The constitution of the State authorizing the issue of these bonds explicitly stated that they should be used for perfecting public works.

3d. Section 4 of the act of the legislature, approved June 24th, 1869, empowered the governor to issue these bonds, for the purpose of further aiding in the speedy construction of the road.

4th. Section 9 of the act, approved June 28th, 1870, authorized the governor to deliver the said bonds to aid in completing, equipping, and maintaining the road.

5th. Frank H. Collins, for and on behalf of the firm of S. W.
1621 Hopkins & Co., in contracts entered into by him with me, on the
23d of March, 1871, and as a modification on the 26th of May, 1871, agreed that the proceeds of the sale of the last 1,200 bonds should be used for the construction of 100 miles of the railroad over and above the 250 miles said to have been then completed.

6th. By a letter dated July 1st, 1871, and addressed to me by James Anderson, general superintendent of the Jacksonville, Pensacola and Mobile Railroad Company, it appeared that only 214 miles of the said road were then completed.

7th. In view of the foregoing letter, and to insure the speedy completion of the railroad to the Chattahoochie River, S. W. Hopkins & Co. signed a further contract, undertaking, out of the proceeds of the bonds then sold, to complete the railroad to the said river on or before the 1st of August, 1872.

Commenting on the above points, I must first recall the fact that the purchasers of the bonds, looking to their faces, understood they were issued in pursuance of, and in accordance with, the tenor of the constitution and acts, viz: "for completing the public works," "further aiding in the speedy construction of the road," and "completing, equipping, and maintaining the road," whereas the "compromise" proposes to divert the proceeds to the payment of certain old claims against the stockholders of the railway company.

The next fact is that, to further secure the bondholders, the fiscal agents of the railroad company and State, as an inducement to them to take the bonds, agreed to the application of the proceeds of their sale to a certain specified extension of the railroad.

Also, the "compromise," providing in no manner for any material, if any, extension of the road, requires the negotiation of an amount of bonds which would constitute an overissue representing an aggregate of 250, whereas only 214 miles are completed.

1622 I am, consequently, asked to consent to a "compromise" which is—

Firstly. Illegal as regards the State, being a misapplication of the State aid.

Secondly. An abandonment of contracts beneficial to the bondholders entered into by the fiscal agents of the railroad company and the State.

Thirdly. An overissue of bonds without the redeeming feature of their proceeds being held in trust for proper application in constructing the requisite length of road.

And generally: An arrangement by which the bondholders will diminish their security by increasing the obligations of the road and State without any equivalent therefor.

In conclusion, I would suggest that if there are any just claims against the stockholders of the railroad company, the policy of the claimants in their own interests should be the same as that of the bondholders, viz, to faciliate and not retard the completion of the road, by which means there is little doubt but what the earnings would speedily satisfy their claims.

Yours, faithfully,
(Signed) JOHN COLLINSON.

1623 Exhibit C, No. 18.—*James M. Ball and R. E. Stilwell, examiners*

50 Old Broad Street,
London, E. C., July 26th, 1872.

C. L. Chase, Esqr.:

Dear Sir: I beg to inform you that the following are the numbers of the Florida State bonds deposited with the London and County Bank:

Nos. 3001 to 3178.
" 1727 to 1735.
" 1737.
" 3179 to 3200.

Yours, faithfully,
JOHN COLLINSON.

1624 Exhibit C, No. 19.—*James M. Ball and R. E. Stilwell, examiners.*

Appendix F.

An agreement made the twenty-ninth day of August, one thousand eight hundred and seventy-two, between Converse L. Chase, of the first part, the said Converse L. Chase and Francis H. Flagg, as trustees under an indenture dated the second of October, one thousand eight hundred and seventy-one, of the second part, and John Collinson of the third part.

Whereas the said Converse L. Chase and the said John Collinson have consented to arrange the matters in dispute between the said John Collinson and the Jacksonville, Pensecola and Mobile Railroad Company and other parties, partly upon the terms and conditions embodied in a certain decree of the court of chancery, dated the second of August, one thousand eight hundred and seventy-two, and made in the suit of Collinson versus Collins, 1871, Number 178, and partly upon the terms and conditions hereinafter stated; and whereas it has been alleged by the said Converse L. Chase and Francis H. Flagg that the said company intend shortly to issue and negotiate bonds of the said company to the extent of twenty thousand dollars ($20,000) per mile, more or less, and out of the proceeds of such bonds to retire the bonds of the State of Florida heretofore issued and sold in aid of the said railroad, and to complete the construction of the said railroad: Now, therefore, it is agreed between the parties as follows:

1. The said Chase hereby undertakes, immediately after his arrival at New York, to obtain and forward to the said Collinson an official docu-

ment from the governor of the State of Florida, signed also by the attorney-general and the secretary of state, and attested by the English and Dutch consuls at New York, to the effect that the balance of the original issue of four thousand eight per cent. State bonds, in aid of
the Jacksonville, Pensacola and Mobile Railroad, over and above
1625 two thousand eight hundred heretofore sold, are now to be dealt
with in the manner following, namely: Two hundred and twenty-four thereof, numbered, to be returned to the State for cancellation, and nine hundred and seventy-six thereof, numbered, shall belong to the Jacksonville, Pensacola and Mobile Railroad Company, and be sold by them for the purposes of the company, the said nine hundred and seventy-six bonds being legally and properly issued and forming, with the two thousand eight hundred bonds heretofore sold, an equal obligation on the State of Florida.

2. The said Chase shall in every month, beginning in the month of November, one thousand eight hundred and seventy-two, cause to be made out and transmit to the said John Collinson the gross and net traffic returns of the said railroad for the entire month next preceding the month in which such return shall or ought, under these presents, to be made.

3. The said Converse L. Chase will, within ninety days from the date of said decree, hand to the said John Collinson a written certificate from Messrs. Barlow, Larocque and MacFarland that all parties having any claim, legal or equitable, against the proceeds of the sale of the State bonds, or who shall have any claim which in law or equity will have priority over the first mortgage bonds of the railroad company, as a lien on the property of the company, have respectively released such claims.

4. The said Converse L. Chase shall, on or before the thirtieth of September, one thousand eight hundred and seventy-two, hand to the said John Collinson a written certificate from the National Trust Company of New York (now the New York State Loan and Trust Company), that the two hundred and twenty-four State and railroad bonds mentioned in the said decree have been duly cancelled in accordance with the provisions thereof.

5. The said Converse L. Chase undertakes that until the said John Collinson shall have exercised the options reserved to him by the terms
of the said decree of purchasing the bonds therein mentioned, or
1626 until the period of such option shall have expired, no other
bonds of the State of Florida shall be issued or offered for negotiation in aid of the said railroad.

6. The said Converse L. Chase, on behalf of and as agent for the said railroad company, and as trustee under the said deed of the second of October, one thousand eight hundred and seventy-one, further agrees, and the said Francis H. Flagg, as trustee under such deed, also agrees that in the event of the company issuing bonds in accordance with their heretofore mentioned intention (and each of which bonds shall be for one thousand dollars ($1,000) gold, and bearing interest at the rate of seven per cent. per annum (also in gold), such bonds shall forthwith be deposited in a bank in London, to be approved by the said John Collinson, to be delivered to him from time to time upon his request, and upon his payment for the same upon the terms hereinafter mentioned, and the said John Collinson shall have the option of purchasing all or any of the same bonds at the price for each bond of the equivalent in sterling in England of six hundred and fifty dollars, gold, and accrued interest on the date of delivery to the said John Collinson of such

bonds; such option shall last so long as the said John Collinson shall take during every six calendar months from the date of the receipt by him of notice of such deposit as aforesaid, not less than one thousand bonds, at such price as aforesaid.

7. The said Converse L. Chase, on behalf of and as agent for the said railroad company, and as such trustee as aforesaid, undertakes, and the said Francis H. Flagg, as such trustee aforesaid, also undertakes, that no bond or bonds which may be issued by the said railroad company, as mentioned in the last preceding clause, shall be dealt with except on the terms of this agreement.

C. L. CHASE,
And on behalf of F. H. FLAGG.
JOHN COLLINSON.

TUESDAY, *April 15th*, 1879.

1627 MILTON S. LITTLEFIELD, a witness called on the part of compainant, being duly sworn and examined, says:

Q. 1. State your name, age, residence, and occupation.

A. Name, Milton S. Littlefield; age, forty-eight years; residence, Jacksonville, Florida; occupation, president of the Jacksonville, Pensacola and Mobile Railroad Company.

Q. 2. How long have you been president of said railroad company?

A. Since August, 1869.

Q. 3. Do you or do you not know the Western Division of the Western North Carolina Railroad Company, the complainant in this action; and, if yea, how long have you known the same?

A. I do, and have known it since its organization, in 1868.

Q. 4. Were you, or were you not, at any time connected with said company, and, if yea, in what capacity?

A. I was president of said company from about October, 1869, to October, 1870.

At request of the witness, his further examination is adjourned till to-morrow morning, April 16, 1879, at 12 o'clock, to enable him time to examine books and papers.

WEDNESDAY, *April 16th*, 1879.

Present, Joseph B. Stewart, esq., counsel for complainant.

Witness LITTLEFIELD'S examination continued:

Q. 5. Within your knowledge, did or did not the said company (which, for brevity and certainty, will hereafter be called the North Carolina Company, in the course of this examination) receive any
1628 bonds from the State of North Carolina, and, if yea, please state, to the best of your knowledge and recollection, to what amount and for what purpose?

A. It came to my knowledge that the State of North Carolina issued to said company a little over six millions, par value, of bonds for the purpose of building its road.

Q. 6. Do you, or do you not, know in what manner said bonds were disposed of, and, if yea, please state, to the best of your recollection, by and to whom?

A. A great portion of them, if not all, were sold by Messrs. Soutter & Co., bankers in the city of New York, and the proceeds thereof placed to the credit of said company.

Q. 7. Were, or were not, the proceeds of said bonds, or any portion thereof, used in the purchase of stock or bonds of or in any railroad or railroads in the State of Florida, and, if yea, please state what road or roads, to the best of your knowledge, information, and belief?

A. George W. Swepson, late president of said company, expended about $500,000 in the first mortgage bonds of the Pensacola and Georgia and Tallahassee Railroad Companies, and about $130,000 in stock of the Florida Central Railroad Company, and he has informed me that the money so expended was from the proceeds of said State bonds.

Q. 8. Was there, or was there not, at any time within your knowledge, a demand made on said Swepson by said North Carolina Company for the refunding of its moneys so used and appropriated, and, if yea, please state, to the best of your knowledge and recollection, when such demand was made?

A. A demand was made sometime in the forepart of April, 1870, upon Mr. Swepson for the money.

Q. 9. Please look at the paper now shown you, a copy of which is made part of this question, marked L, No. 1, and state what knowledge you have, if any, of said paper, and for what purpose the same was made and executed.

A. I know that that paper was executed 16th April, 1870; the
1629 purpose of its being, as the paper itself expresses, to secure to
said company the payment of the money expended by George W.
Swepson, as stated in the paper.

Q. 10. Were, or were not, the terms and conditions of said paper, Ex. L, No. 1, complied with and the payments made to the North Carolina Company, as therein provided?

A. It was not complied with entirely; to the best of my recollection less than $100,000 was paid on said contract, or about $100,000.

Q. 11. Referring again to said paper of the 16th April, 1870, was there, or was there not, at the time of the execution of the same, any agreement or understanding between yourself and said Swepson, as presidents of the Florida Central and the Jacksonville, Pensacola and Mobile Railroad Companies, and said North Carolina Company, that you and Swepson, of the said companies of which you were presidents, were constituted the agents, servants, or representatives, to act for said North Carolina Railroad Company in the management of said Florida railroads?

A. No, sir; there was no such agreement or understanding; the question was not even discussed; there was but one question presented, and that was how the said North Carolina Railroad Company should recover back the money received by George W. Swepson for the sale of its bonds.

Q. 12. By further referring to said paper, it provides that, "Whereas, The said Littlefield has received authority from the State of Florida and the said several railroad companies to receive bonds to be issued by and for account of said several railroad companies, which bonds are to be exchanged for the bonds of the State of Florida, to be issued for the purpose of aiding the finances of said railroad companies;" will you please state whether or not either of the said bonds mentioned, or a specimen of the same, or the law authorizing the issue thereof in said agreement, were or were not present, considered, or discussed by and between yourself and said Swepson and the parties representing said North Carolina Company?

1630 A. The law authorizing the issue of the bonds had been approved, and I had a certified copy of it with me; there were no bonds, or a copy thereof, proposed to be issued by the State, present at the time; the same were not seen, considered, or discussed by the parties at that time.

Q. 13. Did or did not the said North Carolina Railroad Company, or any of its officers, agents, or representatives in any manner, undertake to assume the authority to sell, vend, or dispose of, or to aid in the selling, vending, or disposing of the said bonds of the State of Florida, mentioned in the said paper of the 16th April, 1870?

A. Not to my knowledge.

Q. 14. Was or was not said North Carolina company, or any of its agents or representatives, at any time or in any manner, invested with power or authority to sell or dispose of said Florida State bonds?

A. Not to my knowledge, excepting such authority as may have been given in that agreement entered into between N. W. Woodfin and myself as president of the Jacksonville, Pensacola and Mobile Railroad Company, executed and delivered in London, England, on the 10th day of November, 1870, and my letter of the same date to Messrs. S. W. Hopkins & Co., which I make part of my answer, marked L, No. 2.

Q. 15. Such letter speaks of the delivery of Florida eight per cent. gold bonds, to the number of eight hundred, to the credit of Nicholas W. Woodfin, chairman of the commissioners appointed by the legislature of North Carolina; will you please state whether or not said eight hundred bonds, or any portion of them, were or were not placed with Messrs. Hopkins & Co. to the credit of said commissioners; and, if yea, please state the time and manner in which the same was done?

A. I have no knowledge upon the subject, except that I gave the order to have them delivered on the 16th day of November, 1870; on the same date Messrs. S. W. Hopkins & Co. notified said Woodfin
1631 that the bonds would be held for said company, but no bonds
were present in the room when the order was given and accepted, and none were shown to Mr. Woodfin at that or any other time, to my knowledge or belief, and subsequently Mr. Hopkins informed me that the bonds to be placed to the credit of said North Carolina company were numbered above 3,000, and there were no bonds of the State of Florida numbering above 3,000 then issued.

Q. 16. You have spoken of the purchase, by Geo. W. Swepson, of certain bonds of the Pensacola and Georgia and Tallahassee Railroad Company, with moneys belonging to the North Carolina Railroad Company; do you know, and if yea, will you please state in what manner said bonds were used or disposed of by said Swepson, and the par value and amount thereof, to the best of your knowledge and recollection?

A. They amounted to about nine hundred and sixty thousand dollars par value, and about twelve thousand accrued interest thereon; they were delivered to Franklin Dibble and associates, according to the terms of an agreement, March 26th, 1869.

Q. 17. Please look at the paper now shown you, and referred to as part of this question, marked L, No. 3, which commences:

"Whereas at a sale of the trustees of the internal improvement fund of the State of Florida, on the 20th day of March, 1869, of the Pensacola and Georgia and Tallahassee Railroads, F. Dibble, on behalf of himself and his associates, became the purchasers thereof, bidding for the Pensacola and Georgia Railroad $1,220,000, and for the Tallahassee Railroad $195,000. And whereas Geo. W. Swepson is the holder of a large amount of the first mortgage bonds of the Pensacola and Tallahassee Railroad Companies," etc.

"Dated March 26th, 1869.

(Signed) "FRANKLIN DIBBLE, [L. S.]
"*For himself and Associates.* [L. S.]
"GEO. W. SWEPSON. [L. S.]

"Witnesses:
"M. D. PAPY.
"A. R. MEEK."

1632 and state whether or not the same, to the best of your knowledge, is or is not the original agreement pursuant to which said Swepson used and appropriated the said bonds so purchased with the money of the North Carolina Railroad Company?

A. To the best of my knowledge I should say this is the original agreement; I did not see it executed, but I am familiar with the handwriting of all of the signing parties, and I say that the signatures to the same are in the proper handwriting of said Franklin Dibble and Geo. W. Swepson, A. R. Meek and M. D. Papy, and I understand the bonds here referred to were purchased by Mr. Swepson with the money of said North Carolina Railroad Company.

Q. 18. Besides the said $960,000, or thereabouts, described in said agreement, do you or not know of any other consideration; and if so, what and by whom paid or used in the purchase of said Pensacola and Tallahassee Railroad?

A. I understand that this is the only consideration within my knowledge.

Q. 19. Please look at the paper now shown you, and referred to as part of this question, marked L, No. 4, purporting to be a deed of conveyance and trust, signed and delivered by F. Dibble, for himself and associates, to Geo. W. Swepson, dated 22d of April, 1869, and state what, if anything, you know about said deed of trust.

A. This is the original deed of trust executed by Franklin Dibble, for himself and associates, to secure Geo. W. Swepson for the moneys he expended in the purchase of the said bonds of the Pensacola and Tallahassee Railroad Companies, and for all expenses, commissions, interest, attorneys' fees, and $150,000 profits on the investment, and to pay the unpaid purchase money to the trustees of the internal improvement fund for about $460,000.

Q. 20. By the terms of said trust deed, it is provided that an act of incorporation shall be obtained from the legislature of Florida, consisting or to consist as incorporation of said F. Dibble and his associates, in which the rights and interests of said Swepson shall be guarded and provided for in a manner mentioned in said deed; will you please state whether or not such act of incorporation was obtained? 1633

A. Such act was obtained.

Q. 21. Will you now please look at the bill of complaint filed in this cause respecting the Jacksonville, Pensacola and Mobile Railroad Company, at the paper marked Schedule D, page 63, headed: "An act for the relief of Franklin Dibble, A. Huling, E. M. Cheney, and their associates, purchasers of the railroad from Tallahassee to St. Marks, and of the railroad from Quincy to Lake City, and incorporating the Tallahassee Railroad Company," and approved June 24th, 1869, and state whether or not the same, to the best of your knowledge and belief, is a correct copy of the act incorporating the said F. Dibble and his associates?

A. I have looked at said paper, and believe it to be a copy of said act.

Q. 22. The sixth section of said act authorizes said Tallahassee railroad thereby incorporated to issue bonds subject to the following condition and provision namely: "Provided, that any deed of trust, mortgage, conveyance, bond or bonds, or security which may have been executed, made, created, or contracted for as a lien on said railroad or otherwise, by said Franklin Dibble, in behalf of himself or associates, prior to the passage of this act, shall be valid and affectual to all intents, either at law or in equity, as a lien or mortgage or security on said railroad, as if the same had been made by virtue of this act, and shall in nowise be affected by any provision thereof;" will you please state if you know, and if yea, what deed of trust or conveyance said provision referred to or was intended to cover?

A. The deed of trust mentioned above, dated the 22d day of April, 1869.

Q. 23. What relation, if any, did you have or hold to said act of incorporation, or the said Tallahassee Railroad Company when incorporated?

1634 A. I secured the passage of the act of incorporation, and subsequently became president of the company when incorporated; the first president was F. Dibble.

Q. 24. After said act of incorporation of the Tallahassee Railroad Company, and pursuant to said agreement of the 26th of March, 1869, and said deed of trust of 22d April, 1869, did or did not said company deliver any bonds to said Swepson? and, if yea, please state to the best of your knowledge and recollection the date and amount thereof.

A. Under said act of incorporation, the Tallahassee Railroad Company organized, and elected Franklin Dibble its president, and under the authority of the sixth section of said act, and in pursuance of the provisions of said deed of trust of the 22d of April, 1869, and of said contract of the 26th day of March, 1869, as modified by agreement between the same parties in August, 1869, a deed of trust was executed and delivered to me for Geo. W. Swepson by Franklin Dibble, said president, covering the Pensacola and Georgia and the Tallahassee Railroad Companies, as sold and purchased on the 20th day of March, 1869. The trustees named therein were Stewart L. Woodford, Bazelia G. Worth, and Darius R. Mangam. Under said deed of trust fifteen hundred bonds, of one thousand dollars each, were signed by said Dibble, president, and delivered at the time of the delivery of said deed of trust.

Q. 25. Did you or did you not deliver said bonds to said Swepson?

A. I delivered said bonds to Geo. W. Swepson.

Q. 26. Do you or do you not know the locality and termini of the Florida Central Railroad Company and the Jacksonville, Pensacola and Mobile Railroad Company? and if yea, please describe the same to the best of your recollection.

A. I do know the locality and termini of the railroads of each of said companies: The Florida Central runs from Jacksonville to Lake City in
the State of Florida, and is sixty miles in length. The eastern
1635 terminus of the Jacksonville, Pensacola and Mobile Railroad is
at Lake City, and is constructed as far west as the Chattahooche' River.

Q. 27. Were you or were you not a director and stockholder of said Florida Central Railroad Company in the year 1870, and subsequently thereto?

A. I was a director and stockholder in the Florida Central Railroad Company in the year 1870, and still am.

Q. 28. Was there or was there not at any time within your knowledge a consolidation of the road of said Florida Central Railroad Company with the road of said Jacksonville, Pensacola and Mobile Railroad Company?

A. The Florida Central Railroad Company never consolidated with the Jacksonville, Pensacola and Mobile, or any other railroad company whatever.

Q. 28. Please look at the book now shown you, at page 1, headed Augusta, Ga., August 13th, 1868, which recites that, "a meeting of the stockholders in the Florida Central Railroad Company was held" on that day, and from thence to page numbered 51, and state whether or not you know said book; and if yea, state what it is to the best of your knowledge and information.

A. I have examined said book, and recognize it as the original record book of the acts and proceedings of the stockholders and directors of the Florida Central Railroad Company from its organization to the 27th day of May, 1876.

Further examination of this witness is adjourned to Thursday, April 17th, 1879, at 11 a. m.

THURSDAY, *April 17th*, 1879—11 a. m.

Present, Joseph B. Stewart, esq., counsel for complainants.

Q. 29. You have stated that you were a stockholder and direc-
1636 tor in the Florida Central Railroad Company in the year 1870,
and subsequently thereto; will you now please look at the paper made part of the bill filed in this cause, in respect to the Florida Central Railroad Company, marked Schedule B, headed as follows: "No. 501," in the upper left hand corner, and "$1,000" in the upper right hand corner, and which reads:

"UNITED STATES OF AMERICA,
" *State of* (Florida coat of arms) *Florida :*

"*Bond of the Florida Central Railroad Company.*

"Know all men by these presents, that the Florida Central Railroad Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars," &c.,

and purporting to be dated the first day of January, in the year eighteen hundred and seventy, and signed "George W. Swepson, president," and "H. H. Thompson, treasurer," and state what, if anything, you know about the object and origin of said paper.

A. This paper is a copy of a bond pretended to have been issued by the Florida Central Cailroad Company; I had the blanks printed in the city of New York about the month of March or April, 1870; they were taken to the St. Nicholas Hotel, in the city of New York, and signed by H. H. Thompson, and from thence were taken by me to Washington City and delivered to George W. Swepson, who was then president of the Florida Central Railroad Company, and by him signed Sunday, April 17, 1870, after which, I, as his messenger, took them to Tallahassee, Florida, and delivered them to Edward Houstoun, in accordance with the tenor and effect of an understanding and agreement entered into between the said Houstoun, Swepson, and myself in the month of August, 1869, in the City of New York, which was subsequently reduced to writing between said Houstoun and myself.

1637 Q. 30. You have stated that the object for which said bonds were issued was pursuant to an agreement between Swepson, Houstoun, and yourself, entered into in the month of August, 1869, and subsequently reduced to writing between said Houstoun and yourself; will you now be so good as to look at Schedules C, D, and E, now shown you, forming part of the bill of complaint filed in this cause respecting the Florida Central Railroad Company, Schedule C, being dated "Tallahassee, Florida, the thirteenth day of May, A. D. 1870," signed "E. Houstoun [seal], M. S. Littlefield [seal]," Schedule D being signed:

"In witness whereof the said parties have hereunto interchangeably set their hands and seals, this 10th day of May, A. D. 1870.

"(Signed) MILTON S. LITTLEFIELD. [L. S.]
"(Signed) EDWARD HOUSTOUN. [L. S.]"

And Schedule E being signed:

"Witness our hand and seal, this the seventh day of June, A. D. 1870, at Tallahassee, Florida.

"(Signed) M. S. LITTLEFIELD. [L. S.]
"(Signed) E. HOUSTOUN. [L. S.]

"Signed, sealed, and executed in our presence:
"(Signed) CHAS. P. COLLINS.
"(Signed) J. P. SANDERSON."

And state whether or not said papers or schedules are or are not correct copies of any original papers or agreements known to you, and if yea, have you the said originals in your possession, and will you produce the same as part of this your examination?

A. I have examined said Schedules C, D, and E, and they are true and correct copies of the originals now in my possession, here present, and tender them as part of this my examination, same marked respectively Exhibit L 5, Exhibit L 6, and Exhibit L 7.

1638 Q. 31. Will you now please state the origin of said papers, for what consideration and for what purpose the same were executed respectively, to the best of your knowledge and recollection, other than the matters expressed upon their face.

A. On the 2d of August, 1869, said Houstoun came to the city of New York to settle his agency matters with George W. Swepsen, and to sell one hundred and ten thousand dollars par value of the first mortgage bonds of the Pensacola and Georgia and Tallahassee Railroad Companies, and certain lots in the city of Jacksonville, and his stock in the Florida Central Railroad Company; in the settlement of his agency with said Mr. Swepson, which was to purchase the bonds of the Pensacola and Georgia and Tallahassee Railroad Companies, there was a balance of money still in the hands of said Houstoun belonging to said Swepson of twenty-two thousand and odd dollars; said Houstoun owned, or claimed to own, one hundred and ten thousand dollars par value of the said bonds of the said Pensacola and Georgia and Tallahassee Railroad Companies, which he offered to sell to said Swepson and myself at the rate of seventy-five cents on a dollar for the face of the bonds and accrued interest, which amounted to about eighty-two thousand five hundred dollars; he also owned, or claimed to own, one hundred and thirty thousand dollars par value of the stock of the Florida Central Railroad Company, which he offered to sell for seventy-five cents on the dollar, which amounted to about ninety-seven thousand five hundred dollars. This proposition was accepted, and in payment he retained the

twenty-two thousand dollars, and I paid him thirty-five thousand dollars in cash, making a total cash payment of about fifty-seven thousand dollars, leaving due one hundred and nine thousand one hundred and forty dollars, for which the said Houstoun proposed to take George W. Swepson's drafts, accepted by me, and this was the way the matter stood when I went to Florida early in May, 1870. Mr. Houstoun then proposed to change the arrangement, to compel Mr. Swepson to pay him a commission of fifty thousand dollars, but not wishing to have it
1639 known that he had been acting as agent for said Swepson, he demanded that we should make the account so as to cover his commissions, and we purchase his stock in the Flórida Central, paying therefor a sufficient sum to cover his commissions, interest, and expenses. The account then stood about one hundred and nine thousand one hundred and forty dollars due him as by our August agreement, 1869, and to this he added sixty thousand dollars to cover said commission, interest, and expenses, but called it Florida Central stock, and upon this basis Schedule C was executed. It was also agreed at the time that he should retain the Jacksonville lots and get his pay for them from the Florida Central Company to which he was to convey the lots; after the execution of the contract, Schedule C, a difficulty arose between Mr. Houstoun and myself, I having since August 2d, 1869, purchased of Geo. W. Swepson whatever interest he had in the railroads in Florida; the difficulty was about the security for the payment of the one hundred and sixty-three thousand and seventy dollars and twenty cents; he said Houstoun demanded that he should retain in his possession and have absolute control of all bonds then proposed to be issued by the Florida Central Railroad Company as shown by Schedule B, he having said bonds in his possession as well as the stock referred to in Schedule C, and *and* to secure him such control contract marked Schedule D was executed. A few days after the signing and delivery of the contract marked Schedule D, said Houstoun again departed from the agreements, Schedules C, D, for the reason that bonds, Schedule B, were made payable to the State of Florida. He demanded that he not only have the stock of the Florida Central in his control, but that the bonds to be issued by the Florida Central Railroad Company should be made payable to bearer; hence, to overcome this difficulty contract, Schedule E was executed.

Q. 32. Referring again to said bond, Schedule B, it concludes as follows: "In witness whereof, the said company has caused this
1640 bond to be signed and attested in its behalf by its president, and its common seal affixed at its office in , this first day of January, in the year 1870." And again at the foot of said bond, under what purports to be a certificate, appears " January 1st, 1870," there being no name fixed or signed preceeding said date, as apparently intended. Do you or not know, and if yea, will you please state, why said blanks were left in said paper?

A. When the blank bonds were prepared and signed by H. H. Thompson, treasurer, and George W. Swepson, president, it was not certain where said Swepson and said Houstoun would establish the office of th company.

Q. 33. Was it or was it not intended to locate the office of said company, and fill up said blanks before said bonds were finally used.

A. When the bonds were signed as aforesaid it was the intenti Mr. Swepson, then president of said company, that before the said bonds should be used, the office of the company should be established and the consent of the holders of every share of stock of the Florida Central

Railroad Company should be obtained before the said bonds should be used, for which reason blanks were left.

Q. 34. Were or were not the stockholders consulted and their consent obtained to the issuing of said bonds before the same were signed and placed in the hands of said Houstoun as you have testified?

A. Only two or three stockholders were consulted, the rest were not; those that were consulted did not give their consent.

Q. 35. Who, if any one, in the month of April, 1870, was the duly elected treasurer of the Florida Central Railroad Company?

A. Francis H. Flagg.

Q. 36. Please look at pages 9 and 10 of the book which you have testified was and is the original record of the proceedings of the stockholders and directors of the Florida Central Railroad Company now shown you at certain proceedings of September 21st, 1868, 1641 and state whether or not you know what the same are; and if so, what the same are?

A. I do know what these proceedings are; they are the by-laws of the Florida Central Raailroad Company.

Q. 37. Were or were not said by-laws in force in and during the year 1870?

A. They were.

Q. 38. Please look again at said records at pages 22, 23, 24 and 25, which commences on page 22, under date of "Tallahassee, June 2d, 1870," headed "The stockholders of the Florida Central Railroad Company convened this day pursuant to call of the chairman at the last meeting," and at page 24, under same date, which reads, "The directors of the Florida Central Railroad Company met this day at the call of the president," &c., and state what, if anything, you know about said meeting, and the origin thereof, and whether the same was convened in the manner required by the by-laws?

A. I have examined said record at said places; the stockholders convened on the 2d day of June, 1870, as stated in said record; no previous notice was given, as the by-laws required, for said meeting; there were present but two stockholders; they were Edward Houstoun and myself; stock was transferred temporarily to A. Huling, ten shares, G. R. Foster, ten shares, and M. D. Papy, ten shares of Mr. Houstoun's stock to make up a meeting; the object of the meeting was to bring into use the bonds mentioned in Schedule B, as provided in Schedule D.

Q. 39. The fifth article of said by-laws, at page 10 of said record, to which you have testified, reads as follows: "5th. That an annual meeting of stockholders shall be held on the second Wednesday in August of each year; other meetings may be called by the president or any three stockholders by giving public notice for ten days through the newspapers." Will you please state if either the president or any three stockholders of said Florida Central Railroad Company made a 1642 call for said meeting of the 2d of June, 1870, and published the same in any newspaper as required by said by-law?

A. They did not.

Q. 40. Now, please look again at said record on page 24, purporting to be a meeting of the directors of said Florida Central Railroad Company, and state whether or not you were present at said meeting, and, if yea, state in what manner that meeting was called.

A. I was present at said meeting; the record purports to say that the directors met at the call of the president; this certainly was a mistake, as John P. Sanderson, the president of the company, was in Tallahassee at the time when said meeting purports to have been called; in fact the meeting was not called at all; directors Huling, Houstoun, Foster, Papy, and Littlefield met and passed resolutions which had just been passed at the meeting of stockholders above testified about; the above-named directors converted themselves from a stockholders' meeting into a directors' meeting; the meeting was not held at the office of the company, but at the office of M. D. Papy.

Q. 41. The resolutions purporting to have been passed and adopted at said stockholders' and directors' meetings, as recorded at pages 23 and 24 respectively of said record, direct that the Florida Central Railroad bonds, purporting to have been signed by George W. Swepson and H. H. Thompson, as therein described, "shall be placed in the hands of Edward Houstoun, for the purposes agreed upon, by an arrangement between himself and M. S. Littlefield"; do you or do you not know, and, if yea, please state what agreement was referred to between yourself and said Houstoun, as therein mentioned?

A. Agreements Schedules C and D; principally Schedule D, dated May 13th and 30th, 1870.

Q. 42. You have stated that besides being a stockholder and director of the Florida Central Railroad Company, you were likewise a director, stockholder and president of the Jacksonville, Pensacola and
1643 Mobile Railroad Company; will you please state whether there was or was not any agreement or contract of any kind entered into between said companies, verbal or written, whereby the Florida Central Railroad Company agreed to issue and deliver a thousand, or other number, of its bonds to the Jacksonville, Pensacola and Mobile Railroad Company, and whereby the last named company agreed and bound itself to receive and apply said Florida Central Railroad bonds, in any manner or for any purpose, and, if yea, please state when, how, and in what manner such agreement was made between the said two companies, and produce the record thereof, if any such exists?

A. No such contract was ever entered into between the said companies, or between any persons for them, or either of them, written or verbal.

Q. 43. Did or did not the Florida Central Railroad Company ever at any time, and, if yea, please state when and in what manner, issue, seal, sign, and deliver a thousand, or any other number, of its bonds to the Jacksonville, Pensacola and Mobile Railroad Company, and did or did not said last named company ever receive or have in its possession such bonds, or apply the same in the construction of its road, or for any other purpose?

A. No such bonds were ever issued by the Florida Central Railroad Company for the Jacksonville, Pensacola and Mobile Railroad Company; the latter company never received any bonds of any description from the Florida Central Railroad Company.

Q. 44. Please look again at the bill filed in this cause respecting the Florida Central Railroad at Schedule F, headed and dated "Tallahassee, Fla., January 11th, 1871," and signed "T. B. Coddington," which says, "Received from Edward Houstoun, esq., in trust and for his account, one thousand Florida Central Railroad Company first mortgage bonds, payable to the State of Florida, for one thousand dollars each," &c., and state, if you know, what bonds are therein mentioned, and, if yea, please state to the best of your knowledge and recollection.

1644 A. I know the bonds mentioned in Schedule F, and they are the same bonds mentioned in Schedule E and are shown by Schedule B.

Q. 45. Do you or do you not know whether said bonds were charged in the hands of said Houstoun or Coddington with the payment of any debts or obligations other than the debt to said Houstoun, as to which you have testified, and if yea, please state the same to the best of your knowledge and recollection; please give the names and amounts as far as you can remember.

A. The said bonds were charged with the payment of other debts; besides the one hundred and sixty-three thousand dollars to Edward Houstoun, there were to M. D. Papy, $16,000; R. H. Gamble, $15,000; J. P. Sanderson, $57,560; F. H. Flagg, $4,000; J. D. Wescott, jr., $3,845.33; T. W. Brevard, $50,000; Harrison Reed, governor of the State of Florida, about $300,000; T. B. Coddington, $25,000,

Q. 46. You have stated that said bonds, purporting to have been issued by the Florida Central Railroad Company, were signed by said Thompson, as treasurer, in New York, and by said Swepson, as president, in Washington City; do you or not know, and if yea, will you please state when, where, and in what manner the seal of the Florida Central Railroad Company was affixed to said bonds, if its seal was affixed thereto?

A. The seal of the Florida Central Railroad Company was affixed to said bonds at my room in Tallahassee, by Thomas J. Saunders; the seal was brought from the railroad office at Tallahassee by said Edward Houstoun and delivered to said Saunders or myself, I will not be positive which.

Q. 47. You have stated that F. H. Flagg was, at the time mentioned, secretary and treasurer of said Florida Central Railroad Company; will you please state whether or not the said seal of said company was in his custody, and whether or not he was applied to to affix the same to said bonds? and if yea, please state what, if anything, he said or did in relation thereto.

1645 A. The said Flagg was the custodian of the seal of the Florida Central Railroad Company, and he was asked to put the seal upon said bonds by Mr. Houstoun, in my presence and hearing, which said Flagg decidedly refused to do, for the following reasons as given by him: first, that there was no authority given by the law to said company to issue any such bonds and exchange them with the State; second, if there was any such law, the stockholders had not authorized or directed him to do so; third, if the stockholders should authorize and direct him to put the seal upon said bonds he would resign before he would obey it, unless Mr. Houstoun would first purchase his stock in the Florida Central Railroad Company.

The further examination of this witness is adjourned to Friday, April 18th, 1879, at 11 a. m.

FRIDAY, *April 18th*, 1879—11 a. m.

Present, counsel as before.

Witness LITTLEFIELD continues:

Q. 48. Referring again to the original record book of the Florida Central Railroad Company, at page 27 occurs the following resolution, purporting to have been adopted by a meeting of stockholders, represented to have been held at Tallahassee April 13, 1871: "Mr. Houstoun offered the following resolution: Resolved, That Edward Houstoun is authorized to place the bonds referred to in the preamble and resolution of the stockholders adopted June 2d, 1870, in the hands of S. W. Hopkins & Co., for the purposes mentioned in the said resolution, subject to the same exceptions as therein expressed with respect to the portion thereof applicable to the stock owned by other parties, and according to the same terms therein mentioned"; will you please look at said resolution, and state whether you was or was not present at said meeting? and if yea, state to what bonds said resolution referred, to the best of your recollection.

1646 A. I was not present at said meeting; the bonds referred to were the same bonds T. B. Coddington received from Edward Houstoun on the 11th day of January, 1871, as described in schedule F, heretofore testified to.

Q. 49. Calling your attention again to the purchase of the stock of the Florida Central Railroad Company by Edward Houstoun, as agent for George W. Swepson, will you please look at the paper now shown you, purporting to be a copy of a letter dated "Augusta, February 17th, 1869," addressed:

"Col. EDWARD HOUSTON, *Tallahassee:*

"DEAR SIR: Your proposition to purchase at forty dollars per share, in bills on New York at thirty days, to the stockholders of the Florida Central Railroad Company, their stock, was submitted to them yesterday, and the parties, as named in the enclosed list, have accepted your bid.

"The following persons were not present, but have no doubt they will also accept, of which I will notify you, viz: J. T. Miller, thirty shares; C. F. McCoy, cashier, sixty; and M. Wilkinson, forty.

"The stockholders in Charleston I will write to, naming your proposal; and it will be for them to notify you of their acceptance or rejection.

"For those indicated, named on the enclosed sheet as having accepted your proposition, you will please forward me drafts for their respective amounts, and to their order, and according to the arrangement I will hold their scrip until the payment of the draft, and will then transfer the stock as you may direct.

"Respectfully yours,

(Signed) "W. E. JACKSON."

and state whether or not, within your knowledge, the said letter was written and received, according to its tenor and purport; and have you at any time seen, read or had in your possession the said letter, or have you now the same; and if yea, will you produce the same as part of your examination?

1647 A. I have no personal knowledge of the writing of said letter by W. E. Jackson, or its receipt by Edward Houstoun; but I have in my possession what purports to be the original letter, and will produce the same as part of my examination, and which is marked L, No. 8; I received said letter among other papers relating to Houstoun's agency from Francis H. Flagg, who was the secretary of Mr. Houstoun.

Q. 50. Was or was not the Florida Central Railroad stock mentioned in said letter the same that was the subject of the settlement between said Houstoun, Swepson, and yourself, the 2d of August, 1869, and referred to in the schedules C, D, and E, executed between yourself and said Houstoun, to which you have testified?

A. I understand it to be the same stock.

Q. 51. Who, if any one, was president of the Florida Central Railroad Company in the years 1870 and 1871?

A. From April, 1870, to April, 1871, John P. Sanderson was president.

Q. 52. Within your knowledge, and during the year 1870, were there, or were there not, any exchange of bonds of the Jacksonville, Pensacola, and Mobile Railroad Company, for bonds of the State of Florida? and if yea, please state, to the best of your knowledge and recollection, when such exchange of bonds occurred, and what number of bonds were so exchanged at that time.

A. There was an exchange of bonds between the Jacksonville, Pensacola, and Mobile Railroad Company and the State of Florida; the exchange was made in the early part of the month of June, 1870, and the numbers were from 1 to 3000 inclusive—that is, there were 3,000 bonds of $1,000 each.

Q. 53. Will you please look at the paper now shown you, and made part of this question, marked L, No. 9, and state what knowledge, if any, you have of the origin of said paper?

A. I know this paper; it is a correct copy of the original in my possession, and I do know the origin of it.

1648 Q. 54. Will you please produce the said original paper, and make the same a part of your deposition?

A. I do produce the same, and it is marked L, No. 10.

Q. 55. Now please state the origin, why and for what purpose, and by authority of what law, if any, said paper L, No. 10, to which you have just testified, was prepared.

A. It is a paper presented by Harrison Reed, then governor of the State of Florida, for me to sign and swear to, on or about the 6th day of June, 1870; it was intended to be the authority of said governor to exchange bonds with said company under section 2d of "An act to alter and amend an act entitled an 'Act to perfect the public works of the State' (of Florida), approved June 24, 1869"; said amendatory act was approved January 28th, 1870.

Q. 56. By the terms of 2d section of said act "the governor of the State is hereby directed to deliver to the president of said company coupon bonds of the State to an amount of $16,000 for the whole line of road and length of railroad owned by or belonging to said Jacksonville, Pensacola and Mobile Railroad Company, in exchange for first mortgage bonds of said railroad company, when the president thereof shall certify upon his oath that the road, or parts of road to which he asks for exchange of bonds, is completed, and is in good running order." Will you please state whether or not you ever made, signed, and certified on oath to any such certificate as described in said act, and delivered the same to the governor of Florida?

A. I never did.

Q. 57. Do your emember, and if yea, please state, who placed the original of said paper L, No. 10, in your hands, and whether there was any changes or alterations made therein, and if so, by whom?

A. The paper was prepared by J. P. Sanderson, and by him delivered to said Harrison Reed, governor, requesting me to swear to the same, and deliver it back to him, which I declined to do, for the reason
1649 that in the original were those words: "Do certify that one hundred and fifty-nine miles of road of said company is that for which, under said section, I ask for an exchange of bonds." This sentence was changed when handed to me by said governor, so as to read: "Do certify that one hundred and eighty-eight miles of road of said company is that for which under said section I ask for an exchange of bonds," and declining to make such oath, as stated, I retained said original paper in my possession, and make the same part of this my examination.

Q. 58. Subsequent to the date of said paper L, No. 10, and the exchange of the said $3,000,000 of bonds of the State of Florida, did or did not the governor of said State further request you to execute the said paper, or give a receipt for the said $3,000,000 of bonds, and the further amount of $1,000,000 of bonds? and if yea, please state what you did in reference thereto.

A. Referring to a memorandum in the handwriting of Harrison Reed, governor, under date of May 22d, 1871, he called upon me to "give receipt for $3,000,000 and $1,000,000 railroad bonds, and return coupons to July"; referring to another memorandum, also in the handwriting of said Harrison Reed, governor, he requested me to "forward receipt for $3,000,000 and $1,000,000 railroad bonds, and send stamp for railroad bonds in treasury"; for the same reason stated above, I declined to execute and forward the receipt.

Q. 59. Before the receipt was asked for, was or was not the exchange of said bonds with the State of Florida authorized by the Jacksonville, Pensacola and Mobile Railroad Company?

A. Yes.

Q. 60. Will you please look at the two books now shown you, one of which, at page 1, which reads, "Organization of the Jacksonville, Pensacola and Mobile Railroad Company," and the other headed at page 1, "A meeting of the board of directors was called by the president the 19th day of August, 1869," and state if you know said books, and, if you know, what they are?

1650 A. I do know said books; the first named book is the original record book of the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company, and from pages 1 to 86, inclusive, contains the original record of the proceedings of the stockholders of said company; the second book mentioned in the question I also know to be the original record book of the acts and doings of the directors of said company, and from page 1 to 76, inclusive, is the record of the proceedings of the directors of said company.

Q. 61. Please look at said stockholders' record book, at the bottom of page 4, and top of page 5, and state whether or not the resolution therein contained is the one authorizing the exchange of said bonds with the State of Florida, of which you have testified in your preceding answer?

A. I have looked at said record, and it is.

Q. 62. Was there, or was there not, any other or subsequent resolution passed by said stockholders, authorizing said exchange, and if yea, will you please give the date thereof, and refer to the same in said record?

A. The resolution to which I have testified is the only one I remember, or find in the book.

Q. 63. What railroad, if any, was owned by said Jacksonville, Pensacola and Mobile Railroad Company at the date of said resolution, authorizing the exchange of bonds with the State of Florida, to wit, January 31, 1870?

A. Not any at the date of the passage of this resolution; it was a prospective road, commencing at the city of Quincy, in the State of Florida, and moving westward—that is, a contemplated line.

Q. 64. Did, or did not, said company subsequently consolidate with any other railroad company? and if yea, please state with what company, and when.

A. Said company did consolidate with the Tallahassee Railroad Company, which owned the line of railroad between Lake City and Quincy in the State of Florida, with a branch to Monticello, and another

1651 to St. Mark's; said consolidation was consummated on the 25th day of May, 1870.

Q. 65. Subsequent to such consolidation, did, or did not, the stockholders of said consolidated company ever at any time, and if so, when, by resolution, or otherwise, approve, authorize, or direct the exchange of bonds of said consolidated company, for bonds of the State of Florida?

A. I have no recollection of any such action on the part of the stockholders or directors of said consolidated company, nor do I, in the examination of the record books of the said stockholders' or directors' meetings, find any such resolution or authority authorizing such exchange of bonds.

Q. 66. Do you or not know, and if yea, please state in what manner, upon what terms, and upon what price, and through what agency the said bonds of the State of Florida exchanged, as you have hereinbefore testified, were disposed of? Please state to the best of your knowledge and recollection.

A. I do not know how a portion of said bonds were contracted to be disposed of; it was through and to the banking house of S. W. Hopkins & Co. of New York and London; the price was £100 net per bond of $1,000 each; the contract to sell said bonds at that price was made about the month of November, 1870; I have no official knowledge of the sale of any bonds, as no final report has ever been made to me by said Messrs. Hopkins & Co.; they have reported that they never sold any bonds numbering above 2,800; I cannot testify as to the details of the sale and negotiation of those bonds without having the testimony heretofore taken in the various suits now pending, touching the sale or disposing of these bonds, before me, to refresh my memory.

Q. 67. You have stated that you contracted to dispose of said bonds for Florida State bonds at the price of only £100 sterling for each $1,000 bond; do you, or do you not know? and if yea, please state what reason, if any, caused you to contract to sell said bonds at such reduced price; please state in detail the facts as they occurred within your knowledge.

1652 A. I do know the reason; they were many, but principally because of the damaging statement in relation to the issue of said bonds which appeared in the public press of the State of Florida, in the city of New York, and other places, which papers were sent to London, England, Amsterdam, Holland, Frankfort, Germany, thus rendering it impossible to sell the bonds in open market at any price whatever. The only way they could be converted into money was by placing them in the hands and under the control of a syndicate formed for the purpose of floating securities, and then we had to accept just such terms as they proposed; before I accepted the proposition I tried to dispose of the bonds in open market, and a private negotiation in London, England, in Brussels, in Berlin, in Frankfort, and Vienna in person, and through correspondence in Paris and in Holland; the damaging reports in relation to the said Florida State bonds had preceded me at every place I went, and finally I was compelled to accept the reduced offer from the necessities of the company at home; the company was extending its road westward from Quincy and was greatly in need of money to pay for material and iron and to pay employees upon, of which there was a large number of men clamoring for their pay.

Q. 68. At or about what time did you go to London and Europe in reference to the sale and disposing of said bonds, if you say you visited Europe for that purpose?

A. I went to Europe for the sale of those bonds in August, 1870.

Q. 69. While so visiting Europe for such purpose, please state who, if any one, you saw or met in reference to disposing of said bonds or connected with the syndicate of which you have spoken; please give their names to the best of your recollection, and which, if any, are named as parties to this suit?

A. I had no personal knowledge of the formation of the syndicate which finally purchased the bonds, except such information as I received from Frank H. Collins; he informed me that a syndicate was 1653 being formed in England and Holland of which John Collinson, of England, was the head. I did not meet any members of the syndicate in London except Collinson; in about the month of June, 1871, said Collinson visited me at Jacksonville, in the State of Florida, where he informed me that Gideon Maria Boissevain, Adrian J. Milders, and a Mr. Mangay were members of the syndicate, and Mangay was said Collinson's brother-in-law, whom he told me, in connection with others, was engaged in the floating the bonds.

Q. 70. Was or was not the statements and publications to which you have referred in your testimony as damaging to said bonds matters of general notoriety in the bond market of Europe where you visited?

A. Yes; it was.

Q. 71. Besides what you have stated as the price at which said bonds were taken, was there or was there not a portion of the proceeds thereof deducted for any purpose? and, if yea, please state, to the best of your knowledge, the amount so deducted, and in what manner to be applied.

A. From such accounts as I have received from S. W. Hopkins & Company, John Collinson and others, I find there was deducted about £100,000 to pay interest on said bonds, and about sixty thousand pounds for commissions, attorney's fees, and expenses.

Q. 22. Please look at the paper now shown you, dated "New York, June 15th, 1872," purporting to be a cablegram repeated to Milton S. Littlefield, signed Barlow, Larocque & MacFarland, which I make part of this question, marked Exhibit L No. 11, and state whether you received said cablegram; and, if yea, state to what subject it refers.

A. This is the original cablegram I did receive, repeated to me by Barlow, Larocque & MacFarland from New York; it was from John Collinson, at London; it refers to a bill filed by W. G. M. Davis in the high court of chancery in England to restrain Drake, Kleinwort & Cohen from paying the coupons upon the Florida eight per cent. bonds maturing July 1st, 1872, from the proceeds of said bonds set apart to pay said interest, as I have hereinbefore testified.

1654 Q. 73. Please state what relation, if any, said W. G. M. Davis occupied to said Jacksonville, Pensacola and Mobile Railroad Company and what authority he had, if any, for filing such bill?

A. He was attorney in fact for the Jacksonville, Pensacola and Mobile Railroad Company and myself, and was attorney and counsellor for the trustees of said railroad company; he had no other authority, except as above stated, to bring such suit.

Q. 74. Please look at the paper purporting to be a cablegram, dated July 31st, 1872, made part of this question, and marked Exhibit L, No. 12, and state whether you received the same, and to what subject it relates; said paper being addressed to "Litchfield," and signed "Chase"?

A. I did receive the same; the word Litchfield was a mistake, it should have been Littlefield, and the Chase was Converse L. Chase, then representing the company in London, where said cablegram was from; it was a request for me to appoint Jay Cooke, McCullough & Co. fiscal agents for Jacksonville, Pensacola and Mobile Railroad Company.

Q. 75. Besides the charges of illegality and fraud which you have testified to respecting the issue of said Florida State bonds, were there, or were there not, any questions raised about the sufficiency of the title to said railroad and the lien thereupon by the State of Florida; if yea, please state by whom and in what manner such questions were raised?

A. There were two questions raised, both of them by John Collinson and his associates; the first was whether the State had any authority to issue the bonds to perfect public works, and whether railroads were public works under the constitution of the State of Florida, and this question was raised in a memorandum which commences: "Memorandum of agreement made the twenty-eighth day of December, one thousand eight hundred and seventy, between Messrs. S. W. Hopkins & Co., of 58 Old Broad street, London, of the one part, and John Col-
1655 linson, of 9 Victoria Chambers, London, of the other part," a copy
of which I make part of this answer, marked Exhibit L, No. 13; the next question was whether there was any lien under the statute upon the railroads for the benefit of the bondholders; this was raised by the same parties in the month of October, 1870, in relation to which I was requested to meet, and did meet Ashurst, Morris & Co., solicitors in London.

Q. 76. Will you now please look at the paper which I now show you marked on the upper left hand corner No. 144, addressed "Littlefield, care of Soutter & Co., New York," and dated December 29, 1870, and signed "Collins," and which I make part of this question, marked L, No. 14, and state whether or not you received such a message; and, if yea, please state what the said cablegram means, and to what subject it relates?

A. I recognize the paper as the original cablegram which I received on the 29th day of December. 1870, from Frank H. Collins, who was a member of the firm of S. W. Hopkins & Co. and who is the same person who signed the agreement testified to above, dated the day preceding; it is partly in cipher, of which I will explain: the first idea was that success was certain for the sale of the bonds; the second refers to S. L. M. Barlow, a lawyer in the city of New York, whose legal opinions had been previously solicited by John Collinson as to the legality and constitutionality of the said Florida State bonds, which opinion was adverse to their legality and constitutionality; Mr. Collins wished to convey that he had overcome the opinion of Barlow with Mr. Collinson and the syndicate; the third idea which the cablegram conveyed to me was that I must see Hopkins, his partner, and do what was necessary to be done to overcome the damaging effect of Mr. Barlow's opinions.

Q. 77. Please look at the paper now shown you, purporting to be a telegram addressed to M. S. Littlefield, and signed C. L. Chase, trustee,
and made part of this question, marked L, No. 15, and say
1656 whether or not you received such a telegram, and to what matter
it referred?

A. I received this telegram; it is the original; it referred to the execution of a mortgrge to the State of Florida.

Q. 78. For what purpose was such mortgage desired to be executed?

A. To meet the objection raised by Barlow against the validity of the bonds, and was sent to me by C. L. Chase, trustee, who was at that time in the city of New York, but it was not admissible to execute the mortgage in the form they sent it, and it therefore was not done; their paper was not executed; I mean that their paper was not executed.

Q. 79. You have testified that the Pensacola and Georgia and Tallahassee railroads were purchased by F. Dibble and associates, on the 20th day of March, 1869, from the trustees of the internal improvement fund; will you now please state if within your knowledge the said trustees executed deeds of conveyance of said railroads to said Dibble and associates?

A. They did.

Q. 80. Please look at Schedules B and C, forming part of the bill filed in this cause, and state whether the same are, or are not, to the best of your knowledge and belief, correct copies of said deeds?

A. They are; I know them to be.

Q. 81. Did or did not said Dibble and associates, at any time within your knowledge, and, if so, when, execute a deed of conveyance of said railroads to the Tallahassee Railroad Company, or the Jacksonville, Pensacola and Mobile Railroad Company?

A. There was no deed executed to the Jacksonville, Pensacola and Mobile Railroad Company to my knowledge; if there had been, I should have known it. There was a quit-claim deed drawn and signed by Dibble and his associates; it was not signed by the said wives of any of them; nor was it acknowledged by any of them; nor was it dated.

1657 Q. 82. Have you in your possession the paper or draft of deed which was sent to you by Barlow, Larocque & MacFarland, to be executed to the governor of Florida; and if yea, will you produce the same as part of your answer?

A. I have in my hands the draft of the deed sent to me by Barlow, Larocque & MacFarland, and this is the original paper; the erasures and interlineations were made by me after it came into my hands, which I present as part of my answer, marked L, No. 16.

Adjourned to the 19th inst., at 11 a. m.

SATURDAY, *April 19th*, 1879.

Present Joseph B. Stewart, counsel for the complainant.

Adjourned to the 21st inst., at 3 p. m.

MONDAY, *April 21st*, 1879.

Present Joseph B. Stewart, counsel for the complainant.

M. S. LITTLEFIELD'S examination continued:

Q. 83. In your preceding examination, and in answer to the last question, you have produced and made part thereof a proposed deed sent you by Messrs. Barlow, Larocque & MacFarland, counsel for the purchasers of the Florida State bonds in London and Amsterdam, which you say was not executed; did you or did you not execute any paper or conveyance in obedience to the request of said parties, and if yea, please state when and in what manner the same was done?

A. I executed a deed of trust upon the Jacksonville, Pensacola and
Mobil*le* Railroad, as president of said company, but not in the
1658 name of the Tallahassee Railroad Company. The deed was executed, to the best of my recollection, in the month of December, 1872.

Q. 84. To whom did you execute said deed?

A. To the best of my recollection it was to Harrison Reed, governor of the State of Florida.

Q. 85. Was or was not the executing of said deed by you submitted to or authorized by the stockholders?

A. It was not; it was not submitted to or authorized by them; it was simply done on my part at the request of Barlow, Larocque & McFarland.

Q. 86. After executing said deed what did you do with it?

A. I sent it for record to the clerk of Columbia County, Florida; I have never seen it since, as the court-house was subsequently burned, with all the records.

Q. 87. Did you or did you not know one Nicholas Woodfin; and if yea, when and where did you make his acquaintance, and in connection with what business matters, if any?

A. I did know Nicholas W. Woodfin; I first became acquainted with him in the year 1868 in the State of North Carolina, where he resided; I subsequently knew him as chairman of the commission appointed by the legislature of North Carolina to settle the affairs of the complainant company and George W. Swepson, as I have hereinbefore testified.

Q. 88. Did or did not said Woodfin take any part or assume to exercise the right to sell the Florida State bonds referred to in this examination?

A. Not to my knowledge.

Q. 89. You have stated that you were president of the Jacksonville, Pensacola and Mobile Railroad Company from the period of its organization; will you please state whether or not the said road was taken possession of by the State of Florida, and if yea, please state when such possession was taken by said State, and what was the earning capacity of said road when so taken possession of; how long such possession has continued and what, if anything, has been received
1659 by the company from the State or those in charge of said road?

A. The road was taken possession of by a receiver, appointed at the suit of the State, about the month of March, 1872; that receiver held possession of said road for some months, when the road was taken out of his hands by a receiver appointed at the suit of the Pensacola and Georgia and Tallahassee bondholders, who also held the road for some months, when it was taken out of his hands by the United States marshals at the suit of E. C. Anderson et al. vs. The Board of Trustees et al., and held it till about April, 1874, when it was taken from the marshal's hands by a receiver appointed by the United States Supreme Court, at the suit of the State of Florida, by order of the Supreme Court of the United States, and by the governor held and operated until it was taken possession in September, 1877, by a receiver appointed by this court, where the same is still held; the company operated the road for a few months in the summer of 1873, while it was held by the United States marshal, but the net earnings were paid to the Pensacola and Georgia and Tallahassee bondholders under the Anderson decree; with this exception, not one dollar has the company received of its earnings since the seizure in March, 1872; from the 20th of March, 1869, to the 31st of December, 1869, the gross earnings of said railroad were $255,414.95; for the same time the gross expenses for operating said road were $175,348.06; the net earnings were $80,066.89; for the year ending March 31st, 1871, the gross earnings of said railroad was $408,925.66, and the nett earnings for the same time of said railroad were $133,833.87; for the year ending March 31st, 1872, the gross earnings of said railroad were $360,329.75; the net earnings for the same time were $164,642.98; the above figures show the consolidated earnings of the Jacksonville, Pensacola and Mobile Railroad Company and the Florida Central Railroad Company; the earnings of the latter company was about, gross, $150,000 a year; the accounts

1660 were kept separately, and I have the original books, but not with me, but will produce them before the court, if desired, on the hearing of this cause; prior to March, 1872, the former company, viz, the Jacksonville, Pensacola and Mobile Railroad Company, operated the Florida Central Railroad, under arrangement between the two companies.

Q. 90. Do you know or can you state any other matter or thing material to this your examination of interest to either party, complainant or defendant? and if yea, please state the same fully and at large in your answer as if fully interrogated thereto.

A. Nothing now occurs to me.

M. S LITTLEFIELD.

Subscribed and sworn to before us this 21st April, 1879.

R. E. STILWELL,
JAMES M. BALL,
Examiners.

The witness states to the examiners that he finds upon examination that he has not the original of the Exhibits L, No. 5, No. 6, and No. 7 with him, which are described in the bill of complaint as Schedules C, D, and E, being the agreement between himself and Edward Houstoun, dated May 13th and 30th, and June 7th, 1870, and that he also fails to find the originals of Exhibits L, No. 8 and No. 10, No. 8 being a letter from Wm. E. Jackson to Colonel Edward Houstoun, and No. 10 being the original of a paper proposed to be sworn to by him on the 6th June, 1870, to be delivered to Harrison Reed, governor, but that the copies of said several papers he knows to be correct, as he made or caused the same to be made, and he compared them himself, and that he will produce the originals before the court or file the same with the clerk before the trial of this cause.

Complainant's counsel closes the commission.

1661 EXHIBIT L, No. 1.—*R. E. Stilwell and James M. Ball, examiners.*

Memorandum of agreement and settlement between the Florida Central Railroad, George W. Swepson, president, and the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, president, and Milton S. Littlefield, majority owner of the stock of said companies, & also of the stock of the Tallahassee Railroad Company, of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by N. W. Woodfin, W. G. Candler, W. Pink Welsh, and W. W. Rollins, commissioners appointed by an act of the legislature of North Carolina, approved by the stockholders of said corporation, of the second part, witnesseth:

That whereas George W. Swepson, late president of the Western Division of the Western North Carolina Railroad Company, made certain investments of the funds of said company in securities of and interests in the said Florida Central Railroad, Jacksonville, Pensacola and Mobile Railroad, and the Tallahassee Railroad of the said State of Florida, as per report made by the said George W. Swepson to the said commissioners, amounting in the aggregate to the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, to bear interest from the first day of November, 1869, at the rate of eight per cent. per annum; and

Whereas the said George W. Swepson heretofore conveyed to the said

Milton S. Littlefield, subject to the payment of the above recited claim, his interest in the above recited railroads; and whereas the said Littlefield has received authority from the legislature of the State of Florida, and the said several railroad companies to receive bonds to be issued by and for account of the several railroad companies, which bonds are to be exchanged for the bonds of the State of Florida, to be issued for the purpose of aiding the finances of the said several railroad companies, all of which bonds are now in a state of preparation; and

1662 Whereas the said Milton S. Littlefield has made a contract with S. W. Hopkins & Co., No. 71 Broadway, for the disposition of said bonds of the Central Railroad Company of the said State of Florida, amounting to nine hundred and sixty thousand dollars, are to be applied to the payment of existing liabilities of the said several railroad companies, including the sum of one hundred and fifty thousand dollars, to be paid to the commissioners aforesaid for the purpose of paying existing liabilities of said Western Division of the Western North Carolina Railroad Company:

It is understood and agreed by the parties of the first and second parts that the proceeds of the sale of the said bonds so to be issued by the said Florida Railroad companies and the said State of Florida, is to be equally divided, dollar for dollar, between the Western Division of the Western North Carolina Railroad Company, and the said Florida railroads, and as the commissioners aforesaid receive by this first sale of bonds only the sum of one hundred and fifty thousand dollars, it is further understood and agreed that out of the proceeds of the sale of the issue of the bonds of the Jacksonville, Pensacola and Mobile Railroad, there is first to be received by the commissioners aforesaid a sum sufficient to be equal to the amount received by and on account of the said Florida railroads, and then an equal amount is to be received by the said commissioners and the said Florida railroads, dollar for dollar, until the entire amount of one million two hundred and eighty-seven thousand and thirty-six dollars and three cents, with interest at eight per cent. as aforesaid, being the sum reported by the parties of the first part, as due to the Western Division of the Western North Carolina Railroad, is fully paid.

It is further understood and agreed by the parties of the first and second parts, that all the interest owned or claimed by the said parties of the first part, both George W. Swepson and Milton S. Littlefield, or which they as individuals have a right to control in the said Florida railroads, are hereby pledged for the faithful fulfillment of this
1663 contract, without the right on part of any party to interfere with our management or control of the affairs of the roads.

GEO. W. SWEPSON,
Prest. Fla. Central R. R. Co.
M. S. LITTLEFIELD.
M. S. LITTLEFIELD,
Pres. J., P. and M. R. R. Co.

Witnesses:
M. W. RANSOM.
R. R. SWEPSON.

N. W. WOODFIN,
W. W. ROLLINS,
W. G. CANDLER,
W. P. WELSH,
Commissioners.

STATE OF MARYLAND,
City of Baltimore, sct :

Be it remembered that on this fifteenth day of August, the year one thousand eight hundred and seventy, before me, the undersigned, William W. Latimer, a commissioner resident in the city of Baltimore, in the State of Maryland, duly commissioned by the executive authority, and under the laws of the State of Florida, to take the acknowledgement and proof of deeds to be used or recorded therein, personally appeared R. R. Swepson, whose name appears as subscribing to the foregoing instrument, and who, being duly sworn, on his oath says that George W. Swepson, president Florida Central Railroad Company; M. S. Littlefield, M. S. Littlefield, president of the Jacksonville, Pensacola and Mobile Railroad Company; N. W. Woodfin, W. W. Rollins, W. G. Candler, and W. P. Welsh, commissioners, duly signed, sealed, and delivered the foregoing instrument in the presence of him, the said R. R. Swepson, and of one M. W. Ransom, who then and there signed and attested the same in the presence of him, the said R. R. Swepson, and that they each subscribed their names as witnesses thereto.

In witness whereof I have hereunto set my hand and affixed my official seal at Baltimore the day and year aforesaid.

W. W. LATIMER.
A Commissioner for Florida.

1664 EXHIBIT L, No. 2.—*James M. Ball and R. E. Stilwell, examiners.*

LONDON, *November* 16, 1870.

Messrs. S. W. HOPKINS & Co.,
58 Old Broad street, London, and 71 Broadway, New York:

GENTLEMEN: On the 10th day of November, A. D. 1870, I made a final settlement with the Western Division of the Western North Carolina Railroad Company, represented by Nicholas W. Woodfin, chairman of the commissioners appointed by the legislature of North Carolina to collect the money due said company.

The commissioners are N. W. Woodfin, W. G. Candler, W. W. Rollins, W. P. Welsh, and J. L. Henry.

One of the terms of said settlement was, that it should place to the order of said company any 800 of the Florida eight per cent. gold bonds my railroad contracted with you to negotiate on the 13th of April last; therefore you will place to the order of the Western Division of the Western North Carolina Railroad Company eight hundred of said bonds, and sell or dispose of the same as the said chairman may direct, but this order is subjected to the following conditions:

First. The said bonds are to remain in your hands to sell.

Second. The proceeds of said bonds are to be transferred to your New York house, and disbursed to said company upon the orders of a majority of said commissioners.

I remain, gentlemen, your most obedient servant,

M. S. LITTLEFIELD,
President J., P. & M. R. R. Co.

1665 EXHIBIT L, No. 3.—*James M. Ball and R. E. Stilwell, examiners.*

Whereas, at a sale by the trustees of the internal improvement fund of the State of Florida, on the 20th day of March, 1869, of the Pensacola and Georgia and the Tallahassee Railroad, F. Dibble, in behalf of himself and his associates, became the purchaser thereof, bidding for the Pensacola and Georgia Railroad $1,220,000, and for the Tallahassee Railroad $195,000; and whereas George W. Swepson is the holder of a large amount of the first-mortgage bonds of the Pensacola and Georgia and the Tallahassee Railroad Companies; and whereas said parties desire to come to an accommodation respecting their interests, the one through said purchase and the other as the holder of said bonds:

Now, therefore, it is hereby agreed between said F. Dibble, in behalf of himself and his associates of the one part, and said George W. Swepson of the other part, in manner and form following, that is to say:

First. That said George W. Swepson shall deliver, as he shall come into possession of them to be surrendered to the trustees of the internal improvement aforesaid, by said F. Dibble, in behalf of himself and his associates, as part of the purchase money for said roads respectively, the first-mortgage bonds of said roads purchased by him, amounting to about nine hundred thousand dollars, for bonds of the Pensacola and Georgia Railroad Company, and to about one hundred and fifty thousand dollars of the Tallahassee Railroad Company, the bonds of the Pensacola and Georgia Railroad Company to be surrendered at par, and those of the Tallahassee Railroad to be surrendered at the pro rata of the amount bid for said road at the said sale, and the balance or remainder of the purchase money to be supplied by said F. Dibble and his associates.

1666 Second. As soon as may be after the title is acquired by F. Dibble, in behalf of himself and his associates, from the trustees of the internal improvement fund, first mortgage bonds are to be issued in such form and to be executed in such manner as may be devised to make them legal and binding as an obligation on said roads, their equipments, workshops, depots, and franchise; said bonds shall bear interest at the rate of six per cent. per annum, payable in New York semi-annually, principal and interest paid in gold, and not having more than thirty years to run. To secure said bonds a proper deed of trust is to be executed by F. Dibble, in behalf of himself and his associates, to Calvin B. Dibble and George W. Swepson, as trustees, with the ordinary conditions in such cases, and shall contain a provision that on default in the non payment of any instalment of interest for sixty days the principal shall become due, and that on such default the trustees shall enter upon and take possession of said railroads, their equipments, workshops, depots, and franchise, without any legal process whatever, and advertise the same for sale, and sell the same at public outcry for cash, the proceeds of which shall be applied to the payment of said bonds, principal and interest, and if a sufficient amount thereof shall not be realized at such sale, then to apply the same pro rata in the payment of said bonds.

Third. The bonds to be thus issued shall be delivered to Calvin B. Dibble and George W. Swepson, to be sold or negotiated, and the money realized on them, or a sufficient amount thereof for that purpose, shall be paid to George W. Swepson to reimburse him for the amount of money he has paid out in purchasing the first mortgage bonds aforesaid, and all amounts paid or to be paid by him for commissions and attorney's fees in connection with his business with said roads, together with interest on said amounts from the time they were paid out by him
1667 until the date of his reimbursement, and also to pay him the additional sum of one hundred and fifty thousand dollars.

Fourth. The stock is to be divided and owned in the following manner: George W. Swepson is to have and own one-third; Calvin C. Dibble is to have and own an amount of stock which in connection or united with the stock of said Swepson shall constitute a majority of the whole, and F. Dibble and his associates are to have and own the remainder, to be subdivided among themselves as they shall determine.

Fifth. Said Swepson is to have the right to appoint four directors of said roads; F. Dibble and his associates are to have the right to appoint four, and Calvin B. Dibble shall be appointed by both parties the ninth director. This provision is to expire as soon as said Swepson is reimbursed and paid the amounts hereinbefore mentioned, with interest as provided, and thereafter the stock shall stand on a common footing as in all other cases.

Sixth. Until the title is acquired from the trustees of the internal improvement fund, the roads are to remain as they are and to be operated as they are.

Seventh. None of the stock shall be transferable for the space of two years from this date, except as may be necessary to qualify the persons to be appointed as directors to be such directors.

Eighth. The roads are to protect the outstanding transportation notes or tickets of the Tallahassee Railroad Company to an extent not exceeding twenty-eight thousand dollars, and shall receive the same as usual for the transportation of freight or fare.

Ninth. F. Dibble is to be the president until the stock becomes transferable.

1668 In testimony whereof the said parties have hereunto set their hands and seals this twenty-sixth day of March, A. D. 1869.

FRANKLIN DIBBLE, [L. S.]
For himself and his Associates. [SEAL.]
GEO. W. SWEPSON. [SEAL.]

Witness:
M. D. PAPY.
A. R. MEEK.

[Internal revenue 5-cent stamp.]

(Endorsed:) Agreement between F. Dibble and Geo. W. Thompson, 26 March, 1869—C, No. 10—Class F, Div. A, Vou. 35.

1669 EXHIBIT L, No. 4.—*James M. Ball, R. E. Stilwell, examiners.*

Whereas George W. Swepson has paid to the trustees of the internal improvement fund of the State of Florida, for and on account of F. Dibble and his associates, in payment for the Pensacola and Georgia and the Tallahassee Railroads, sold to said F. Dibble and his associates, by said trustees, on the 20th day of March last, bonds of said roads amounting at their face to nine hundred and sixty thousand and three hundred ($960,300) dollars, and has also paid to said trustees for the same parties the sum of four hundred and seventy-two thousand and sixty-five ($472,065) dollars, being the full amount due said trustees for said roads; and whereas said F. Dibble, for and on behalf of himself and his associates, has obligated himself and them, and does hereby obligate himself and them, to cause bonds upon said roads as now completed, as soon as further legislative authority from said State of Florida shall be obtained therefor, to be issued, the same to be secured and in every respect to be as stated in an agreement executed and dated the twenty-sixth day of last March, between said F. Dibble, on behalf of himself and his associates, and said George W. Swepson; which bonds when executed are to be and shall be placed as provided in said agreement for the purposes therein set forth, and for the further purpose of enabling said Swepson to be reimbursed the said sum of four hundred and seventy-two thousand and sixty-five dollars: Now, therefore, this indenture made and entered into between F. Dibble, on behalf of himself and associates, party of the first part, and George W. Swepson, party of the second part, witnesseth that said party of the first part for and in consideration of the premises, has granted, bargained, conveyed, and confirmed unto said party of the second part all that property of whatever name, nature, and description conveyed to said party of the first part by said trustees of the internal improvement fund of the State of Florida, by two separate deeds of conveyance, each dated April 8th, A. D. 1670 1869; which deeds, for full description of property, are hereby made part and portion of this instrument. The said property hereby conveyed to be held by said party of the second part in trust for the express purpose of enabling said party of the second part—which he hereby agrees and binds himself to do—to convey the same to that incorporation, consisting, or to consist, as incorporators of said F. Dibble and his associates, as soon as said Dibble and his associates shall have granted to them such, or similar, relief as the legislature of the said State of Florida granted to Wm. E. Jackson and his associates by act for relief of William E. Jackson and his associates, approved July 29th, 1868, and also for the further purpose of securing said party of the second part in all advances made as specified and agreed upon in the said agreement between these parties executed and dated March 26, 1869, and the advancement as aforesaid of said sum of four hundred and seventy-two thousand and sixty-five dollars, until such time as said relief shall have been granted, and said party of the second part shall have conveyed said property to said incorporation as hereinbefore provided.

To have and to hold said property to said party of the second part for the purposes and trust herein declared.

In testimony whereof said party of the first part has hereunto signed his name and affixed his seal this 22d day of April, A. D. 1869.

F. DIBBLE, [SEAL.]
For himself and Associates.

Signed, sealed, and delivered in presence of us—
W. J. WOODWARD.
JESSE CARTER.

No stamps being present, George W. Swepson is authorized to stamp.

F. D.

(Endorsed:) Deed of trust. Agreement, F. Dibble and ass'ts with Geo. W. Swepson. Class F, Div. A, voucher 34.

1671 EXHIBIT L, No. 9.—*R. E. Stilwell and James M. Ball, examiners.*

STATE OF FLORIDA,
Leon County, ss:

In accordance with the requirements of the second section of the act entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,' approved June 24th, 1869," and for the purpose of obtaining the benefits of said act, in order to aid the said Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvements of the State;

And for the purpose of causing the State of Florida, by the governor thereof, to exchange the bonds prescribed in said act to be delivered in exchange for first mortgage bonds of said railroad company;

I, Milton S. Littlefield, president of the Jacksonville, Pensacola and Mobile Railroad Company, do certify that one hundred and fifty-nine miles of road of said company is that for which under said section I ask for an exchange of bonds of the State of Florida, for the first mortgage bonds of this company, at the date hereof; that said one hundred and fifty-nine (159) miles, being part of the road for which the exchange is asked, is complete, and in good running order.

In witness whereof I have hereunto set my hand this 6th day of June, 1870.

[L. S.] M. S. LITTLEFIELD,
President Jacksonville, Pensacola and Mobile Railroad Company.

Sworn to and subscribed before me this 6th day of June, A. D. 1870.

1672 EXHIBIT L, No. 11.—*James M. Ball and R. E. Stilwell, examiners.*

Blank No. 1.

THE INTERNATIONAL OCEAN TELEGRAPH COMPANY.

Corrected.

5.

The rules of this company require that all messages received for transmission shall be written on the message blanks of the company under and subject to the conditions printed thereon, which conditions have been agreed to by the sender of the following message

WILLIAM F. SMITH, *Pres't.*

W. H. HEISS, *Gen'l Sup't.*

(Dated New York, June, 15, 1872, received at Jax., 16th, 2.28 p. m.)

TO MILTON S. LITTEFIELD:

Collinson cables, Davis filed bill restraining Kleinwort paying me coupon money; State and company hopelessly discredited, unless Littlefield immediately telegraph me Davis' dismissal railroad agency; this matter requires instant attention.

BARLOW, HOROQUE & MACFARLAND,
No. 35 William St.

30 paid—corrected—(S) T.

1673 EXHIBIT L, No. 12.—*R. E. Stilwell and James M. Ball, examiners.*

Blank No. 1.

THE INTERNATIONAL OCEAN TELEGRAPH COMPANY.

The rules of this company require all messages received for transmission shall be written on the message blanks of the company, under and subject to the conditions printed thereon, which conditions have been agreed to by the sender of the following message.

WILLIAM F. SMITH, *Pres't.*

W. H. HEISS, *Gen'l Sup't.*

(Dated cable, , 187 . Received at Jacksonville, July 31st, 1872.)

TO LITCHFIELD, *Jacksonville Florida.* :

Telegraph immediately appointment Jay Cooke, MacCullough, fiscal agents.

CHASE.

12 paid—(S) T.

1674 EXHIBIT L, No. 13.—*R. E. Stilwell.*

Memorandum of agreement made the twenty-eighth day of December, one thousand eight hundred and seventy, between Messrs. S. W. Hopkins & Company, of 58 Old Broad street, London, of the one part, and John Collinson, of 9 Victoria Chambers, London, of the other part.

Since the agreement between the same parties, dated the fourteenth day of November, 1870, was signed, a question has been raised by Mr. Collinson whether the issue of the bonds, which are the subject of such agreement, is not invalid, as being unconstitutional. Messrs. S. W. Hopkins & Company, although not admitting that there can be any doubt as to the validity of such bonds, have nevertheless agreed with Mr. Collinson as follows: It is therefore agreed between the parties that Mr. Collinson, in lieu of paying the Messrs. Hopkins & Company against delivery, on application, of each of such bonds the sum of one hundred and thirty-eight pounds one shilling and tenpence, shall pay to them one hundred and twenty-four pounds five shillings and tenpence, and that the difference, videlicit, thirteen pounds sixteen shillings, shall, at the risk of Messrs. Hopkins & Company, be paid to the joint account of Frank Howard Collins and John Collinson, with Messrs. Drake, Kleinwort & Cohen, bankers, of Fenchurch street, London. Messrs. Hopkins & Company engage forthwith to take steps for obtaining, and to produce to Mr. Collinson, duly certified by the proper officers of the State, the decision of the supreme court of the State of Florida upon the question so, as aforesaid, raised by Mr. Collinson.

In the event of the decision of such supreme court being in favor of the validity of the bonds, the amount in the hands of Messrs. Drake, Kleinwort & Cohen shall, upon the production to Mr. Collinson, his executors or administrators, of the official copy of such decision, duly certified as aforesaid, belong and be paid to Messrs. Hopkins & Company.

1675 In the event of the decision being adverse to the validity of the bonds, such amount, as aforesaid, shall belong and be paid to the said John Collinson, his executors or administrators, as representing the bondholders.

In either case, such interest as Messrs. Drake & Co. may allow shall be paid to Messrs. Hopkins & Co. In other respects the agreement of the fourteenth day of November, 1870, shall remain in full force, and nothing herein contained shall prejudice the claims of Mr. Collinson or any bondholder against the State of Florida or the Jacksonville, Pensacola and Mobile Railroad Company, as witness the hands of the parties hereto the day and year first above written.

(Signed) S. W. HOPKINS & CO.
JOHN COLLINSON.

Witness to the signatures of S. W. Hopkins & Co. and John Collinson:

(Signed) ADAM F. BLANDY.

1676 EXHIBIT L, No. 14.—*James M. Ball and R. E. Stilwell, examiners.*

No. 144.] *Cable message.* [DX.

9

THE WESTERN UNION TELEGRAPH COMPANY.

All cable messages received for transmission must be written on the message blanks provided by this company for that purpose, under and subject to the conditions printed thereon and on the back hereof, which conditions have been agreed to by the sender of the following message.

WILLIAM ORTON,
President.
THOS. T. ECKERT,
General Superintendent, New York.

O. H. PALMER,
Secretary.

(Received at 145 Broadway, New York, 8.55 p. m., Dec. 29, 1870.)

LITTLEFIELD,
Care Sotter & Co., N. Y.

Success, no, last, clews, sampson, reed, bourbon, faught, desperately, see hopkins, keep quiet.

COLLINS.

120 London.—K. F.

1677 EXHIBIT L, No. 15.—*James M. Ball and R. E. Stilwell, examiners.*

Blank No. 1.

THE INTERNATIONAL OCEAN TELEGRAPH COMPANY.

The rules of this company require that all messages received for transmission shall be written on the message blanks of the company, under and subject to the conditions printed thereon, which conditions have been agreed to by the sender of the following message.

9

WILLIAM F. SMITH,
President.

W. H. HEISS,
General Superintendent.

(Dated New York, Dec. 17th, 1872. Received at Jacksonville, Dec. 17th, 7.30 p. m.)

To M. S. LITTLEFIELD:

Before anything can be completed, the mortgage to the State sent down by Mr. MacFarland for execution last year must be executed and recorded in each county through which the road runs. Answer immediately. Send Henderson here immediately.

C. L. CHASE, *Trustee.*

38 paid.—C. T.
REC. 667—48

1678 EXHIBIT L, No. 16.—*James M. Ball and R. E. Stillwell, examiners.*

An indenture made this day of , in the year one thousand eight hundred and seventy- , by and between the Jacksonville, Pensacola & Mobile Railroad Company, a corporation created, organized, and existing under and by virtue of the laws of the State of Florida, parties of the first part, and Harrison Reed, governor of the said State, party of the second part.

Whereas on or prior to the day of , one thousand eight hundred and seventy, the said Tallahassee Railroad Company owned and possessed a completed line of railway extending from Lake City, in the State of Florida, to Quincy, in said State, together with a branch railroad extending from Tallahassee to St. Mark's, and a branch railroad extending from a point on said main line to Monticello, in said State;

And whereas afterwards, to wit, on the day of , one thousand eight hundred and seventy, under and in pursuance of an act of the legislature of Florida approved June 24th, 1869, entitled "An act to perfect the public works of the State," and the amendments thereto, the said Tallahassee Railroad Company, together with its said branches, was duly consolidated with and then became part of the said Jacksonville, Pensacola & Mobile Railroad Company, so as to become one corporation under the name last mentioned;

And whereas under and by virtue of an act of the legislature of the said State of Florida, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved January 28th, 1870, the governor of the State of Florida was authorized to deliver bonds of the said State to the Jacksonville, Pensacola & Mobile Railroad Company in exchange for a like amount of the first 1679 mortgage bonds or any part or portion of the railroad between said Quincy and Jacksonville in said State, embracing the railroad formerly belonging to the said Tallahassee Railroad Company.

And whereas, in pursuance of such authority, and after said consolidation, the governor of the State of Florida issued to the said Jacksonville, Pensacola & Mobile Railroad Company bonds of the State of Florida to the amount of three millions of dollars, bearing date the first day of January, one thousand eight hundred and seventy, as directed by the second section of the said act, and numbered from to , each for the sum of one thousand dollars, bearing interest at the rate of eight per centum per annum, payable semi-annually, and received in exchange therefor first mortgage bonds of the said Jacksonville, Pensacola & Mobile Railroad Company, embracing the aforesaid main line and branches of the said Tallahassee Railroad Company, and which said bonds were and are of like tenor and date as the said State bonds, and numbered from to ;

And whereas, to set at rest any doubts that might exist touching the existence or sufficiency of the statutory lien upon the premises hereby mortgaged for the indemnity and security of the said State and of the bona fide holders of such State bonds and said railroad bonds, these presents are executed and delivered:

Now, this indenture witnesseth that the said Jacksonville, Pensacola and Mobile Railroad, for and in consideration of the premises and of one dollar to it in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure and effectuate the true intent and meaning of the said statute, and to secure the due and punctual payment of the principal and interest of the bonds aforesaid to the amount of three millions of dollars, has granted, bargained, sold, assigned, set over, released, conveyed, and confirmed, and by these presents doth grant, bargain, 1680 sell, assign, set over, release, convey, and confirm unto the said Harrison Reed, as governor of the said State of Florida, and to his successors in office, all the right, title and interest which the said company, party of the first part, now has or may at any time hereafter acquire in or to the aforesaid line of railway extending from Lake City to Quincy, in the said State, and also said branch, extending from Tallahassee to Saint Marks, and said branch extending from a point on said mai*d* line to Monticello in said State.

Together with all franchises, lands, tenements, hereditaments, easements, rights, or privileges, rolling stock; machinery, and all other personal property in any way appertaining thereto or to the party of the first part.

To have and to hold the above described premises, property, rights, and appurtenances to the said Harrison Reed, governor, and his successor in office, to the only proper use, benefit, and behoof of the said Harrison Reed, governor as aforesaid, and his successors in office, for the benefit and security of the said State of Florida, and of all persons or corporations who may be or may hereafter become holders of any of the above-mentioned three millions of dollars of bonds of the party of the first part, or of the above mentioned three millions of dollars of bonds of the said State of Florida, described as aforesaid, without any preference of any one bond over another, or otherwise by reason of priority in time of issue or negotiation thereof, or otherwise; and it is hereby granted, declared, and agreed that the premises, property, rights, franchises, and interests hereby mortgaged or conveyed are to be held and holden by the said trustee and his successors upon and for the trusts, uses, and purposes following, that is to say:

ARTICLE FIRST. Until default shall be made in payment of the principal or interest of the said bonds of the party of the first part or of some of them, the said company shall possess, manage, use, and enjoy the said property, and take and use the rents, income, profits, 1681 royalties, and tolls thereof, as if this indenture had not been made, and it is understood and agreed that this instrument shall not be construed to embrace any land that may be obtained by the party of the first part from the internal improvement fund of the State, to aid in the construction of its road, or any land that may be obtained by grant from the Congress of the United States.

ARTICLE SECOND. If there shall at any time be default in the payment of interest or principal upon any of the bonds secured by this instrument, as the same shall become payable, and such default shall continue for six months, the party of the second part or his successor in office may, for the benefit of the bona fide holders of bonds secured hereby, sell the mortgaged premises as an entirety, or so much thereof as may be necessary to raise the sum of money due and unpaid, upon publishing a notice of sale for at least six weeks, once each week, in two daily newspapers published in London, England, and two daily newspapers published in the city of New York, and in a paper published at Jacksonville, in said State, if any, and if not in some other paper published in said State, and in case of such sale the purchaser shall have a right to apply the bonds of the said State, issued as aforesaid, in exchange in payment of the purchase money, to the amount, if any, to

which such purchaser would be entitled upon a distribution of the purchase money. If the said bonds of the said State are so applied and thus retired and extinguished, the party of the second part shall cancel and restore to the party of the first part an amount exactly equivalent of the said bonds of the said party of the first part. In the event that it shall be considered best for the interest of holders of bonds secured hereby, the party of the second part and his successors in office, in case of such default, shall have the right to take possession of the mortgaged premises, use, and operate the same, taking the rents, profits, and income thereof, and shall apply the net rents, profits, and income thereof to the payment and discharge of such sums as may be due and
1682 unpaid from time to time, but under due and legal proceedings to that end had in a court of competent jurisdiction.

ARTICLE THIRD. The party of the first part further covenants and agrees to and with the party of the second part, and his successors in office, on behalf and for the benefit of the bondholders intended to be secured hereby, that it will from time to time, and at all times hereafter, upon reasonable request, make, do, execute, acknowledge, and deliver all such further acts, deeds, conveyances, and assurances in the law for the better assuring through the said governor and his successors in the trusts hereby created upon the trust and for the purposes herein expressed or intended, all and singular the lands, premises, property, railways, and appurtenances, rights, interests, and effects hereby mortgaged or conveyed in trust or agreed or purporting or intended so to be, whether now held or possessed by or vested in the company, or subsequently acquired by or vested in it, and all other property and things whatsoever which may hereafter be acquired in aid of or by way of substitute for or for use for the purposes of the same or any part thereof, and all franchises now held or hereafter acquired relating thereto, including the franchises to be a corporation as by the trustees or bondholders or by counsel learned in the law shall be reasonably devised or required, excepting always such lands as are excepted in the first article of this instrument.

ARTICLE FOURTH. If the party of the first part shall well and truly pay the sum of money specified in the said bonds, and each and all of them, and the interest thereon, according to the tenor thereof, and shall well and truly keep and perform all the things herein required to be kept and performed according to the true intent and meaning of these presents, then, and in that case, the estate hereby conveyed shall cease and determine, and shall revert to and vest in the party of the first
1683 part, without any acknowledgment or satisfaction, reconveyance, re-entry, or other act—otherwise the same shall continue and remain in full force and virtue.

In virtue whereof the said Jacksonville, Pensacola and Mobile Railroad Company has caused its common seal to be affixed.

(Endorsed:) Dated 1871. The Jacksonville, Pensacola and Mobile Railroad Company, and the Tallahassee Railroad Company, to the governor of Florida. Mortgage.

(Xd.) BARLOW, LAROCQUE & MCFARLAND,
35 William street.

1684 We, James M. Ball and R. E. Stillwell, special examiners, duly appointed by said circuit of the United States for the northern district of Florida by an order made by said court, and dated on 3d day of January, A. D. 1878 (a copy of which is hereto annexed), to take the depositions of witnesses on the part of complainants in

said cause of the Western Division of the Western North Carolina
Railroad Company, complainants, vs. George F. Drew, governor of the
State of Florida, and George F. Drew, governor, et als., do hereby cer-
tify that we commenced the taking of said depositions on the 22d day
of Oct., 1878, at No. 247 Broadway, in the city of New York, in the
county and State of New York, and continued the same by adjourn-
ments from day to day until 21st day of April, A. D. 1879. That we
were attended at said place by the counsel for the complainant, Joseph
B. Stewart, esq., and the witnesses aforesaid named in the depositions
hereto annexed; and that Lucien Birdseye claimed to have the right
to attend as counsel for one of defendants, George F. Drew,
1685 governor, and that the proceedings had thereupon appear upon
the record hereto annexed; that said witnesses were duly sworn
and examined in said cause and their several depositions were reduced
to writing by us in their presence, and read to them respectively and by
them respectively subscribed in our presence; and that exhibits Nos.
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23,
24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35. 36, 37, 38, 39, 40, 41, 42, 43,
44, 45, 46, 47, 48, 49, 50, 51, and 52, exhibits A and B, exhibits C, D, E,
and F, exhibits C No. 1, C No. 2, R. E. S., J. M. B., C No. 3, C No. 4, C
No. 5, C No. 6, C No. 7, C No. 8, C No. 9, C No. 10. C No. 11, C No. 12,
C No. 13, C No. 14, C No. 15. C No. 16, C No. 17, C No. 18, and C No.
19, and exhibits L No. 1, L No. 2, L No. 3, L No. 4, L No. 9, L No. 11,
L No. 12, L No. 13, L No. 14, L No. 15, and L No. 16 hereto annexed
were introduced in evidence in said cause during the taking of said
depositions; and that exhibits L No. 5, L No. 6, and L No. 7, and L
No. 8 and L. No. 10 were not produced and annexed to the deposition
of M. S. Littlefield for the reason therein stated, but they are to
1686 be produced before the court or filed with the clerk before the
trial.

And we annex hereto the several papers left with us by complainants' counsel, and marked by us, one, two, three, four, five, dated New York City, May 12, 1879; to the circuit court of the United States for the northern district of Florida.

JAMES M. BALL, and
R. E. STILLWELL,
Special Examiners.

1687 WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant,

vs.

GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, and George F. Drew, governor, Columbus Drew, comptroller, Walter Gwynn, treasurer, George P. Raney, attorney-general, Hugh A. Corley, commissioner of lands and immigration, trustees of the internal improvement fund, & The Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, James G. Gibbes, Adolph Engler, trustee for the holders of the alleged bonds of the State of Florida, involved in this suit, Thomas B. Coddington, et al., defendants.

The complainants having given notice to the defendants that the complainant desires and claims the right to have evidence in the above-entitled cause taken orally before an examiner, to be appointed by the court for that purpose, as provided by the sixty-seventh rule of equity practice, and having applied for such examiner to take the testimony of witnesses residing in the city of New York, it is now 1688 and hereby ordered and directed that James M. Ball & Richard E. Stillwell, whose is a United States commissioner residing in and for the southern district of New York, and said Ball being a resident of said city of New York, be, and they are hereby appointed examiners of this court to take testimony in this cause in the manner provided by law and the rules of equity practice prescribed by the Supreme Court of the United States, and that a commission do issue to them accordingly.

THOMAS SETTLE, *Judge.*

JAN'Y 3*d*, 1878.

I, Philip Walter, clerk of the United States circuit court, 5th judicial circuit and northern district of Florida, do hereby certify that the foregoing is a true copy of its original on file and of record in my office.

In witness whereof I have hereunto set my hand and official seal at the city of Jacksonville, in the district and circuit aforesaid, this 30th day of September, 1878, and of the Independence of the United States of America the one hundred and third.

{ SEAL OF U. S. CIR. CT., N. DIS. FLA. }

PHILIP WALTER,
Clerk.

1689 ONE.—*James M. Ball and R. E. Stillwell, examiners.*

In the United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Florida Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Jacksonville, Pensacola and Mobile Railroad Company, et al.

It is hereby stipulated that the time for taking testimony in the above-entitled causes be, and the same is hereby, extended to the first Monday in December, A. D. 1878, by giving the usual notice to the respective parties.

Dated Sept. 11th, 1878.

JOS. B. STEWART.
Sol. for Complainant.
JAS. M. BAKER,
Sol. Fla. Central R. R. Co.
GEORGE P. RAINEY,
Sol. for Trustees I. I. Fund.
S. B. STEPHENS,
Sol. J. P. M. R. R.

I, Philip Walter, clerk of the U. S. circuit court, 5th judicial
1690 circuit, northern district of Florida, do hereby certify that the foregoing is a true copy of its original on file in my office.

Witness my hand and seal at the city of Jacksonville, in the northern district and circuit aforesaid, this 28th day of September, 1878.

{ SEAL U. S. C. CT., N. DIST. OF FLA. }

PHILIP WALTER,
Clerk.

Filed Sept. 20, 1878.

P. WALTER, *Clerk.*

1691 Two.—*James M. Ball, R. E. Stillwell, examiners.*

In the United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Florida Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Jacksonville, Pensacola and Mobile Railroad Company, et al.

To the defendants, George F. Drew, governor, trustee, &c., and George F. Drew et al., trustees of the internal improvement fund, or George P. Rainey, their counsel, The Florida Central Railroad Company, or James M. Baker, its counsel, The Jacksonville, Pensacola and Mobile Railroad Company, or S. B. Stephens, its counsel, and Adolph Engler, trustee, or William G. M. Davis, his counsel:

Take notice, that on Tuesday, the 22d day of October, A. D. 1878, at the hour of ten o'clock a. m., before and at the office of Robert E.
1692 Stillwell, esq., United States Commissioner, No. 247 Broadway, in the city of New York, I shall proceed to take the deposition of Lawrence P. Bayne and other witnesses, to be read as evidence on the part of the complainant on the trial of the above entitled causes, and shall continue such taking of testimony, subject to such adjournments from time to time as may be necessary till the same is completed.

Dated Sept. 30th, 1878.

JOS. B. STEWART,
Solicitor for Complainants.

(Endorsement:) U. S. circuit court. The Western Division of Western N. C. R. R. Co. vs. George F. Drew, governor, trustee, &c., et al. Two cases. Notice to take testimony, to the defendant George F. Drew, governor, trustee, &c.

SEPT. 30, 1878.

Service accepted, Sept. 30th, 1878.

D. S. WALKER,
G. P. RANEY,
N. Y. *Sol's for trustees I. I. fund.*

1693 THREE.—*James M. Ball and R. E. Stillwell, examiners.*

In the United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Florida Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Jacksonville, Pensacola and Mobile Railroad Company, et al.

To the defendants, George F. Drew, governor, trustee, &c., and George F. Drew, governor, et al., trustees of the internal improvement fund, on George P. Raney, their counsel, The Florida Central Railroad Company, or James M. Baker, its counsel, The Jacksonville, Pensacola and Mobile Railroad Company, or S. B. Stephens, its counsel, and Adolph Engler, trustee, or William G. M. Davis, his counsel.

Take notice, that on Tuesday, the 22d day of October, A. D. 1694 1878, at the hour of ten o'clock a. m., before and at the office of Robert E. Stillwell, esq., United States Commissioner, No. 247 Broadway, in the city of New York, I shall proceed to take the deposition of Lawrence P. Bayne and other witnesses, to be read as evidence on the part of the complainants, on the trial of the above entitled causes, and shall continue such taking of testimony, subject to such adjournments, from time to time, as may be necessary till the same is completed.

Dated Sept. 30th, 1878.

JOS. B. STEWART,
Solicitor for Complainants.

(Indorsed :) U. S. circuit court, northern dist. of Florida. The Western Division of the Western N. C. R. R. Co. vs. George F. Drew, governor, trustee, &c., et al. Two cases. Notice to take testimony, to the defendant Adolph Engler, trustee.

UNITED STATES MARSHALL'S OFFICE,
NORTHERN DISTRICT OF FLORIDA,
Jakcsonville, Fla., Oct. 1st, 1878.

John W. Howell is hereby appointed special deputy U. S. marshal*l*, to execute the within notice.

S. CONANT,
U. S. Marshall.

Executed the within notice at Fernandina, within the northern district of Florida, on the 3d day of Oct., A. D. 1878, by serving a true copy thereof upon the within named W. G. M. Davis, and at the same time showing to him the original thereof.

Dated Oct. 3d, 1878.

S. CONANT,
U. S. Marshall.
J. W. HOWELL,
Deputy.

1695 FOUR.—*James M. Ball & R. E. Stillwell.*

In the United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Florida Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Jacksonville, Pensacola and Mobile Railroad Company, et al.

To the defendants, George F. Drew, governor, trustee, &c., and George F. Drew, et al., trustees of the internal improvement fund, or Georg' P. Raney, their counsel, the Florida Central Railroad Company, or J. M. Baker, its counsel, the Jacksonville, Pensacola and Mobile Railroad Company, or S. B. Stephens, its counsel, and Adolph Engler, trustee, or William G. M. Davis, his counsel.

Take notice that on Tuesday, the 22nd day of October, A. D. 1878, at the hour of 10 o'clock a. m., before and at the office of Robert 1696 E. Stillwell, esq., United States Commissioner, No. 247 Broadway, in the city of New York, I shall proceed to take the testimony of Lawrence P. Bayne and other witnesses, to be read as evidence on the part of the complainants on the trial of the above-entitled causes, and shall continue such taking of testimony subject to such adjournments from time to time as may be necessary till the is completed.

JOS. B. STEWART,
Solicitor for Complainants.

Dated Sept. 30, 1878.

(Endorsement:) U. S. circuit court northern dist. of Florida. The Western Division of the Western N. C. R. R. Co. vs. George F. Drew, governor, trustee, &c., et al. Two cases. Notice to take testimony to the defendant, the Florida Central R. R. Co.

Due service of the within notice is hereby admitted.

JAMES M. BAKER,
Sol. for Fla. Cen. R. R. Co.

1697 **FIVE.**—*James M. Ball, R. E. Stillwell, examiners.*

United States circuit court for the northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, &C., THE Florida Central Railroad Company, et al.,

and

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Jacksonville, Pensacola and Mobile Railroad Company.

And now at a circuit court held in and for the circuit aforesaid on this 2nd day of February, 1879, comes the complainant, and upon its motion it is ordered that the time for taking testimony upon the commissions now outstanding or such further commissions as may be issued be and the same is hereby extended to the 1st Monday in March, 1879.

W. B. WOODS, *Judge.*

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

1698 I, Philip Walter, clerk of the United States circuit court in and for said district, do hereby certify that the foregoing is a true copy of an order on file and of record in my office.

Witness my hand and the seal of said court, at the city of Jacksonville, in said district, this 5th day of December, 1878.

{SEAL, U. S. C. C'T N. D. FLA.}

PHILIP WALTER,
Clerk.

Filed Dec. 4th, 1878.

PHILIP WALTER,
Clerk.

Received in due course of mail and opened this 14th day of May, 1879.

PHILIP WALTER,
Clerk.

1699 *Depositions of witnesses taken on the part of complainant in New York.*

United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, THE JACKSONville, Pensacola and Mobile Railroad Company, The Florida Central Railroad Company, et al.

Opened by order of the court and filed this 19th day of May, 1879.

PHILIP WALTER, *Clerk.*

1700 In the circuit court of the United States for the northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant,

vs.

GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, and Geo. F. Drew, governor, Columbus Drew, comptroller, Walter Gwynn, treasurer, Hugh A. Corley, commissioner of lands and immigration, &c., trustees of the internal improvement fund, &c., The Jacksonville, Pensacola & Mobile Railroad Company, Milton S. Littlefield, James G. Gibbes, Adolph Engler, trustee for the holders of the alleged bonds of the State of Florida, involved in this suit, Thomas C. Coddington, and others, defendants.

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

To Richard E. Stillwell, United States commissioner for southern district of New York, and James M. Ball:

1701 Know ye, that confiding in your fidelity and good judgment and discretion, and in obedience to the order of this court hereto annexed, you are hereby authorized and empowered to proceed to take the depositions of Aaron Barnett and such other witnesses as may be called before you, to be read in evidence on the part of complainant in the manner prescribed by the sixty-seventh rule of equity practice of this court, and that you certify such your examination and all and singular the testimony taken by you under this commission, together with all papers, documents, and exhibits, if any may be presented as part of such testimony, duly sealed and directed to the clerk of this court in the manner prescribed by law.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Jacksonville, in the northern district of Florida, this the third day of January, A. D. 1878.

{ SEAL U. S. CIR. CT., N. DIS. FLA. }

PHILIP WALTER,
Clerk.

1702 Circuit court of the United States for the northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, complainant,

vs.

GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, and George F. Drew, governor, and Columbus Drew, comptroller, Walter Gwynn, treasurer, Hugh A. Corley, commissioner of land and immigration, &c., trustees of the internal improvement fund, &c., the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, James G. Gibbs, Adolph Engler, trustee for the holders of the alleged bonds of the State of Florida, involved in this suit, Thomas B. Coddington, and others, defendants.

Testimony taken on the part of the complainant, under the 67th rule of the Supreme Court of the United States (as amended) and under a commission issued out of the circuit of the United States for the northern district of Florida, directed to Richard E. Stillwell and James M. Ball, to be used on the final hearing of this cause, before the circuit court of the United States for the said northern district of Florida.

THURSDAY, *January 17th*, 1878.

Present, Joseph B. Stewart, esq., counsel for complainant; J. H. Herbert, esq., counsel for Jacksonville, Pensacola and Mobile Railroad Company, and Milton S. Littlefield.

1703 The counsel for complainant, before proceeding with the examination, enters of record the statement now made, that the examination of the witnesses and testimony taken under this commission is not designed to be read to the prejudice of any interests of rights or duties of the defendants, known as the trustees of the internal improvement fund of the State of Florida, who is represented by the attorney-general of the State of Fla., Hon. George P. Raney, and Hon. David S. Walker. The defendants so included are George F. Drew, governor; Walter Gwynn, treasurer; Columbus Drew, comptroller; George P. Raney, attorney-general; Hugh A. Corley, commissioner; and that leave is reserved to said defendants or their counsel to cross-examine the witnesses if they so elect.

AARON BARNETT, being duly sworn on the part of complainant, testifies as follows:

1. Question. State your name, age, residence, and occupation.

Answer. Aaron Barnett; 45 years old; reside at No. 785 Madison avenue; business, commission merchant. I appear without counsel.

2. Ques. Did you at any time reside or sojourn in the State of Florida; if so, when?

Ans. In the year of 1867. I hav' resided there before up to that time.

3. Ques. For what length of time did you so reside or so sojourn in the State of Florida, and when did you cease to reside there?

Ans. I ceased to reside there in 1867. Before 1867, I resided part of the time in Georgia and part of the time in Florida. About fifteen years I resided in Florida, and have done business in both States.

4. Ques. Please state what business you were engaged in in Florida.

Ans. Cotton-factor and shipping business.

5. Ques. Were you engaged in any other business while in Florida?

Ans. I was general commission merchant.

6. Ques. Do you, or do you not, know anything about a body corporate known as the Jacksonville, Pensacola and Mobile Railroad Company, a party defendant to this suit?

Ans. I do.

7. Ques. How and where did you acquire your knowledge of that company?

1704 Ans. In Florida, while there.

8. Ques. At what period?

Ans. In 1870, as near as I know.

9. Ques. What time in the year 1870?

Ans. I could not remember, sir.

10. Ques. Had you any connection with or interest in said company?

Ans. No direct interest.

(Answer excepted to)

11. Ques. Had you any indirect interest?

Ans. I acted as a director for said company for a short time.

12. Ques. Had you any other interest than that attached to your position as director?

Ans. No other interest.

13. Ques. Do you know of the issue of any bonds by the State of Florida, to be delivered, or which were delivered, in exchange for any bonds issued by the said Jacksonville, Pensacola and Mobile Railroad Company?

Ans. I have so learned that there was an issue of $4,000,000 of bonds by the State of Florida, the same being turned over to the Jacksonville, Pensacola and Mobile Railroad Company before I had become director of the company.

14. Ques. At what time did you become a director of the company?

Ans. I could not remember the time.

15. Ques. But it was after the issue and exchange of bonds you have mentioned.

Ans. Yes, sir.

16. Ques. You say you learned of the bond issue referred to. How did you obtain that information, and from whom, or was it the result of your connection with the company as director?

Ans. It was before the board of directors, and otherwise, probably.

17. Ques. State, if you know, the object for which said bonds were issued and exchanged between the State of Florida and said company.

Ans. I read the act more than once, and believe from what I can remember now the bonds were issued for the purpose of extending the Jacksonville, Pensacola and Mobile Railroad Company.

18. Ques. And for no other purpose?

1705 Ans. No other purpose, as far as the act goes.

19. Ques. Do you know of any of said Florida State bonds, so exchanged for the purpose of building said Jacksonville, Pensacola and Mobile Railroad, as stated by you, having been sold or purchased by any parties in Europe? And if you have such knowledge, please state fully your information on the subject.

Ans. As a director of the company, I had been appointed by the company and the State of Florida, in 1870 to 1871, to come here and investigate S. W. Hopkins & Co.'s account with said company, at which time I ascertained that Hopkins & Co. had sold, through John Collinson and

Company, of London, $2,800,000 of said bonds at £138 and a fraction over for $1,000 bond. The information of the sale I got from Mr. Collinson, who was here at the time.

20. Ques. You say you was appointed as an agent on the part of the State of Florida. Please state what caused such appointment to be made.

Ans. By the company and the State both. For the reason that the company could never before get any information from Hopkins & Co. whether or not there was anything realized from that issue of bonds.

21. Ques. And do I understand you to say, or to mean to say, that the State of Florida being advised of the inability of your company to get the desired information from S. W. Hopkins & Co. as to what was realized from that bond issue, appointed and authorized you to investigate the books of S. W. Hopkins & Co. in order that the State might know what the facts were in the premises? Do I understand this to be the meaning of your answer just given?

Ans. It is.

22. Ques. At the time of issue and sale of bonds to which you have referred to, Mr. Barnett, was there not any question raised about the legality and validity of the same?

Ans. I so heard frequently.

23. Ques. To what extent did you hear it alleged and stated that said bonds were illegal, and on what grounds?

Ans. Mr. Collins, the old gentleman, representing S. W. Hopkins & Co., passing through Savannah, Georgia, stopped at my office in such place, and told me that the bonds could not be sold or negotiated, as they are pronounced by some parties in Holland as an illegal issue, and for that reason was going to Florida, and for that reason asked me to go with him; whether I went with him or not I do not remember, 1706 but he stated that it was necessary to get some decision, I believe to be from the highest court in Florida, to legalize the issue of the bonds.

24. Ques. Did or did not the allegation and charges of illegalities and irregularities alleged to exist in the issue and exchange of said Florida State bonds about or preceding the visit to Mr. Collins to Florida, on the part of S. W. Hopkins & Co., give rise to publications and statements before the public, and add also to proceedings before the court to which you, as a director, was made a party defendant, charging that said bond issue was fraudulent and void?

Ans. I may have seen publications and read them as far I remember of, but I do not remember of being a party to any of the suits, as I had resigned my directorship about the time, or before, when various suits were brought against the company.

25. Ques. But did you or did you not know of the fact that such publications were made, and such suits instituted, charging and alleging that such bond-issue was illegal and fraudulent?

Ans. I believe I have seen publications, as I said before, and read them, charging the fraudulent issue of said State bonds, but do not remember seeing the title of the case.

26. Ques. While you were director of the company, and on the 10th day of December, 1870, did you, or did you not, as a board of directors, pass a resolution, and publish the same to the world, denouncing the use made and being made of said bond issue as fraudulent and void, which said resolution is made part of this question (marked B, No. 1) and now shown you?

Ans. The witness, after reading the resolution, says: I do not know whether I was a director or not at the time. I have seen a resolution similar to this—whether it was in print or otherwise I do not remember.

27. Ques. You have spoken of parties in Holland who raised objections as to the validity of the said Florida State bonds. Can you remember the names of any of the persons in Holland referred to, by whom such questions were raised? If so, please state the same.

Ans. I do not remember speaking to any of the people in Holland, who were interested in said bonds, as to their validity. There was Boserain, Mildures & Bros., Menge & Collins; I do not remember others.

1707 28. Ques. Did you, or did you not, know that the persons or some of them whose names you have just mentioned, under date of December 18th, 1870, in consequence of the charges of illegality and fraud, or for some other reasons, telegraphed to Governor Reed, of Florida, in or about the following words: "Being negotiating, $4,000,000 bonds issued by your State to Jacksonville, Pensacola and Mobile Railroad, to know, by telegraph, from you whether provision made for payment interest; whatever result railroad traffic; financial position of State, really sound, and bonds undoubted security." To which dispatch Governor Reed replied as follows: "Bonds recently recalled by company; no provision will, therefore, be made for interest." And if you say you have such knowledge, or was advised of said telegrams, please state fully all you know about the same.

Ans. As near as I remember, Governor Reed himself has told me the substance of this, or may have shown me the telegram. I am aware from what the governor told me that such telegram passed.

29. Ques. Did you, or did you not, yourself, as director of said company, or otherwise, give notice to any person or persons about the use and appropriation of said bond issue? And if you say you did, please state when and where it was, and why you gave such notice, and to whom addressed.

Ans. I understood about the time when I was a director that the bonds which were issued to aid the railroad company were about to be misappropriated from the purpose for which they were issued, upon which I have given notice to Barlow, La Rocque & McFarland, whom I employed as attorneys for the Jacksonville, Pensacola and Mobile Railroad Company, knowing that they acted as attorneys for John Collinson & Company, of London, England, and in substance the notice read, as far as I can remember, I, as a director and stockholder of said company, gave them notice as attorneys for the Jacksonville, Pensacola and Mobile Railroad Company, that they should see that the bonds of the State of Florida should not be diverted from their original purpose for which they were issued, and a copy of which said notice I sent Baring Bros. & Co., of London, asking them, as a favor, to hand it to Mr. Collinson, and see the contents of the notice, which was done, and at which time, after the notice was served, I resigned as a director.

30. Ques. Have you a copy of said notice; and if so, will you produce the same as part of your answer?

Ans. No doubt I have a copy, which is on file in Savannah, Georgia, where this notice was sent from, and will procure copy as soon as I can.

1708 31. Ques. Did you not yourself, subsequent to giving these notices, visit Europe in reference in part to the use being made of the issue of said Florida State bonds?

Ans. Yes, sir.

32. Ques. What part?

Ans. England and Holland.

33. Ques. While there, was or was not the matters mentioned in your examination, touching the validity and use of said bonds, the subject of remark and more or less notoriety, both in England and Holland, by or among those who were engaged in handling said bonds?

Ans. In the summer of 1872, while in Holland and England, I remember having seen papers published in Holland, notices which had been taken from Florida papers, attacking the validity of the State of Florida bonds. I remember having been spoken to in regard to the notices in papers, by whom I do not now remember, but they were parties in interest, asking me at the time as to the validity of this issue, the entire complication as to the bonds being about to be compromised, but I do not remember having said anything against the issue of the bonds.

34. Ques. Were the publications you refer to in Holland printed in the public journals in the local language of the country?

Ans. Yes, sir, they were published in the Dutch language in the papers for general circulation.

35. Ques. While or about the time you were so in England and Holland, did or did not it come to your knowledge and the knowledge of the public, that the legislature of the State of Florida had preferred articles of impeachment against Governor Harrison Reed, of that State, for having fraudulently and illegally issued and exchanged said bonds of the State of Florida with the said railroad company, and, if so, please state to the best of your recollection, what occurred or was said in reference thereto?

Ans. I remember it came to my knowledge that articles of impeachment had been brought against Governor Reed, of Florida, but whether I heard it in America or Europe, I do not remember. It was, however, in reference to the bonds issued by the State of Florida and exchanged with said company in aid of said company. It was generally known, and was a matter of public notoriety.

1709 The further examination of this witness is adjourned until Friday, February 16th, 1878, at 2 p. m.

Adjourned until January 18th, 1878, at 11 a. m., as to the examination of other witnesses.

SATURDAY, *February* 16, 1878—2 *p. m.*

Present, counsel as before.

AARON BARNETT, continued.

36. Ques. Do you know of a corporation or company known as the Florida Central Railroad Company, and, if yea, please state the location of the road of said company?

Ans. I know of such corporation in Florida, the running of the road of which from Lake City, in said State, to Jacksonville.

37. Ques. What is the length of said road?

Ans. About sixty miles.

38. Ques. Had you, at any time, any connection with said Florida Central Railroad Company, and, if so, what?

Ans. I was president of said company.

39. Ques. Please state at about what time you was president of said company, or as near as you can remember the date of your election?

Ans. As near as I can remember, I was elected in 1872, and acted as president of said company about 12 months.

40. Ques. Was, or was not, said Florida Central Railroad Company ever consolidated with any other railroad company, and, if yea, please state with what company, and all you know about it?

Ans. There never was any consolidation with any company until the time my term expired as president. The road had been running during my administration and before upon the usual pro rata with other roads.

41. Ques. How long have you known of the existence of the Florida Central Railroad as a corporation?

Ans. Ever since it organized, which I believe was in 1868.

42. Ques. Has, or has not, said Florida Central Railroad Company, since its organization in 1869, been managed and conducted by its own officers and board of directors?

Ans. I believe it has, for the reason that I have been looking over the books while president, and found a continuous record of its minutes from its organization up to the time I became president.

1710 43. Ques. Did the Florida Central Railroad Company, at any time, agree or undertake to issue or deliver its bonds or obligations to the Jacksonville, Pensacola and Mobile Railroad Company for any purpose, or enter into any contract or agreement to that effect; and, if yea, please state what it was.

Ans. As far as I can remember, there was an issue of bonds to the extent of one million dollars, issued to be exchanged for a like amount of bonds of the State of Florida, for the purpose of enabling the Jacksonville, Pensacola and Mobile Railroad Company to extend their road westward. Whether they ever were finally delivered or not I am unable to state, as I heard various reports that the bonds were not turned over for some reason, but as far as I know there was no contract or agreement on the subject between the two companies, and from the minutes I have seen in the companies' books, while president, that they had been delivered and again returned and held by the State of Florida.

44 Ques. Do you know of any other matter or thing material to this, your examination, beyond what you have been interrogated hereto of interest to either party, plaintiff or defendant? and, if yea, please state the same fully and at large in your answer.

Ans. Nothing.

AARON BARNETT.

Subscribed and sworn to before us this 16th day of February, A. D. 1878.

R. E. STILWELL,
JAMES M. BALL,
Examiners.

FRIDAY, *January 18th*, 1878.

Present, counsel as before.

ADOLPHUS W. ENGLER, being duly sworn on the part of complainant, testifies us follows:

1. Ques. State your name, age, residence, and occupation.

Ans. Adolphus W. Engler; fifty-three; occupation, commission merchant; residence, 437 West Twenty-third street, New York City.

2. Ques. Where is your place of business?

Ans. No. 160 Pearl street.

3. Ques. In what particular class of commission business are you engaged?

Ans. Shipping leaf tobacco to Europe; buying and shipping.

4. Ques. Are you alone, or connected with a firm?

Ans. My firm is Kremelberg & Co.

1711 5. Ques. Who composes that firm; give the name of each individual interested.

Ans. John D. Kremelberg, of Baltimore; George J. Kremelberg, of New York; residence 60 West Thirty-sixth street, and myself.

6. Ques. Have you, or not, any connection, and, if so, what, with certain bonds issued by the State of Florida?

Ans. I have. I am trustee for the foreign owners for a certain number of bonds.

7. Ques. State the names of the persons for whom you are trustee.

Ans. There are too many; I cannot do so this moment. There are hundreds.

8. Ques. When did you become such trustee?

Ans. It must be about March, 1877, I began to have some correspondence about it; I consented to become trustee.

9. Ques. Previous to March, 1877, had you any knowledge of, or connection with, said Florida State bonds?

Ans. None, whatever, excepting in preliminaries for my trusteeship in the month of February, 1877.

10. Ques. Is your trusteeship created by any written instrument?

Ans. It is. I have hundreds of powers, duly sworn to, each before the United States consul at Amsterdam, by the then bona fide owners of the Florida State bonds.

11. Ques. Will you please produce said powers of attorney to be incorporated as part of your deposition?

Ans. I will produce said papers.

12. Ques. Accompanying said powers of attorney, did you receive any bonds of the State of Florida; and, if so, how many, and will you produce the same?

Ans. I have received bonds of the State of Florida to the number of about 2,700 or 2,800, I cannot say this moment. I cannot say for certain. I can produce a part of them here in the city; the larger part is not here in my hands; there are 300 or 400 lately received, and about 2,400 are not in the State of New York.

13. Ques. Where are the 2,400 of said bonds, that are not in the State of New York?

Ans. They are in the hands of my partner, John D. Kremelberg, in Baltimore, Md.

14. Ques. You have stated that you are trustee for the whole 1712 of said bonds, will you please state why 2,400 of said bonds are in the hands of John D. Kremelberg, in Baltimore, and please state fully what relation to title or interest, if any, said Kremelberg has in said 2,400 bonds?

Ans. At the time these Florida State bonds were going to be sent to me from Amsterdam I had reason to fear that a certain party would prevent them from getting safely to my hands, and in consequence I telegraphed to Amsterdam to direct them to my partner in Baltimore, who has no interest whatever, except to keep them safe until they are wanted for the purpose the bona-fide owners have authorized me to use them for.

15. Ques. State who the party was that you had reason to apprehend were trying to get possession of said bonds or would interfere to prevent them coming into your hands.

Ans. I can only give a general answer that they were opponents in a certain suit then going on.

16. Ques. Where was that suit pending?

Ans. I think it was pending in Florida.

17. Ques. From whom did you get your information as to the pendancy of said suit?

Ans. From Mr. Charles D. Willard.

18. Ques. Was that information imparted to you in writing?

Ans. Most of it was imparted to me verbally, and there may be some contained in correspondence from Mr. Willard.

19. Ques. You have stated, Mr. Engle, that it was not until about the month of February or March, 1877, that you had or acquired any knowledge whatever of or concerning these Florida State bonds; now I ask you to state, fully and distinctly, who brought those bonds to your attention at that time. Give the name of each individual and how you came in contact with that individual, to the very best of your knowledge and recollection.

Ans. The first intimation I had from Mr. C. D. Willard, and about the same time received a cablegram from Amsterdam, asking for some information about the "memorandum plan."

20. Ques. Where did you first meet or see Mr. C. D. Willard, who you say first brought the subject of these bonds to your attention at the time to which you refer?

Ans. I think the first intimation came to me through a visit at my office, 160 Pearl street, from Mr. Willard, in February, 1877.

1713 21. Ques. You had no knowledge of Mr. Willard previous to that visit?

Ans. Never heard of him or saw him before.

22. Ques. In what manner did Mr. Willard introduce himself to you, and what did he state to you was the object of his visit?

Ans. Mr. Willard came to me at the instance of some of our business friends in Amsterdam who had proposed to my firm here to act as trustee.

23. Ques. As trustee of what, and in what connection?

Ans. As trustee of the bona-fide owners of the Florida State bonds, to receive same, and to act with them as directed by their powers of attorney.

24. Ques. Was or was not that trusteeship connected wholly and exclusively with the execution of the "memorandum plan," of which you have spoken; and if you say your trusteeship related to any other purpose than the "memorandum plan" and the execution thereof, you will please state fully and distinctly what it was.

Ans. My trusteeship has no relation to anything else than the "memorandum plan."

25. Ques. Did you or did you not have authority as such trustee to bring suits and defend suits concerning such bonds, in your name or otherwise, as such trustee?

Ans. None whatever.

26. Ques. Did Mr. Willard bring a letter introducing himself to you?

Ans. I do not recollect for certain; he may have brought a letter of introduction from Washington.

27. Ques. Have you a copy of the "memorandum plan," which you say you are created a trustee to aid in the execution of; and, if you have, will you produce the same as part of your examination?

Ans. I have a copy of that "memorandum plan" and will produce it.

28. Ques. And will you also produce a copy of the power of attorney constituting you such trustee?

Ans. Yes, sir.

29. Ques. Do you know one Frank R. Sherwin?

Ans. No, sir.

30. Do you know one Charles Mueller?

Ans. No, sir.

1714 31. Ques. Whom besides Charles D. Willard have you seen, conversed or corresponded with in reference to these Florida State bonds since February, 1877?

Ans. I have corresponded with the Amsterdamsche Bank, Kreglinger & Co., at Amsterdam, and have given information by affidavits, letters, and telegrams to Florida when the same suit was pending there. I have a letter of H. R. Jackson and Charles H. Simonton accepting the proposition of the "memorandum plan," as trustees of the Pensacola and Georgia bondholders.

32. Ques. Will you produce said letter or a copy thereof as a part of your examination?

Ans. I will.

33. Ques. To whom in Florida did you address the letters and telegrams to which you have referred?

Ans. Governor Drew, one letter, I think; Wm. G. M. Davis and others. That I will give when I look at my books.

34. Ques. Have you seen or had any personal interview with either Governor Drew or Mr. Davis on the subject of these bonds?

Ans. I have seen both these gentlemen on their occasional visits to this city and had a conversation without reference to anything special in regard to these bonds.

35. Ques. What did Governor Drew say to you in reference to said bonds and the said memorandum plan, if anything?

Ans. First he seemed to want to satisfy himself if my affidavits were in so far correct that I was really in possession of these bonds, and he seemed anxious to have the bonds returned for cancellation by the State of Florida after the suits then pending against the different railroads in Florida—that is, the Jacksonville, Pensacola and Mobile Railroad and the Florida Central—were decided in favor of the owners of the Florida State bonds.

36. Ques. You have repeatedly alluded to pending suits in Florida. Can you not state who were the parties to these suits, or, in fact, do you not understand that they are the same suits in which you are now being examined as a witness?

Ans. I do not know anything about the particularities. I have heard in a general way of suits pending, for which purpose Mr. Willard has frequently been in Florida. That is all I know.

1715 37. Ques. They were not, then, suits which you were authorized, as trustee, to prosecute or defend, or which were prosecuted or defended by your authority as trustee?

Ans. My trusteeship has nothing whatever to do with suits at law.

38. Ques. Have you paid or disbursed any money as trustee or otherwise in or for the prosecution of said suits?

Ans. Not a cent.

39. Ques. Have you any personal interest aside from your trusteeship in said bonds?

Ans. No personal interest, except to help some of our friends in Holland to get, if possible, some value in place of these Florida State bonds.

40. Ques. In what way, other than the "memorandum plan," have you aimed or expected to get this value for your friends in Holland?

Ans. In no way whatever.

41. Ques. Do you know or have you heard of any of said Florida State bonds having been sold or purchased since February, 1877?

Ans. None. I heard in the streets that there was a telegram from

Amsterdam to a banking house here that somebody wanted to buy these bonds there at Amsterdam at a low figure.

42. Ques. Was any price named in the information you got?

Ans. No, sir.

43. Ques. When did you last see or correspond with C. D. Willard?

Ans. His last letter was dated January 12th, 1878.

44. Ques. Was it in reference to the subject matter of this suit or said bonds?

Ans. It was in reference to the matter of said bonds.

45. Ques. Did it refer to any litigation pending in Florida?

Ans. Yes, sir.

Adjourned for half an hour.

Witness resumes.

46. Ques. Have you any personal knowledge as to who are the bona fide holders of the Florida State bonds, except such as derived from the papers and powers of attorney to which you have referred?

Ans. No, sir.

47. Ques. Have you any knowledge or proof of their title except such as is contained in said paper?

1716 Ans. No, sir.

48. Ques. You have stated that none of the expense for the prosecution of any suits in Florida or elsewhere effecting said bonds, have been paid or provided for by or through you. Will you please state who does provide and pay the expenses of the litigation, to the best of your knowledge and belief?

Ans. I do not know; I have nothing to do with any such financial arrangements.

49. Ques. Did you ever, at any time, direct or authorize the bringing, instituting, or defending any suit in Florida or elsewhere, in relation to said bonds, in your capacity as trustee or otherwise?

Ans. No, sir.

50. Ques. Did you, or not, know anything of the suit brought in the name of J. Fred. Schutte, Jan Prins, Adranius Prins and others, against the Western Division of the Western North Carolina Railroad Company and others, on or about the 23d of May, A. D. 1877, in the United States circuit court for the northern district of Florida?

Ans. My answer is only by reading in a certain pamphlet which was sent to me.

51. Ques. Please look at the pamphlet now shown you, purporting to be a bill in equity, sworn to by Charles D. Willard on the 23d day of May, 1877, and state whether or not, from the best of your knowledge and belief, that such is the pamphlet you referred to in your last answer.

Ans. I cannot tell whether this is the same; I have one of these things; cannot tell whether it is the same or not.

52. Ques. Please look over the names in said pamphlet, who are made party complainant, and state whether or not those are the persons, or any of them, from whom you have received powers of attorney to act as their agent and trustee in reference to said bonds.

Ans. I recognize some names for certain, and believe all of them have sent powers of attorney to me.

53. Ques. Name the parties to whom you refer.

Ans. J. Fred. Schutte, Jan Prins, Adriauus Prins, Heinrich Ulric, Allias Fuld, J. Borzo, H. Van Borren, Dr. Nicholas, Jacob den Texchs, H. J. Brunnekruff, J. H. Grenn, Willien Mier, Van Tyer Van Ter, C.

Both, L. L. Wertheim, Wysman de Voogt, Rore Opesed, Jan Ticheleer, jr., Jacobus Wertheim, P. Van Reysen, May de Benedithy Beer, Jerard A. Heineken, T. Colon, Charles Gosewinchel, Born Hart-
1717 sink Van Tyen, N. J. Franket Johanns, Willem Donk, Vander Stoop & Berg, and many more.

52. Ques. Are the powers of attorney, so constituting you the agent and trustee of said parties, unrevoked and still in full force by the makers of the same?

Ans. Yes, sir; the time has been extended on them.

55. Ques. Were they in full force and unrevoked at the time the said suit was brought in the name of said J. Fred. Schutte and others on the 23d day of May, 1877?

Ans. A good many were in full force at the time, and a good many have been extended afterwards by parties not named in the bill of equity referred to.

56. Ques. Previous to the bringing of said suit, so instituted by said Willard, on the 23d day of May, 1877, was you, or was you not, consulted about the bringing of the same, and was the same in any manner brought by your direction or under your responsibility as trustee or otherwise?

Ans. No, sir.

57. Ques. Do you know Calvin H. Allen?

Ans. I do, sir.

58. Ques. When did you make his acquaintance, and through whom?

Ans. I made his acquaintance through Charles D. Willard.

59. Ques. Is, or is not, said Allen a party to said "memorandum plan," and interested therein?

Ans. Not that I know of; he was to be one of the managers or directors of the new organization to be formed for the "memorandum plan."

60. Ques. For what purpose did said Willard bring said Allen to your office?

Ans. To make me acquainted with him, as he was to be a member of the new organization to be called the Jacksonville and Mobile Railroad Company, to be formed as according to the "memorandum plan."

61. Ques. Was it proposed at the same time to have Mr. Allen appointed receiver of the roads in Florida mentioned in said "memorandum plan?"

Ans. It was not.

1718 62. Ques. Was it at any time subsequently proposed to you, that he should be so appointed as receiver?

Ans. It was not exactly proposed to me, but I understood that if Judge Bradley would appoint him that he was to accept it.

63. Ques. Who so informed you?

Ans. Mr. Willard himself.

64. Ques. Are you, or are you not, the bondsman of said Allen in the sum of $50,000 as such receiver?

Ans. I am not. I am one of the bondsmen to a nominal amount—$10,000, I think.

65. Ques. Who are the other bondsmen of said Allen?

Ans. One is Louis H. Meier, and the other Lucien Birdseye.

66. Ques. Have you any personal acquaintance with said Meier?

Ans. Yes, sir.

67. Ques. Is he the owner of real estate in the city or county of New York, or in the State of New York, within your knowledge?

Ans. I think he has in the State of New York.

68. Ques. Do you know where said real estate is situated and its value?

Ans. On Staten Island.

69. Ques. Do you know for what amount said Meier signed said bond?

Ans. $25,000.

70. Ques. Are you now ready to produce, and will you produce, the powers of attorney, and the copy of said "memorandum plan," and the Florida State bonds, and correspondence referred to in the previous part of your examination?

Ans. Yes, I will produce the same.

The examination of this witness is adjourned until Saturday, January 19th, 1878, at 12 o'clock m.

SATURDAY, *January* 19, 1878—12 *m.*

Present, counsel as before.

ADOLPHUS W. ENGLER, continued:

71. Ques. Will you now produce the bonds called for in the last interrogatory?

(Inasmuch as there is about 2,800 bonds of the State of Florida
1719 which the witness holds as agent and trustee for various parties
in Holland, it is agreed that the body of one bond be copied as a
specimen of the whole, treating the remainder of about 2,800 as presented for the purpose of this examination.)

Ans. I present bond No. 1240 as a specimen of the lot of about 2,800, in my hands as agent and trustee, which bond is in the words, letters, and figures following, to wit:

[1,000]	UNITED STATES OF AMERICA.	[1,000]
[1240]	STATE OF FLORIDA.	[1240]

It is hereby certified that the State of Florida justly owes to or bearer, one thousand dollars, redeemable in gold coin of the United States, at the Florida State agency, in the city of New York, on the first day of January, 1900, with interest thereon, at the rate of 8 per centum per annum, payable half yearly at the said Florida State agency, in gold, on the first days of July and January, in each year from the date of this bond, and until the principal be paid, on surrendering the proper coupons hereto annexed.

Tallahassee, January 1st, 1870.

[SEAL.]

HARRISON REED,
Governor.
S. B. CONOVER,
Treasurer.

Issued in accordance with an act of the legislature of Florida, approved January 28th, 1870.

(Across the face:) 1,000.

72. Ques. Will you now produce the "memorandum plan"?

Ans. I now produce it, which I make part of my examination, marked Appendix "A, A. E., marked Exhibit A, January 19, 1878," James M. Ball and R. E. Stillwell, examiners.

73. Ques. Will you now be so good as to produce the powers of attorney, appointing or constituting you the agent and trustee of the 2,800 bonds, or thereabouts, in your possession under and pursuant to the terms and

objects of the "memorandum plan," of which you have heretofore testified?

I herewith produce said power of attorney:

(Inasmuch as there are a large number of these papers, representing the said 2,800 bonds or thereabouts, referred to in the testimony of the witness, and they being all made from uniform printed blanks, it is stipulated and agreed that one of said powers of attorney and appointment for agency and trusteeship being copied and entered here as a specimen of the whole.)

110, 194.

I, the undersigned, H. M. Lehren, bona fide holder of 1 bonds,
1720 8 per cent. Florida, issued 1870, each bond of Ds 1,000, numbered as follows:

1879—

declare by these presents to accept and to join for my part to the provisions of the memorandum plan for the reorganization of the Jacksonville, Pensacola and Mobile Railroad Company, and the Florida Central Railroad Company, of Florida, signed on the 12th day of January, 1877, at Savannah, Georgia, between Frank R. Sherwin, agent of the owners and holders of the bonds of the said State of Florida, issued in aid of the said railroad companies, on the first part, and the owners and holders of the first mortgage bonds of the Pensacola en Georgia en Tallahassee Railroad Company of said State, issued under the provisions of the act of January 6th, 1855, generally known as the "internal improvement act," represented by Henry R. Jackson, of Savannah, in the State of Georgia, and Charles H. Simonton, of Charleston, in the State of South Carolina, of the second part:

That I do hereby appoint my lawful trustee Adolph Engler, partner of the firm of Kremelberg & Co., at New York, handing to him herewith as trustee one said as above-numbered bonds, with the power to deliver and to exchange the so in trust given bonds as aforesaid, with all the coupons attached, to a company to be formed under the general incorporation laws of the State, under the style and name of the "Jacksonville and Mobile Railroad Company," for the purpose of purchasing the present lines of constructed and completed railways extending from Lake City to Chattahoochee and from Tallahassee to St. Mark's, known as the Jacksonville, Pensacola and Mobile Railroad, and the road extending from Jacksonville to Lake City, known as the Florida Central Railroad, together with all their depots, rolling stock, machine-hopss and all their other salable property, and such in the proportion of 33⅓ per cent. in bonds and 16⅔ per cent. in shares lawfully and legally issued by the said new company to be formed as aforesaid; i. e., for each old bond of $1,000, with coupons attached, $333⅓ in bonds and $166⅔ shares; all, however, under the following terms and conditions:

1st. That the said bonds shall be part of a first-mortgage bond of a maximum not exceeding $12,000 per mile, redeemable in 40 years by lot, bearing 5 per cent. interest per annum in gold; bonds and interest at maturity payable in Amsterdam and New York at the rate 2.50 Dutch currency per dollar. First coupon for interest to be paid on the 1st July, 1878.

2d. That no expenses whatsoever already incurred or to be made for the reorganization as per the memorandum plan aforesaid shall be at the charge of the bonds or of the bondholders.

3d. That the exchange and delivery of the old bonds against the bonds and shares of the new company must be completed before or on the 1st of December, 1877. That on or before the 1st of June, 1877, the directors of the new company to be formed, Messrs. Robert Walker, Hubbart L. Hart, John Clark, C. H. Allen, and Robert P. Dodge, shall depose with my said trustee an authentic act containing that they accept to execute the said memorandum plan, and that the necessary funds
for the purpose of placing the said lines of the new railroad
1720½ company in first-class order and to repair as to road-bed, rolling
stock, and otherwise is secured.

In witness whereof I have signed this 31st day of July, A. D. 1800 seventy-seven, at Amsterdam.

H. M. LEHREN.

Witness:

S. L. PINTO,

For legalization of the above signatures of H. M. Lehren.

Amsterdam, August 23d, 1877.

AMERICAN CONSULATE,
AMSTERDAM.

CHARLES MUELLER,
U. S. Consul.

74. Ques. This power of attorney constitutes and appoints "Adolphus Engler," partner of the firm of Kremelberg & Co., at New York, &c., the trustee of the party executing the same. Are you the Adolph Engler named therein?

Ans. I am.

75. Ques. And are you the same Adolph Engler named in each and all of the other powers presented by you, numbering 271, exhibited as part of your examination, representing said 2,800 Florida State bonds or thereabouts?

Ans. Yes, sir.

76. Ques. Are each and all of said powers and appointments, constituting you the agent and trustee for the several parties executing the same, in full force and effect and unrevoked at the present time?

Ans. As far as I know, they are.

77. Ques. Is the C. H. Allen mentioned in said powers and appointments the same C. H. Allen who was presented to you by said Charles D. Willard and for whom you became bondsman as receiver, as you have previously testified?

Ans. I suppose it is.

78. Ques. Will you now produce the letters and correspondence between yourself and Charles D. Willard, Henry R. Jackson, Charles H. Simonton, George F. Drew, George P. Raney, and William G. F. Davis, or any or all of them, called for in the preceding part of your examination?

Ans. I will produce such letters as I have from any of the parties referred to which have reference to the "memorandum plan." As to suits, I know nothing about them. I have other letters, of a private nature, which I decline to produce. I now produce letter dated Charleston,
S. C., May 16, 1877, from Henry R. Jackson and Charles H.
1721 Simonton; and another, dated Savannah, Ga., May 31st, 1877,
from Henry R. Jackson and Charles H. Simonton, copies of which
are hereto annexed, marked Schedule B and Schedule C, respectively,
January 19th, 1878.

79. Ques. By the letter of the 16th of May, 1877, marked schedule B, January 19th, 1878, you were advised of the receipt of your letter of the 12th of May, 1877, addressed to Simonton and Jackson, to which they replied. Will you be so good as to produce a copy of your letter of May 12th, 1877, so referred to?

Ans. I have not a copy of said letter with me, but in that letter I merely asked them to acknowledge their willingness to accept the conditions of the "memorandum plan" as trustees for the "P. & G." bondholders.

80. Ques. At whose instance did you write said letter?

Ans. At Mr. Willard's request.

81. Ques. Was Mr. Willard present when you wrote said letter, and did he or not dictate the terms thereof in whole or in part?

Ans. He was not present; he sent me the letter, and I copied it.

82. Ques. By the letter marked schedule C (January 19, 1878), and dated May 31, 1877, you were informed by the writers that they had addressed you a letter from Tallahassee, signed by Henry R. Jackson individually, or by said Jackson and Simonton; have you said letter, and will you please produce the same as part of your examination?

Ans. I know of no other letter than the one marked schedule B, January 19, 1878.

83. Ques. You have spoken of a letter received from Charles D. Willard, under date of January 12th, 1878. Will you please produce said letter as part of your examination?

Ans. No; I will not produce it, because it has no reference to these suits whatever.

34. Ques. Has said letter any reference to the bonds of the State of Florida involved in this suit, or the use or disposition thereof?

Ans. No, sir.

85. Ques. In reference to the persons whom you represent as the holders of the said 2,800 bonds of the State of Florida, or thereabouts, do you remember whether you are in possession of the bonds belonging to, and hold a power of attorney from, G. M. Boissevain and N. J. Den Tex?

1722 Ans. I think I do. Yes, I have the powers here, and have presented them among others.

86. Ques. You are, then, at this date, the authorized agent and trustee of the several parties who are the holders of said 2,800 bonds or thereabouts. Is that so?

Ans. I am the agent as stated in this examination before.

87. Ques. By the printed portion of said power of attorney, the following language is made to appear: "The undersigned , bona-fide holders of bonds." Will you state if you have any other knowledge of the bona fides of the holders of said bonds than such as you derive from the language used in said powers?

Ans. Not of my own positive knowledge.

88. Ques. Do you know, or can you state, any other matter or thing material to the rights of the parties, plaintiffs or defendants, in this action, beyond what you have stated in the course of your examination? and, if yea, please state the same fully and at large in your answer.

Ans. Nothing further occurs to me.

AD. ENGLER.

The complainants' counsel here states that he closes the direct examination of the witness, reserving the right to recall him for the purpose of cross-examination by defendants' counsel at any time within ten days from this date.

Subscribed and sworn to this 19th day of January, A. D. 1878, before us.

JAMES M. BALL,
R. E. STILLWELL,
Examiners.

The complainants' counsel here states that he closes the direct examination of the witness, reserving the right to recall him for the purpose of cross-examination by defendants' counsel at any time within ten days from this date.

SCHEDULE B.—*January 19th*, 1878.—*James M. Ball*, *R. E. Stillwell*, *examiners.*

[Simonton & Baker, law office. Charles H. Simonton, Theodore G. Baker.]

15 BROAD STREET, *Charleston*, *S. C.*, 16*th May*, 1877.

To ADOLPH ENGLER, Esq.,
Kremelberg & Co., *P. O. No.* 4445, *New York:*

SIR: We have received yours of the 12th instant, informing us that
you have accepted the trust and agency for bona-fide holders resident
in the Kingdom of the Netherlands, of about 3,200 bonds of $1,000
1723 each, State of Florida, 8 per cent., as per memorandum plan, en-
tered into between Mr. Sherwin and ourselves and clients, in Sa-
vannah, in January, 1877 (not October, 1876).

Responding to your request, we notify you that each of us has accepted the trust under the same memorandum plan for the Pensacola and Georgia and the Tallahassee Railroad bonds.

Very respectfully, yours,

HENRY R. JACKSON.
CHARLES H. SIMONTON.

SCHEDULE C.—*January* 19.—*James M. Ball*, *R. E. Stilwell*, *examiners.*

[Law office of Jackson, Lawton & Basinger. Henry R. Jackson, Alex. R. Lawton, Wm. S. Bassinger.]

SAVANNAH, GA., *May* 31, 1877.

ADOLPH ENGLER, Esq.,
Trustee in behalf of the Florida State Bonds, New York:

SIR: Since the date of my letter to yourself, from Tallahassee, indicating my acceptance, in companionship with Mr. Simonton, of the trust under the "memorandum plan," a temporary injunction has been granted by the U. S. circuit court, restraining the sale of the railroad by the governor. The judge has intimated that upon presentation of evidence of the bona-fide character of the bondholders whom you represent, the injunction will be dissolved. I beg to say to you that my confidence in the plan remain unshaken, and that I will spare no effort to carry it out to full consummation.

Yours, very respectfully,

HENRY R. JACKSON.

I concur.

CHARLES H. SIMONTON.

Exhibit marked H., January 19, 1878.

JAMES M. BALL,
R. E. STILWELL,
Examiners.

Appendix A.
A. E.

1724 *Appendix A. E., marked Exhibit A, Jan'y 19th,* 1878, *James M. Ball, B. E. Stilwell, examiners.*

Memorandum plan for the reorganization of the Jacksonville, Pensacola and Mobile Railroad Company of Florida, to be agreed upon by and between Frank R. Sherwin, agent of the owners and holders of the bonds of the said State of Florida, issued in aid of said railroad company of the first part, and the owners and holders of the first mortgage bonds of the Pensacola and Georgia and Tallahassee Railroad Companies of said State, issued under the provisions of the act of January 6th, 1855, generally known as "the internal improvement act," represented by , of the second part.

The object to be sought in said reorganization shall be the formation under the general incorporation laws of said State of a new company, under the name and style of "The Jacksonville and Mobile Rail- 1725 road Company," for the purpose of purchasing the present lines of constructed railroads between Jacksonville and Chattahoochee, and Tallahassee and St. Mark's, with branch at Monticello Junction, together with all their rolling stock, depots, machine-shops, and all their other property, and of completing the said line of road to Mobile, in the State of Alabama.

To this end it is agreed between the said parties that the line of completed railway, to wit, the roads extending from Lake City to Quincy, and from Tallahasse to St. Mark's, formerly known as the Pensacola and Georgia and the Tallahassee Railroads, and the road extending from Jacksonville to Lake City, known as the Florida Central Railroad, and any other portion of said completed line or lines, if any such be legally saleable by the said, the governor of the State of Florida, together with all their depots, rolling stock, machine-shops, and all their other saleable property, shall be sold at public outcry in accordance with law, so soon as the following antecedent arrangements numbered "first" and "second" shall have been completed.

First. The said the parties to this agreement shall within 30 days 1726 select three persons who shall act as trustees in discharge of the trusts hereinafter set out; any vacancy in their number occurring by death or otherwise to be filled by the surviving trustees.

Second. The said bonds and coupons of the Pensacola and Georgia and Tallahassee Railroad Companies held by the said parties of the second part, and a majority of the said bonds and coupons of the State of Florida, paid in issue*d* of the said the Jacksonville, Pensacola and Mobile Railroad Company, and the said the Florida Central Railroad Company, shall be placed in the hands or under the control of the said trustees so selected for the purpose of the said trust, within thirty days from the date of the acceptance of their appointment.

The said the governor shall offer at public sale according to law said line of railroads or as much of said *said* line as can be legally so offered, together with all their depots, rolling stock, machine-shops, and all their other property, or such portions of it as may be legally saleable, and at the said sale the said trustees shall bid for the said property so 1727 to be exposed for sale to the extent, if necessary, of the par value of the said bonds and past due coupons of the State of Florida so placed under their control, the aggregate amount in dollars and cents, of which said bonds and past due coupons shall be treated and received as cash at said sale by the said governor, and if such bid be the highest made at such sale or sales the said line of railroad, together with all of its property as hereinbefore detailed, shall be struck off to the said trus-

tees so bidding, and upon the delivery to the said the governor of the said bonds and past due coupons last mentioned, the said trustees at the same time shall deliver to the said governor the said bonds and coupons of the said the Pensacola and Georgia Railroad Company for cancellation by the board of trustees of the internal improvement fund of the said State of Florida, whereupon the governor shall immediately cause the said trustees so bidding to be placed in the actual possession of all said railroad property, and full title shall be perfected in said trustees by the governor, so far as the same is in his power, the same to be held by them subject to the following conditions, namely, in trust to
1728 be conveyed by them to the said "Jacksonville and Mobile Railroad Company" after the following arrangements and conditions shall have been perfected and complied with:

First. Such title to the line of railroad now known as the Florida Central, extending from Jacksonville to Lake City, and such title to that portion of the Jacksonville, Pensacola and Mobile Railroad which extends from Quincy to the Chattahoochie River; and such right or franchise to continue the construction of said line of railway westward to the city of Mobile, as may not be perfected in the said selected trustees, by the said sale as hereinafter provided, shall be perfected in the said the Jacksonville and Mobile Railroad Company, through the action and agency of the said party of the first part, and shall be so perfected as not to leave any lien or incumbrance upon said last-mentioned title or property, which shall be superior to the special mortgage lien to be created as hereinafter provided. The provisions of this clause, numbered first, to be practically carried out by the said party of the first part within six (6) months from the date of this agreement.

1729 Second. Title having been so perfected in the said the Jacksonville and Mobile Railroad Company, that company shall execute an obligation in writing to the said the selected trustees, stipulating that immediately after conveyance made to it, the said railroad property, so to be purchased as aforesaid by them (the said selected trustees), the said the Jacksonville and Mobile Railroad Company shall cause the entire line of constructed railroads heretofore named to be bonded at the rate of not more than twelve thousand dollars ($12,000) per mile, which bonds shall be due forty years from date, bearing interest at the rate of five (5) per cent. per annum, payable semi-annually, either in New York city or Amsterdam, Holland, at the option of the holders, principal and interest payable in gold, which bonds shall be a first mortgage lien upon said line of railroad, its depots, machine-shops, rolling stock, and all of its other property.

That distinct provisions shall be made in said mortgage for the issue in the first place of a series of said bonds equal in amount only to the par value of said surrendered bonds and overdue coupons of the said
1730 Pensacola and Georgia and Tallahassee Railroad Companies, in the event that the said lines of road formally known as the Pensacola and Georgia and Tallahassee Railroads should be bid off by the said selected trustees, at a sum below or not exceeding the aggregate amount of said last-mentioned bonds and past due coupons; but should the said last-mentioned roads be so bid off at a sum equal to or exceeding the aggregate amount of principal of said bonds and past due coupons and interest on said coupons, then the said first series of bonds to cover the full amount of said last-mentioned aggregate, and this first and distinct series of bonds so issued shall constitute a prior lien upon the said line of railroad and its said property, to secure the payment of the interest and principal of the same when due; and the first

said series of bonds when so issued shall be delivered to the said selected trustees, to be by them delivered to the owners of the said surrendered bonds and coupons of the said Pensacola and Georgia and Tallahassee Railroad Companies.

That provision shall also be made in said mortgage that in
1731 case of default for one year by said new company in payment of
interest or any of the bonds, foreclosure of said mortgage may be made for the entire amount of indebtedness secured by it, both principal and interest; and the said road and all of its said property may be sold, and the proceeds delivered from such sale shall be first applied to the payment of the said first series of bonds, principal and interest, and the surplus, if any, shall be applied toward the payment of the remaining or second series of said bonds.

That provision shall also be made in said mortgage that in case of default for one year by said new company in payment of interest on any of the bonds, foreclosure of said mortgage may be made for the entire amount of indebtedness secured by it, both principal and interest, and the said road and all of its said property may be sold, and the proceeds delivered from such sale shall be first applied to the payment of the said first series of bonds, principal and interest, and the surplus, if any, shall be applied toward the payment of the remaining or second series of said bonds.

1732 That provision shall also be made in said mortgage for the
creation, at the expiration of three years from the organization of said company, of a sinking fund of one per cent. per annum in gold, payable semi-annually upon its said bonded debt, which said sinking fund shall be semi-annually applied, as paid, to the redemption at par of the said bonds of said company, the numbers of which shall be selected by lot, and the said first series of said bonds of said company, issued as aforesaid, shall have priorty of payment out of said sinking fund.

A draft of said contemplated bonds and mortgage, to be approved by the said selected trustees, shall be appended as an exhibit to the said written obligation, and also a copy of the proposed charter of the said Jacksonville and Mobile Railroad Company, showing powers in the said new corporation to issue such bonds, and to execute such mortgage.

It shall be further stipulated in said written obligation that a sufficient number of the second series of said bonds shall be set apart and
used for the purpose of placing said line of constructed railroad
1733 in first class order and repair as to road-bed, rolling stock, and
otherwise, and that said new railroad company shall be managed by a board of directors, consisting of not more than seven nor less than five members, who shall be named by the owners or holders of said State bonds, but who shall be acceptable to said selected trustees, and that in case of vacancy in said board of directors or officers of said company, by death, resignation, or otherwise, notice of any intended new appointment shall be given to the said selected trustees, and a protest in writing, signed by the owners representing a majority of the said first series of bonds of said company, shall operate to prevent the appointment to fill said vacancy, this provision to continue in operation for the period of six years from the organization of the said new company.

It is also further stipulated and agreed that all funds necessary to meet the costs and expenditures incurred in such sale or sales shall be supplied by the said party of the first part.

1734 In witness whereof we the said parties to this agreement have hereunto set our hands and affixed our seals interchang'ably this day of .

1735 And on this 19th day of January, 1878, the complainant produces THOS. B. CODDINGTON, a witness in its behalf, who, being duly sworn, deposes and says:

1. Ques. Please state your name, age, residence, and occupation.

Ans. Thomas B. Coddington; 63 years; city of New York; merchant.

2. Ques. Have you or have you not any knowledge of the issue and exchange of any bonds of the State of Florida for bonds of the Florida Central Railroad Company?

Ans. Yes, sir, I have.

3. Ques. Are you or are you not a defendant in a suit in equity now pending in the circuit court of the United States for the northern 1735½ district of Florida, involving the bonds referred to in your preceding answer, or a portion of them?

Ans. Yes, sir, I am a defendant in that suit.

4. Ques. Did you or did you not file your answer to said bill in said court, sworn to, on or about the 18th day of October, 1877?

Ans. Yes, sir, I did.

5. Ques. In that answer did you or did you not, among other things, state what connection you had with the exchange of a thousand papers, called bonds, of the Florida Central Railroad Company for a corresponding number of bonds of the State of Florida?

Ans. Yes, sir.

6. Ques. Will you now please look at the printed copy of your answer, now shown you, and state whether, to the best of your knowledge and belief, the same is a true and correct copy?

Ans. I have looked at the copy, and believe it to be a correct copy.

7. Ques. In that answer, under paragraphs XI and XII, and pages 11 to 17 inclusive, you state and set forth the following facts and exhibits:

This defendant says that on the 12th day of January, A. D. 1871, he gave Edward Houston the written instrument marked Schedule F; that, although by the said instrument it appears that Houston delivered and that this defendant received one thousand Florida Central Railroad Company first-mortgage bonds, payable to the State of Florida, for one thousand dollars each, yet this defendant alleges and says that the following are the actual facts:

That on the 11th day of January Houston, taking a servant with him, and accompanied by this defendant, went to the office of Col. Robert H. Gamble, and received from Gamble the one thousand railroad bonds described in Schedule F.

That thereupon Houston and this defendant, and Houston's servant carrying the bonds, went immediately to the governor's office in the capitol, and the said one thousand railroad bonds were then and there given to Harrison Reed, governor of Florida, in the said executive chamber, and the said Governor Reed then delivered therefor one thousand State of Florida bonds of the face value of one thousand dollars each, and numbered from 3001 to 4000 inclusive, which said bonds this defendant understood were issued under the statutes of 1869 and 1870, described in complainants' bill.

That Houston directed his servant to take the package of State bonds and carry them to this defendant's room in the hotel; that Houston and this defendant, together with the said servant then carrying the bonds, went to the hotel, where the State bonds were by Houston left with this defendant.

That this defendant, the next morning, at Houston's request, delivered to Houston the paper marked Schedule F, and the said Littlefield, as president of the said Jacksonville, Pensacola and Mobile Rail-
1736 road Company, gave his full authority and assent thereto, and signed the same in his official capacity.

And this defendant says that, in the manner aforesaid, he did receive the said one thousand State of Florida bonds, numbered 3001 to 4000, and that the same were received by the authority, assent, and approval of the said president of the said Jacksonville, Pensacola and Mobile Railroad Company, and in trust and for account of said Edward Houston.

And this defendant says that the disposition he was to make of the said bonds and their proceeds, if any were received by him, is set out in said Schedule F.

That the governor told this defendant, in Houston's presence, in the executive chamber, at the time of the delivery of the said State bonds, for this defendant not to take the bonds out of the State until the governor had made arrangements for the payment of certain moneys to the State of Florida with the said President Littlefield.

That, in accordance with this direction of the governor as aforesaid, this defendant remained with the bonds in Tallahassee until he received the following written instructions, which are in the words and figures following, to wit:

PRESIDENT'S OFFICE, JACKSONVILLE, PENSACOLA
AND MOBILE RAILROAD COMPANY,
Tallahassee, Fla., Jan. 12, 1871.

T. B. CODDINGTON, Esq.,
Tallahassee, Florida:

MY DEAR SIR: I have the honor to give you the following instructions in relation to the bonds, or the proceeds thereof, which you have received from the governor in exchange for railroad bonds:

1st. The bonds will be delivered to the parties in London, England, who have purchased the four thousand bonds issued in aid of the Jacksonville, Pensacola and Mobile Railroad, and collect the pay therefor.

2d. You will pay the following-named parties, viz: Edward Houston, $163,000; M. D. Papy, $16,000; Judge Wescott, $5,000; Gamble, $15,000; Col. J. P. Sanderson, $57,000. I state the amounts not exactly, but about the sums, as you have them exact, upon each party delivering to me, or to my order, all stocks, bonds, coupons, notes, drafts, acceptances, or whatever the said   is to pay for; but should any of the parties whose names are mentioned above refuse to receive the said amounts after it had been offered to them, and after Col. Houston has been paid, then the said amounts shall be paid to me or to my order.

3d. The balance of the money will be placed to the order of his excellency Harrison Reed, governor of Florida, to pay indebtedness to the State.

Truly yours,

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

P. S.—This letter is so far modified as to conform to the letter or receipt given by me to Edward Houston, and approved by me.

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

1737 T. B. CODDINGTON, Esq.:

You will please place to my credit, in the National Trust Company of New York City, the amount called for in the above arrangement, either by wire or letter, and oblige,

HARRISON REED,
Governor of Florida.

And this defendant having received the above instructions from the said President Littlefield, and the governor of Florida being fully advised thereof, and assenting thereto, this defendant having first, personally, bade good-bye to all the parties, was making his arrangements to return to New York by the railroad from Tallahassee, and so informed the president of the road; thereupon, President Littlefield directed this defendant to go by the way of Thomasville and Charleston; and the said Littlefield informed this defendant that he (President Littlefield) had provided a carriage, and that for the safety of the bonds, he, Littlefield, would send him by his carriage (accompanied by his secretary) to Thomasville, Georgia, where this defendant could take the rail, and that his secretary, for safety to the bonds, would accompany this defendant as far as Charleston. That, as directed by the said Littlefield, this defendant went in the said carriage to Thomasville, and thence by rail to New York; and that the secretary of the said Littlefield did accompany this defendant as far as Charleston from Tallahassee.

And that after the arrival of this defendant in New York, he proceeded by the first steamer to Europe, and reached the city of London with the bonds as speedily as practicable and without delay.

That this defendant, having thus received the said State bonds on the 11th day of January, A. D. 1871, retained and kept them in London, England, until the (18) eighteenth day of April, A. D. 1871, because he could not get the money for them, when this defendant, having been peremptorily ordered by the said Edward Houston, did, on said eighteenth day of April, A. D. 1871, deliver the said one thousand State bonds, numbered 3001 to 4000, inclusive, to S. W. Hopkins & Co., London, England.

And this defendant says that, as aforesaid, he received said one thousand bonds, Nos. 3001 to 4000, on the 11th of January, A. D. 1871, and delivered them as ordered on the 18th day of April, A. D. 1871, in London, to S. W. Hopkins & Co. And this defendant says the orders and directions to him to deliver the said one thousand bonds are as follows:

That he received in London the following message by cable from Edward Houston:

Atlantic cable message. Station from Savannah.

From E. Houston to Coddington, care Hopkins, London.

Deliver bonds to Hopkins. Everybody protected.

And this defendant also received the following from Edward Houston.

1738 SAVANNAH, GA., *April 11th*, 1871.

T. B. CODDINGTON, Esq., *London*:

DEAR SIR: I hereby authorize and request you to deliver to Messrs. S. W. Hopkins & Co., of London, the one thousand Florida State bonds, of one thousand dollars each, received by you from the State of Florida, in exchange for a like number and amount of the bonds of the Florida Central Railroad Company, the same having been delivered to you by me, to be held in trust, as per your receipt, dated January 11, 1871, which I now surrender herewith, I having no further lien on or against either of the above mentioned bonds.

Yours respectfully,

E. HOUSTON.

Also the following:

TALLAHASSEE, FLA., *April 6th*, 1871.

SIR: I hereby recall my letter of instructions to you, dated January 12, 1871, and also all instructions subsequently given; and now direct you to deliver to Messrs. S. W. Hopkins & Co., of 58 Old Broad street, London, the one thousand bonds of one thousand dollars each, to wit, one million dollars of the State of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, now held by you, as trustee, whenever Edward Houston, esq., shall authorize and direct you so to do; imposing upon you the single duty of procuring from Messrs. S. W. Hopkins & Co. their signature to the written agreement entered into with you, which is intended to fix upon them the responsibility of carrying out my original orders, and relieving you therefrom.

M. S. LITTLEFIELD,
President J., P. and M. R. R. Co.

To T. B. CODDINGTON, Esq.

And on the face of this instrument and across the writing was the following:

I hereby approve of and ratify this order.

HARRISON REED,
Governor of Florida.

I do hereby authorize and request T. B. Coddington, esq., to deliver the within mentioned bonds to S. W. Hopkins & Co., of London, as I have no further lien against them.

E. HOUSTON.

Which was communicated to me by my firm in New York, prior to the cable from Houston, ordering me to deliver the bonds.

XII.

This defendant further says, that the said S. W. Hopkins & Co. had also a house in New York as well as in the city of London, and were the same firm and composed of the said parties; and that the said S. W. Hopkins & Co. were then the fiscal agents of the State of Florida, and of the said Jacksonville, Pensacola and Mobile Railroad Company; 1739 and that, as aforesaid, this defendant, as thus directed, did deliver said one thousand bonds, numbered 3001 to 4000, inclusive, to said S. W. Hopkins & Co., in London, and obtained their signature, as in said instructions directed; that having delivered the said bonds of the 18th of April, as directed by cable from Houston, that afterwards the said S. W. Hopkins & Co. sent a message by cable to their New York house, notifying them of the receipt of the bonds—and thereupon the New York house of S. W. Hopkins & Co. sent the following letter to the partner of this defendant, and also sent Mr. Nichols the original receipt (Schedule F of complainant's bill), which this defendant had given to Houston, as aforesaid, dated April 11th, to deliver the bonds, all of which the defendant was advised of by his said partner, as aforesaid.

That acknowledgment and letter is as follows:

S. W. HOPKINS & CO.,
71 BROADWAY, NEAR WALL STREET,
New York, April 19, 1871.

GEO. L. NICHOLS, Esq.:

DEAR SIR: A cablegram received this morning from our London house, announces that Mr. Coddington has delivered the bonds. Enclosed please find Mr. Coddington's original receipt to Mr. Houston, dated Tallahassee, January 11th, 1871; also Col. Houston's authority for the delivery; please acknowledge receipt of these documents; we should be glad to know if you have anything from Mr. Coddington, confirming our despatch.

Very truly yours,

S. W. HOPKINS & CO.,
Per L. L. SPRING.

7. Ques. Will you please state whether or not said statement and exhibit contain a true history of the transaction which attended the receipt, transfer and delivery of said bonds by you?

Ans. The statement, so made in my answer, is entirely correct.

8. Ques. It appears from your answer that you received said bonds, and that such transaction occurred on or about the 11th or 12th days of January, 1871. Will you please state whether such is, or is not, the correct date of the transaction referred to?

Ans. The dates are correctly stated therein.

9. Ques. Besides the matter stated in your answer, or a portion thereof, before set forth, will you please state any other or further matter or fact connected with the receipt and handling of said bonds, not set forth therein?

Ans. I took the obligation or undertaking of S. W. Hopkins & Co. as directed by Littlefield, and approved by the governor of Florida and Houston, set forth in interrogatory No. 7, preceding;

1740 10. Ques. Will you state the numbers of the bonds of the State of Florida you so received and delivered in the manner you have before stated?

Ans. 3001 to 4000, both inclusive.

11. Ques. At the time you received and exchanged and delivered said bonds, was there or not one or more suits pending, enjoining the receipt or delivery of the same, and if yea, please state by whom said suits were being prosecuted?

Ans. There was such suit, or there were such suits pending by Judge Wescott and Col. Gamble, and injunctions were pending at that time. Col. Gamble and Judge Wescott consented that I should take the bonds, and I supposed the suits were dismissed, but learned subsequently they were not.

Adjourned until Monday, January 21st, 1878, at 11 o'clock a. m.

MONDAY, *January 21st*, 1878.

Present, counsel as before.

Witness THOMAS B. CODDINGTON, continued.

12. Ques. Please state what transpired or was said by the parties, to

wit, Edward Houston, R. H. Gamble, comptroller, Harrison Reed, governor of the State of Florida, in reference to said Florida Central Railroad bonds and the bonds of the State of Florida numbered above 3001, at or about the time said bonds were exchanged, and the said State bonds delivered to you, besides what you have before set forth, or either of them, separately or together.

Ans. Houston informed me that the State bonds which he had had, had been returned to the governor, and the railroad bonds deposited with Gamble, who was comptroller, for safe keeping, and that the governor promised to exchange them back. The governor hesitated about sending them back until some arrangement was made whereby the residue of the money over and above the special liens should be at the disposal of the State of Florida, which arrangement was made subsequently. Mr. Gamble said, in the presence of Houston, that he objected to let the bonds go, as it would impair the value of the stock which he (Gamble) held, and which parties had agreed to buy and pay for, which had not been paid for, and hence he had taken measures to stop the bonds going. The governor said he was quite willing to exchange the bonds, if he could be satisfied that the money, after
1741 paying these liens upon them, would come back to the State and be applied for the purpose for which they were intended.

13. Ques. Was or was not the objects of the suits and injunctions you have spoken of on the part of Gamble and Judge Wescott the subject of conversation between Governor Reed and yourself, and the other parties, at any time when present?

Ans. I do not think I talked with Governor Reed about the suits of the other parties.

14. Ques. It appears, then, from your answer previously given, that the proceeds of said bonds, numbered above 3000, were to be disposed of exclusively in the manner stated in the papers dated January 11th and 12th, 1871. That is, after paying the private liens specified therein; the balance, which was to be placed to the credit of the State of Florida, in the National Trust Company in the city of New York. Is that what you mean to say?

Ans. Yes, and I furnish you the papers, copies of the originals, which will speak for themselves. The paper signed the 11th of January, 1871, I now produce, and a copy of; it is as follows:

TALLAHASSEE, FLA., *January* 11, 1871.

Received from Edward Houstoun, esq., in trust and for his account, one thousand Florida Central Railroad Company first mortgage bonds, payable to the State of Florida, for one thousand dollars each, with which I hereby undertake to arrange with General M. S. Littlefield, and other parties interested, and collect from him or them the amount which it is admitted is due to said Houstoun, viz: One hundred and sixty-three thousand and twenty-six seventy one-hundredth dollars, with interest thereon at seven per cent from the time M. S. Littlefield's draft on S. W. Hopkins & Co., for said amount fell due, and in addition thereto, the sum of five thousand dollars, for costs and expenses incurred by said Houstoun, in suits brought by parties against said Houstoun in relation to these bonds or other bonds and the stock of the Florida Central Railroad Company, it being understood that all proceedings at law, or otherwise, are to be discontinued, or if that be impossible, he is to be indemnified by responsible parties against all damages or costs arising out of said proceedings, it being further understood, that said Houstoun shall, when paid, transfer and assign to said

Littlefield all the stock in the Florida Central Railroad Company, or other securities which he holds or which were given him as collateral security to secure the above amounts due to said Houstoun.

And it is further understood and agreed, that said Coddington is to collect the further sums of money and pay to said Houstoun for account of the parties named below, which it is understood are a lien subsequent and inferior to said Houstoun's lien on these bonds, viz:

M. D. Papy, esq., the sum of sixteen thousand dollars.

1742 Colonel R. H. Gamble the sum of fifteen thousand dollars, who is to surrender to said Littlefield three hundred shares of stock in the Florida Central Railroad Company, and seventeen hundred dollars in bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company at par.

J. P. Sanderson, esq., the sum of fifty-seven thousand five hundred and sixty dollars, and said J. P. Sanderson is to surrender to said Littlefield seventy shares of stock in the Florida Central Railroad Company, and comply with his agreements with said Littlefield, for which a part of said sum is in consideration.

J. H. Flagg, esq., the sum of four thousand dollars, for which he is to surrender the Central Railroad Company's stock and the Pensacola and Georgia Railroad bonds, which he holds, to said Littlefield.

And also to pay for seventy shares of stock, now or lately held by J. D. Wescott, jr., esq., the sum of thirty-eight hundred and forty-five thirty-three one-hundredth dollars, when said stock is to be delivered to said Littlefield.

This arrangement is based on the assumption that the money will be paid from the proceeds of bonds negotiated by S. W. Hopkins & Co., of New York; the remainder of said proceeds is to be disposed of as directed by the parties interested.

(Signed) T. B. CODDINGTON.

I approve and assent to the same.

(Signed) M. S. LITTLFIELD,
President J., P. & M. R. R. Co.

And the contents of the paper of January 12th, 1871, appears in my previous answer, and is shown in question No. 7. In the letter of April 6th, 1871, Littlefield, president of the Jacksonville, Pensacola and Mobile Railroad Company, which letter was approved and ratified by Governor Reed, of Florida, and authorized and requested by Houston, directed me to procure from S. W. Hopkins & Co. their obligation to carry out what I was originally directed to do in his letter of the 12th of January, 1871. This letter of April 6th appears in question 7, and in conformity thereto, I took from S. W. Hopkins & Co., of London, a writing of which the following is a true copy, and the original of which is appended to copies of papers of the 11th of January, 1871, signed by me, and of the 12th of January, 1871, copies of which also appears in question No. 7.

M. S. LITTLFIELD, Esq.:

We hereby agree to hold the net proceeds of the one thousand bonds of the State of Florida, for one thousand dollars each, to be disposed of by us, subject to the performance of the instructions contained in the two documents, dated 11th and 12th of January, 1871, of which copies are hereto annexed, dated this 18th day of April, 1871.

S. W. HOPKINS & CO.

The word net inserted above before signing.
London.

S. W. HOPKINS & CO.

1743 I now present the originals of all these papers for inspection, but retain them for my own protection, and I have now and here compared the copies, as they above appear, with said originals now in my possession, and know said copies to be correct.

15. Ques. Did you not receive at any time any money derived from the proceeds of the bonds numbered above 3000?

Ans. No, sir.

16. Ques. Did you know what became of the said State bonds, numbered above 3000, which you say you received on the 12th of January, 1871, and took to London? State to the best of your knowledge as to the disposal of said bonds, and their present condition.

Ans. I delivered the State bonds, 3001 to 4000, to S. W. Hopkins & Co., of 58 Old Broad Street, London, on the 18th day of April, 1871. That is the last I have seen of them, except the 224 bonds which were cancelled. I am informed and believe that afterwards 800 of these bonds, numbered 3201 to 4000, both inclusive, were brought by S. W. Hopkins & Co., and deposited in the supreme court of the State of New York, and by that court placed in the hands of George G. Haven, receiver of the court. John Collinson, on the 6th of December, 1872, received the said 800 bonds from said Haven, by order of the said court. That Collinson returned to the State of Florida, or its agent, and cancelled 224 of said bonds, 3777 to 4000, both inclusive; that 8 of these 800 bonds, numbering 3769 to 3776, both inclusive, and (200) other of these 1000 bonds, numbering 3001 to 3200, both inclusive, not included among the above 800, were taken by Collinson, under an optional agreement, leaving 568 bonds, 3201 to 3778, both inclusive, which were placed in the Bank of England by order of the chancellor, on motion of the Jacksonville, Pensacola and Mobile Railroad Company, in proceedings instituted by myself in London, England, against the Jacksonville, Pensacola and Mobile Railroad Company, to enforce special performance of a contract or arrangement, the said 568 bonds being a part of the 800 above mentioned. Mr. Collinson took the 200 bonds before mentioned, under an optional arrangement, dated August, 1872, in London or under the proceedings in the supreme court of the State of New York.

17. Ques. Do you know to what use or purpose the 208 bonds which you say said Collinson took under an option were applied?

Ans. I am informed and believe that 200 of them were taken by Collinson to provide for interest on the previous issue of 3,000
1744 bonds by the State of Florida; the other 8 bonds Collinson received, with some other bonds of a previous issue, in settlement of some suit against Hopkins & Co. in London, under the arrangement of August, 1872.

18. Ques. What was the amount of your individual debt or lien upon said bonds, and by whom was the debt contracted—I mean the bonds numbered above 3000?

The lien was $40,000 and interest from August, 1872, recognized and confirmed under the arrangement in London of that date by the Jacksonville, Pensacola and Mobile Railroad Company with me, based upon $15,000 due to Gamble, and $25,000 to be paid to me, under an arrangement by Littlefield, president of said road, with Hopkins & Co. (to be paid to me), in 1871, the $15,000 being referred to in the papers of January 11th and 12th, 1871, before referred to, to be paid to me for Gamble.

19. Ques. Did or not the State of Florida constitute and authorize said Hopkins & Co. as its agent to receive and handle said State bonds, and to apply the proceeds according to its directions, over and above the discharge of the special liens heretofore mentioned?

Ans. I understood Hopkins & Co. were agents of the State of Florida, and that by the letter of April 6th, 1871, signed by Littlefield, president of the Jacksonville, Pensacola and Mobile Railroad Company, approved by the governor of Florida, Harrison Reed, and authorized by Houston, Hopkins & Co. were authorized to so apply the proceeds over and above the surplus liens.

20. Ques. Referring again to your answer in the suit of The Western North Carolina Railroad Company vs. George F. Drew, governor, et al., paragraph XX, page 21, you state, "This defendant further says that in this whole transaction relating to these 1,000 State of Florida bonds, number 3001 to 4000, inclusive, this defendant was acting as the agent and trustee of Edward Houston, and not of any other party, State, corporation, or individual;" does that answer express the real capacity and relation in which you acted in the handling of said bonds?

Ans. I was primarily agent of Houston. What I did was by direction of the president of the railroad company, and with the approval of the governor of Florida, as well as of Houston.

21. Ques. In the previous part of your examination, and under folios
40–41 of your printed answer in said suit, you state that you took
the bonds above 3000 from Tallahassee to Thomasville, Georgia,
1745 by private conveyance, on or about the 12th day of January, 1871;
will you state why that mode of traveling was adopted? And if any
reason was assigned therefor, state by whom and what was said.

Ans. Littlefield, president of the railroad company, provided a carriage, and sent his secretary with me from Tallahassee to Thomasville, and thence by rail to Charleston, South Carolina, as he said, for the safety of the bonds, as he said he did not know but that some other parties having claims against the road might get out an attachment and institute other suits. I intended to have gone by rail from Tallahassee, by way of Live Oak, to Savannah, but took this other route by direction of Mr. Littlefield.

22. Ques. Do you know or can you state any other matter or thing material to the interest of either party to this suit not hereinbefore stated? And, if yea, state the same fully and particularly, as if thereto specifically interrogated.

Ans. No.

T. B. CODDINGTON.

Subscribed and sworn to before us this 21st day of January, A. D. 1878.

JAMES M. BALL,
R. E. STILWELL,
Examiners.

Adjourned until Tuesday, January 22d, 1878, at 11 a. m.

JANUARY 22, 1878—11 *a. m.*

Present, counsel as before.

Adjourned until January 23d, 1878, at 11 o'clock a. m.

WEDNESDAY, *January* 23, 1878.

Present, counsel as before.

Adjourned until 24th instant, at 11 o'clock a. m.

THURSDAY, *January* 24, 1878.

Present, counsel as before.

SIDNEY W. HOPKINS, being called as a witness on the part of the complainants, being duly sworn, deposes and says:

1. Ques. Please state your name, age, residence, and occupation.

1746 Ans. My name is S. W. Hopkins; age, 41 years; residence, New York City; not in any business.

Upon the request of the witness, the examination is adjourned until Monday, the 28th instant, at 11 o'clock a. m., to afford him time to examine his papers called for under subpœna duces tecum.

Adjourned until January 25th instant, at 11 a. m.

JANUARY 25, 1878.

Present, counsel as before.

Adjourned until January 26th instant, at 11 a. m.

And the examination further of Aaron Barnett adjourned until February 16th, 1878, at 2 p. m.

JANUARY 26, 1878.

Present, counsel as before.

Adjourned until Monday, January 28th, 1878, at 11 a. m.

MONDAY, *January* 28, 1878.

Present, counsel as before.

Testimony of witness, S. W. HOPKINS, continued:

2. Ques. What was your business occupation from the year 1870 to 1872?

Ans. Importers of railway iron, negotiators of securities, under the firm of S. W. Hopkins & Co., with our office in the city of New York, and also one in the city of London.

3. Ques. At or about that time did or not your firm have any dealings with the State of Florida, or the bonds of said State, issued to or exchanged with the Jacksonville, Pensacola and Mobile Railroad?

Ans. We entered into a contract with the railroad company for the negotiation of all the bonds of the State of Florida, which, under the various laws of the State, that company was to receive, by contract dated the 13th day of April, 1870.

The further examination of the witness is adjourned to Tuesday, the 29th instant, at 11 o'clock.

1747 TUESDAY, *January* 29, 1878—12 *o'clock m.*

Present, counsel as before.

S. W. HOPKINS continued:

4. Ques. During the negotiations of the Florida State bonds, mentioned in the former part of your examination, were there any letters or statements or communications received by parties in Europe, within

your knowledge, in any way impairing the validity of the said Florida State bonds?

Ans. There was a letter received by Messrs. Holze & Boissevain, of Amsterdam, Holland, some time during the month of February, 1871, attacking the validity of the whole issue of the Florida State bonds. This communication emanated from Florida.

5. Ques. Did there then and thereafter continue to be other and further communications and statements circulating before the public effecting said bonds?

Ans. I believe there were, but I cannot recite any specific cases beyond the one already mentioned.

6. Ques. Did you ever hear it spoken of by others, or did it come to your knowledge, that the board of directors of the Jacksonville, Pensacola and Mobile Railroad Company, under date of December 10, 1870, passed any resolution effecting the validity of said bonds?

Ans. I believe there was such a resolution passed.

7. Ques. Did you at any time in handling said Florida State bonds act under instructions from the governor of that State?

Ans. Our firm received instructions from him which we recognized at the time.

8. Ques. State, to the best of your recollection, how these instructions were given, whether written or verbal, and what was the nature of the same.

Ans. They were instructions with reference to the disposition of a portion of the proceeds arising from the sale of the bonds, when realized, and they were written.

9. Ques. Have you the original of the instructions so given you by the governor of Florida, directing the disposition of the proceeds of said bonds, and if not the original, have you a true copy thereof, and will you produce the same as part of your examination?

Ans. I will endeavor to find the original, or a copy, and produce them here.

1748 10. Ques. During the time you were handling said bonds, did it come to your knowledge of a claim being made to any portion thereof on the part of the complainant in this action?

Ans. Yes.

11. Ques. On or about the 16th day of November, 1870, did you acknowlege and accept an order on your house in London, drawn by M. S. Littlefield, president, in favor of one N. W. Woodfin, a commission' on the part of the State of North Carolina, representative of the complainant?

Ans. Yes.

12. Ques. Have you a copy of said order?

Ans. I have.

13. Ques. Will you produce the same as part of your examination?

Ans. I will produce the original, or a true copy thereof.

14. Ques. Do you remember the number of the bonds called for in said order? And, if you do, please state the same.

Ans. The number was 800 bonds, of 1,000 each, to be held subject to the order of the party in whose favor the order was drawn.

15. Ques. Did you appropriate any particular portion of said bonds to meet said order? And, if you did, please state what portion of the bonds they were.

Ans. We fixed upon 800 bonds out of the 1,000 bonds which were to come into our hands, numbering from 3001 to 4000, inclusive.

16. Ques. Did said bonds ever come into your hands; and, if yea, did you ever deliver the same according to said order?

Ans. They came into our hands, but we never delivered the bonds under said order.

17. Ques. Please state what became of said bonds, according to your recollection, and where they are now, if you have any knowledge of the subject?

Ans. 800 of them were placed in the hands of the receiver of the supreme court of the State of New York, for the city and county of New York; the other 200 bonds were delivered to the representative of the Jacksonville, Pensacola and Mobile Railroad Company.

18. Ques. Do you know what became of the said 1,000 bonds, and to what purpose they were applied?

Ans. 568 of the bonds are now tied up in chancery, in England; 224
were sent back to the State of Florida and cancelled, and the
1749 remainder went into the possession of John Collinson, of London,
England, under an agreement by which he, Collinson, agreed to furnish money to pay the then maturing interest on certain of the Florida State bonds which had previously been negotiated. I have given the figures as near as I remember them.

19. Ques. Did your firm sell any of the said 1,000 bonds, numbered from 3001 to 4000, inclusive?

Ans. We did not.

20. Ques. Do you know, or can you state, any other matter or thing material to this your examination, of benefit to either party, beyond what you have been interrogated to? And, if so, please state the same.

Ans. No, sir.

S. W. HOPKINS.

Subscribed and sworn to before us this 29th day of January, 1878.

JAMES M. BALL,
R. E. STILWELL,
Examiners.

The papers referred to in the testimony of this witness upon comparison, having been ascertained to be included in the same paper described in the deposition of Thomas B. Coddington, who is in possession of the originals, which were produced before the examiners and compared, the counsel for complainant agreed to accept the copies produced by Mr. Coddington as a sufficient production of papers by the witness S. W. Hopkins.

Adjourned to Wednesday, January 30th, at 11 o'clock a. m.

WEDNESDAY, *January* 30, 1878.

Present, counsel as before.

The witness not being present, the examination was adjourned to 11 a. m. the 31st inst.

THURSDAY, *January* 31, 1878.

Present, counsel as before.

Witness not being present, the examination was adjourned to Friday, February 1, 1878, at 11 o'clock.

FRIDAY, *February* 1*st*—11 o'clock a. m.

Present, counsel as before.

Witness not being present, examination adjourned to Saturday, 2d instant, at 11 a. m.

SATURDAY, *February* 2*d*—11 a. m.

Present, counsel as before.

Witness not being presint, examination was adjourned until Monday, February 4th, instant, at 11 a. m.

1750 MONDAY, *February 4th.*

Present, counsel as before.

Witness not being present, examination adjourned until February 5th, instant, at 11 a. m.

TUESDAY, *February* 5, 1878.

Present, counsel as before.

Witness not being present, examination adjourned to Friday, February 6th, at 11 a. m.

WEDNESDAY, *February* 6, 1878.

Present, counsel as before.

Witness not being present, examination adjourned until Thursday, February 7th, instant, at 11 a. m.

THURSDAY, *February 7th.*

Present, counsel as before.

Witness not being present, examination adjourned until Friday, 8th instant, at 11 a. m.

FRIDAY, *Fehruary 8th.*

Present, counsel as before.

Witness not being present, examination adjourned until Saturday, 9th instant, at 11 a. m.

SATURDAY, *February 9th.*

Present, counsel as before.

Witness not being present, examination adjourned until Monday, February 10th, at 11 a. m.

MONDAY, *February 11th.*

Present, counsel as before.

Witness not being present, examination adjourned until Tuesday, 12th instant, at 11 a. m.

TUESDAY, *February 12th.*

Present, counsel as before.

Witness not being present, examination adjourned until Wednesday, February 13th, at 11 a. m.

1751 WEDNESDAY, *February 13th.*

Present, counsel as before.

Witness not being present, adjourned until Thursday, February 14th, at 11 a. m.

THURSDAY, *February 14th.*

Present, counsel as before.

Witness not being present, adjourned until Friday, February 15, at 11 a. m.

FRIDAY, *February* 15, 1878.

Present, counsel as before.

JOHN L. REQUA, a witness on the part of the complainant, being duly sworn, testifies as follows:

1. Ques. Please state your name, age, residence and occupation.

Ans. John L. ReQua; 50; law.

2. Ques. Where did you reside during the years 1869, 1870-'1-'2-'3, and '4?

Ans. At Jacksonville, Fla.

3. Ques. Are you, or are you not, acquainted with a corporation known as the Jacksonville, Pensacola and Mobile Railroad Company? If yea, how did you acquire your knowledge, if any?

Ans. I am acquainted with said company. I was one of its incorporators, and a director and a large stockholder in it.

4. Ques. When was said company incorporated, and what was the location and terminus of its road?

Ans. It was incorporated June, 1869, commencing at Quincy, Florida, extending westward to Pensacola and Mobile.

5. Ques. Was the Jacksonville, Pensacola and Mobile Railroad Company ever consolidated with any other railroad company; if so, what company? Please state to the best of your knowledge and belief.

Ans. At the same time, June, 1869, the legislature of Florida incorporated the Tallahassee Railroad Company, as the owner of the road extending from Lake City westward to Quincy, being a part of the Pensacola and Georgia Railroad, built prior to the war, which was sold on the 20th day of March, 1869, to F. Dibble and associates, who incorporated under the name of the Tallahassee Railroad Company. Soon after the passage of these two acts of incorporation, the two companies mentioned above, consolidated under the name of the Jackson-
1752 ville, Pensacola and Mobile Railroad Company, which, under the
new name extended from Lake City westward. This will better appear by the proceedings of the two companies and by reference to the acts in that behalf.

6. Ques. Did or did not Jacksonville, Pensacola and Mobile Railroad Company ever consolidate with any other railroad company, and especially did it or did it not consolidate with the Florida Central Railroad Company?

Ans. I have no knowledge that such consolidation was made. There was no action on the part of the directors or stockholders of the Jacksonville, Pensacola and Mobile Railroad that I know of, or can remember, to effect such consolidation. There was a discussion and talk of such consolidation, but not effective.

7. Ques. Do you or not know of any such corporation or company as the Florida Central Railroad Company? And if yea, state its location.

Ans. I do know such a corporation, built previous to the war, I am informed and believe, and was reorganized under its present name in 1868. It commences in Jacksonville, Florida, and extends to Lake City at a distance of about 60 miles west. This was held as a separate organization, managed by its own officers and directors, except during the time it was in the hands of a receiver.

8. Ques. Do you know of any bonds having been issued by the Jacksonville, Pensacola and Mobile Railroad Company, in exchange for bonds of the State of Florida? And if so, state what you know in reference to such bond-issue and exchange.

Ans. Yes, I do. There was 3,000 of them for $1,000 each made for such exchange, under the act of January 28th, 1870, amendatory of the act of June 24th, 1869, and I am informed and believe were exchanged, to be sent to New York and Europe for sale.

9. Ques. At the time said bonds were so issued and exchanged, was

there, or was there not, any question raised or charges made before the public about the legality and validity of said bonds? and if yea, state what it was.

Ans. Yes; both prior and subsequent to the issue those questions were raised. They were held to be invalid; I so held. It was very generally discussed both privately and publicly, and continued to be adjutated until the supreme court of Florida held them void. While the bonds were abroad, being negotiated or sold, about the year 1870, I was present at the office of J. P. Sanderson, Jacksonville, Florida,
1753 in company with said Sanderson, Calvin Littlefield, John P. Clark, M. D. Papy, and others, were discussing generally this bond question and their validity, and while engaged doing so Colonel Sanderson received a dispatch by telegraph from Tallahassee, purporting to be a copy of one from Amsterdam to Flagg, asking in substance if the bonds were good or valid, and would the interest be paid. I understood the reply to be, substantially, no.

10. Ques. To what extent were you a stockholder in said company?

Ans. I think I have one-half million of the stock, par value, of the Jacksonville, Pensacola and Mobile Railroad Company; more particularly speaking, I think I held 4,166 shares par value, $100 each.

11. Ques. Did you, as stockholder and director, or otherwise, make any effort to restrain the circulation and use of said bonds?

Ans. As a stockholder, yes. I think I was never consulted as a director, and when impossible to do so, I brought suit as stockholder to have the avails applied for extending the road, under the act, westward from Quincy.

12. Ques. Do you know, or can you state any other fact material to the interest of either party to this suit? If so, state the same now as if particularly interrogated thereto.

Ans. No.

JOHN L. REQUA.

Subscribed and sworn to before us this 15th day of February, A. D. 1878.

JAMES M. BALL,
R. E. STILWELL,
Examiners.

The examination is adjourned to Saturday, February, 16th inst, at 11 a. m.

1754 We, Richard E. Stillwell and James M. Ball, to whom the annexed commission is directed, and in and by which we are authorized and empowered to take depositions of Aaron Barnett and such other witnesses as might be called before us, to be read in evidence on the part of the complainants in the manner prescribed by the 67th rule of equity practice of the Supreme Court of the United States, do hereby certify that the witnesses whose depositions are hereto attached severally appeared before us, and after being duly sworn to testify the truth and nothing but the truth, in the suit mentioned in said commission, gave their answers to interrogatories propounded to them on the part of the complainants, which was reduced to writing by us and read to them respectively, and they severally subscribed the same.

We further certify that the paper exhibits hereto annexed and severally marked Exhibit A and Schedule B and C, and certified by us, were put in evidence on the examination of said witnesses.

We further certify that J. B. Stewart, esq., appeared as counsel on the part of the complainant and J. K. Hurbert, esq., as counsel for the Jacksonville, Pensacola and Mobile Railroad Company and Milton S. Littlefield, defendants, on said examination.

RICHARD E. STILLWELL,
JAMES M. BALL,
Examiners.

1755 Circuit court of the United States, northern district of Florida.

WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company,
vs.
GEO. F. DREW, GOVERNOR OF THE STATE OF Florida, et al.

Deposition of Timothy H. Porter.

1756 United States circuit court, northern district of Florida.

The President of the United States of America to John A. Shields, United States commissioner, New York City, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you full power and authority diligently to examine upon his corporal oath or affirmation, before you to be taken, and upon the interrogatories hereunto annexed, Timothy H. Porter, as a witness on the part of the defendant, George F. Drew, governor, in a certain cause now pending and undetermined in the circuit court of the United States of America for the fifth circuit and northern district of Florida, wherein the Western Division of the Western North Carolina Railroad Company is complainant, and George F. Drew, governor of the State of Florida, the Florida Central Railroad Company, the Jacksonville, Pensacola and Mobile Railroad Company, and others are defendants. And we do further empower you to examine on the same behalf, and in like manner, any other person or persons who may be produced as witnesses before you; and we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal and directed to the clerk of the circuit court of the United States for the fifth circuit and northern district of Florida, at the city of Jacksonville, as soon as may be convenient after the execution of this commission; and that you return the same when executed, as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville in said circuit and district, this 26th day of March, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and third.

{ SEAL OF U. S. CIRCUIT COURT, N. D. FLA., 5 CIRCUIT. }

PHILIP WALTER,
Clerk of the Circuit Court of the United States for the Fifth Circuit, and Northern District of Florida.

The execution of this commission appears in certain schedules hereunto annexed.

April 21, 1879.

JOHN A. SHIELDS,
U. S. Commissioner for N. Y.

1757 In the United States circuit court, northern district of Florida.
In equity.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Co.
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida; the trustees of the internal improvement fund; the Jacksonville, Pensacola & Mobile Railroad Company; the Florida Central Railroad Co.

Interrogatories to be propounded to Timothy H. Porter, a witness to be examined in behalf of the defendant, George F. Drew, governor, in the above entitled cause, who resides in New York City in the State of New York.

Interrogatory first. What is your name, age, residence, and occupation?

Interrogatory second. Are you or not acquainted with the parties complainant and defendant to this suit or any of them?

Interrogatory third. Did you or not have any dealings with one George W. Swepson or the complainant company at any time in respect to certain bonds of the State of North Carolina issued and delivered to said company? If you say you did, please state all facts in
1758 your knowledge in relation to the same, giving dates of such transactions.

Interrogatory fourth. If you say you sold any such bonds, please give the dates of such sales, about the amount of proceeds received by you from such sales, and state under whose authority you made such sales, and if the same was in writing append a copy of such authority to your answer to this question.

Interrogatory fifth. How and in what manner were the proceeds from the sales of such bonds drawn from your firm? If you know such proceeds were drawn upon the drafts of any individual, please give the names or names of such person or persons and state upon whose authority you paid such drafts?

Interrogatory sixth. Were you or not authorized in writing by the Western Division of the Western North Carolina Railroad Company, under its corporate seal, to sell said bonds, and were you, or not, also, in the same way, authorized to pay out the money derived from the sale of such bonds? If you say you were, please append a copy of such authority to your answer to this question. Answer fully upon what authority you paid out said money.

Final interrogatory. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or may be material to the subject of this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer?

LEVI PHILLIPS,
Solicitor for George F. Drew, Governor.

1759 In the United States circuit court, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEO. F. DREW, GOVERNOR OF THE STATE OF Florida, et al.

Please take notice that I have filed in the office of the clerk of this court interrogatories, copy herewith served, for Timothy H. Porter, a witness for the defendant, George F. Drew, governor, &c., and that in ten days from this date I will apply for a commission to examine said Porter on said interrogatories, and such cross-interrogatories as may be filed by you.

Jacksonville, Fla., February 24, 1879.

LEVI PHILLIPS,
Solicitor for George F. Drew, Defendant.

To JOSEPH B. STEWART,
Solicitor for Complainant.

(Endorsed:)
Filed February 28th, 1879.

PHILIP WALTER, *Clerk.*

Deposition of Timothy H. Porter, a witness produced and sworn, and examined the 21st day of April, A. D. 1879, at my office, in the post-office building, in the city of New York, under and by virtue of a commission issued out of the circuit court of the United States of America, for the fifth circuit and northern district of Florida, wherein the Western Division of the Western North Carolina Railroad Company is complainant, and George F. Drew, governor of the State of Florida, the Florida Central Railroad Company, the Jacksonville, Pensacola & Mobile Railroad Company and others are defendants. 1760

TIMOTHY H. PORTER, of Stamford, Connecticut, aged 50 years of age, being duly and publicly sworn on the part of the defendant, George F. Drew, governor, doth depose and say as follows:

First. To the first interrogatory he saith: Timothy H. Porter; age, 50 years; residence, Stamford, Connecticut; occupation, banker, 78 Broadway, New York City.

Second. To the second interrogatory he saith: I am acquainted with the Western Division of the Western North Carolina Railroad Company as a body corporate, but know none of the others mentioned.

Third. To the third interrogatory he saith: The firm of Soutter & Co., of which I am senior partner, had dealings with George W. Swepson, president of the Western Division of the Western North Carolina Railroad Company, in respect to the North Carolina State roads, and negotiated for the same some three million dollars of said State bonds. Such negotiations or sales began about the middle of January, 1869, and continued up to September of the same year.

Fourth. To the fourth interrogatory he saith: The dates of such sales were almost continuous, embracing over one hundred separate transactions, and continuing from January to September, 1869. The amount of proceeds aggregated approximately some one million five hundred thousand dollars. The authority for such sales was given by the president of the company, and was sometimes verbal, sometimes by telegraph, and sometimes in writing. When he was in the city his orders were usually verbal; when he was absent they were communicated by letter or telegram.

To the fifth interrogatory he saith: The proceeds were paid out upon drafts drawn by various individuals, by remittances of currency to various parties, and of deposits made in different banks or banking-houses. The proceeds were always paid out on the order of the 1761 president. But it is impossible for me now to give the names of the individuals who drew the drafts, or to whom the money was paid. When a draft is drawn upon a New York banking-house it is generally presented for collection through some bank, and payment is made by giving a check to the order of the bank making the collection. The name of the drawer is not entered upon either the cash-book or ledger of the firm upon whom the draft is drawn, consequently when an account is settled, and the draft and vouchers returned, there is no possibility of learning the names of individuals drawing drafts or endorsing them.

To the sixth interrogatory he saith: The president of the company aforesaid was authorized by the Western Division of the Western North Carolina Railroad Company to sell such bonds and to draw the proceeds derived from such sale, and a copy of such authority, authenticated by the corporate seal of the company, was lodged with Soutter & Co. I have not been able to find that instrument since receiving the subpœna in this cause; possibly it was returned, with other vouchers, at the time of closing and settling the account; if not, it is packed away among our voluminous papers of ten years ago, and would involve such an amount of labor to overhaul and examine as I have not been able to give.

To the final interrogatory he saith: Nothing, except that I was subpœnaed to give testimony in reference to this matter some months ago. I have no copies of the interrogatories propounded on that occasion, but I remember that certain drafts were there exhibited to me, which I identified as having been drawn upon Soutter & Co., and paid by them. What these drafts were I cannot now say, but upon being shown them could, doubtless, identify them again. I mention this fact to explain any apparent discrepancy between this deposition and the one previously made.

TIMOTHY H. PORTER.

1762 Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 21st day of April, A. D. 1879, before me.

JOHN A. SHIELDS,
U. S. Commissioner for New York.

UNITED STATES OF AMERICA,
Southern District of New York, *ss:*

I, John A. Shields, United States commissioner in and for the southern district of New York, and the commissioner named in the foregoing commission, do hereby certify that on the 21st day of April, A. D. 1879, I was attended by the witness, Timothy H. Porter, named in said commission, and the said witness being by me first carefully examined, and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause in said commission named, he gave his answers to the interrogatories named in said commission. I further certify, that such answers were reduced to writing by me in the presence of said witness, and from his statements; and after the same had been carefully read over to said witness he subscribed the same.

I further certify, that I was not of counsel nor attorney for either of the parties in said commission and deposition named, nor in any way interested in the event of the cause named in said commission.

In testimony whereof, I have hereunto set my hand and seal, this 21st day of April, A. D. 1879.

[L. S.] JOHN A. SHIELDS,
United States Commissioner in and for the Southern District of New York.

1763 *Deposition of Jacobus Wertheim, taken before Joseph H. Durkee, examiner.*

Filed May 21st, 1879.

P. WALTER, *Clerk.*

1764 At a stated term of the United States circuit court, held in and for the northern district of Florida, fifth circuit, at Jacksonville, on the 19th day of May, 1879—

Present, Hon. Joseph P. Bradley, associate justice Supreme Court; Thomas Settle, district judge.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., et als.
} In equity. Two cases.

Application having been made to the court for leave to examine Jacobus Wertheim as a witness in behalf of complainant, and the defendant's solicitors consenting in open court that such order shall be taken, it is, *a* motion of Joseph B. Stewart, the solicitor of the complainant—

Ordered, That the complainant have leave to examine said Jacobus Wertheim, as a witness in its behalf, before Joseph H. Durkee, under and pursuant to rule 67 of equity practice, prescribed by the Supreme Court.

(Signed) JOS. P. BRADLEY,
Chief Justice.

At the request of the complainant's solicitor a subpœna was issued for the said Jacobus Wertheim, returnable forthwith at my office, No. 10 Bay street, Jacksonville, Florida, which subpœna was returned served on the 19th day of May, 1879.

At 4 o'clock p. m. May 19, 1879, met to take testimony under the above named order. The witness not appearing at 6 o'clock p. m., an adjournment is ordered until 9 o'clock a. m. May 20th, 1879.

JOSEPH H. DURKEE,
Examiner.

1765 MONDAY, *May 20th*, 1879.

Met pursuant to adjournment. Present, J. B. Stewart, solicitor for complainants.

The witness not being present, an adjournment is ordered until 2 p. m., and a certification made to the court of non-attendance of witness.

Two o'clock p. m. Met pursuant to adjournment. Present, J. B.

Stewart, solicitor for complainant; Henry R. Jackson, solicitor for defendants.

JACOBUS WERTHEIM appeared as a witness on the part of the complainants, and the said Jacobus Wertheim, being duly sworn, deposes and says:

Question 1. Please state your name, residence, age, and occupation.

Answer. I am Jacobus Wertheim, law doctor, barrister at the court of Amsterdam, and deputy judge of the 1st district court at Amsterdam. I reside at Amsterdam. My age is 51.

Ques. 2. Do you know the parties plaintiff and defendants to this suit, or either of them; and if yea, state who?

Ans. I desire to know who are the parties plaintiff and defendants.

Ques. 3. The party plaintiff is the Western Division of the Western North Carolina Railroad Company, and the parties defendants are George F. Drew, governor of the State of Florida, ex-officio trustee for Gideon M. Boissevain, Adrian Isaac Mildeus, Joseph Zaddock, Doctor Nicholas Jacob Den Tex, J. Fred Schutte, Jan Prins, and others, known as Dutch bondholders. Do you know any of said parties; and, if so, state who of them?

Ans. I have heard the names of all those parties. I know only personally Mr. Boissevain, Mr. Mildeus, Mr. Den Tex, and Mr. Zaddock, and Jans Schutte, and Jans Prins.

Ques. 4. What relation, if any, do you hold or occupy to the parties named in your answer?

Ans. They belong to the Dutch bondholders of whom I am counsel.

Ques. 5. What do you mean by Dutch bondholders?

1766 Ans. I consider them those who hold eight per cent. Florida bonds.

Ques. 6. When, and in what manner did you become counsel for the persons whom you name as Dutch bondholders?

Ans. I decline to answer, because I am counsel for those people.

(The counsel for the complainant ask the examiner to request Mr. Matt H. Carpenter, who is of counsel for the Dutch bondholders, but not of counsel in these suits, not to assume to advise or suggest to the witness as to any answer he shall make. That the witness must answer for himself, in his own way, without advice of counsel.)

Ques. 7. When did you become counsel for the persons whom you describe as Dutch bondholders?

(Solicitor for complainant asks the examiner to note that Mr. Matt H. Carpenter having advised the witness that he need not answer the question propounded, and requested him to instruct Mr. Carpenter that he must not assume to advise the witness as to his answer.)

Ans. I cannot give you the exact date, because I have not my professional diary with me.

Ques. 8. Please state the date as near as you can?

Ans. I cannot; or I should have done it.

Ques. 9. Was it as early as the year 1870?

Ans. I don't recollect.

Ques. 10. Can you give any date?

Ans. I find those queries being tedious. I should have answered if I could.

Ques. 11. You are not able to state, then, at or about what time you became counsel for the persons you describe as the Dutch bondholders? Is that so?

Ans. I have answered that question fully.

Ques. 12. Were you, or were you not, at any time, and, if so, when, counsel or solicitor for any other persons in reference to the Florida eight per cent. bonds, of which you have testified; and, if yea, state for whom and when?

1767 Ans. If the gentleman is acquainted with the different documents in those law suits, he can answer himself the question.

(Complainant's solicitor excepts to the answer as evasive, and question repeated.)

Ans. I answer the same way, and I leave it to the court whether my answer is evasive or not.

Ques. 13. Were you, or were you not at any time counsel for other parties in reference to the Florida eight per cent. bonds spoken of in your previous answers, and which are the subject matter of this suit, than those whom you describe as Dutch bondholders in your former answer.

Answer. I have been counsel for a great many people. If I had my diary with me I could give you all the names; as it is, really I cannot.

(Complainant's counsel excepts to the answer as evasive.)

Question 14. I did not ask you for any multitude of persons, or the names, which might or might not appear upon the diary you have mentioned, but I did ask you the simple question, which I repeat. Were you, or were you not counsel or solicitor for any other parties in relation to the said eight per cent. Florida bonds than those you describe as Dutch bondholders?

Answer. I answer that I refer to my previous given answer, that the gentleman, if he will look at papers in the case he will find for whom I am counsel. Where some persons are not named in the papers I am bound as counsel not to answer that question.

Question 15. Do you, or do you not know Frank R. Sherwin, Charles D. Willard, Henry R. Jackson, Charles H. Simonton, Robert Walker, Calvin H. Allen, Hubbart L. Hart, John Clark, or either of them, and if yea, when did you first make their acquaintance, and did you or not, at any time, and, if so, when, act as solicitor or counsel for said parties or either of them, jointly or severally, in reference to said Florida eight per cent. bonds involved in this suit?

Answer, I know all those gentlemen except two, that is Mr. Walker and Mr. Clark. I have never been, and am not at this moment, the solicitor or counsel for any of those persons, either jointly or severally. I consider the gentleman too good a lawyer to ask that question only in joke.

1768 Question 16. Will you please look at the paper now shown you, and a copy of which I now make a part of this question, purporting to be a translation entitled in these words, "Proposition for a settlement tendered to the holders of eight per cent. Florida bonds, by M. J. Wertheim, attorney and counsellor of Amsterdam," which original purports to be in the Dutch language, and state what, if anything, you know about said people, and whether or not the same, the original was prepared by yourself?

(Solicitor for defendants, George F. Drew, governor, &c., objects to the question upon the ground that it seeks to elicit testimony irrelevant to any of the issues proposed and legally made in either of the cases.

Counsel for complainant requests the examiner to note that George F. Drew as governor, or individually, is not a party defendant to this suit, but that George F. Drew, governor, and ex-officio trustee for the Dutch bondholders, is a party to this suit, and request examiner to ask the counsel to be so good as to state whether or not he represents or is authorized to represent George F. Drew, governor of Florida, as ex-officio trustee for the said Dutch bondholders.

Solicitor for defendant answers that he is authorized to represent Governor Drew in the attitude which he occupies in this case, whatever that attitude may be.

Witness states that being a full stranger here, and unacquainted with the customs of the bar, he asks Mr. Stewart if he could answer that question, and he said to me upon his honor as a barrister, that I am bound to answer and therefore I answer.)

Ans. The document you show me is an abstract of a speech that I made extempore, in more than three hours in a public meeting of bondholders, and is in the Dutch language. Some gentlemen present at that meeting made an abstract and printed it. My name is signed under an abstract of a report of R. Walker, ex-receiver of the Jacksonville, Pensacola & Mobile Railroad, to certify that the said abstract was correct with the original copy which I laid before me. I must earnestly warn any man not to have much confidence in the English translation, as it is badly translated, and there are many expressions in the translation which I never made, and which are not in the original Dutch con-
1769 text. The title of that document is entirely wrong because I have never offered a proposal of settlement, but I have merely given my professional opinion about the memorandum plan signed by Frank R. Sherwin, Henry R. Jackson, and Charles H. Simonton, to my clients, in a general meeting, I believe in April, 1877. I am not quite sure of that date.

(Copy received, filed in evidence, and marked Exhibit A, Jac. Wertheim.)

Ques. 17. The translation, which is made part of my former question was made by Henry L. Thomas, the official translator of the Dutch language of the Department of State of the United States Government, at Washington, D. C., and is such as is received as official by the Government of the United States. Will you please state in what respect you find the same inaccurate, and for that purpose please look at the original translation in manuscript.

(Solicitor for defendant, George F. Drew, governor, &c., objects to the question on the grounds of irrelevancy.)

Ans. I decline to answer that question, being a witness and not a schoolmaster to correct cacographies of a United States translator, and much the less, because I am only bound to give my opinion upon original papers in my own language and not in any foreign language, because I may understand that language.

Ques. 18. The original paper in Dutch, which you have testified to as an abstract of your speech, bears date Amsterdam, 10th April, 1877; were you or were you not at that date counsel and advisor of the persons you describe as Dutch bondholders?

Ans. I truly answered that question in my previous answer.

Ques. 19. The paper purporting to be a translation contains the following language in the first paragraph: "Having been requested last year by certain parties in the United States interested in the reorganization of the railways in Florida to present plans, in the event of certain contingencies, to holders of bonds in the Netherlands, expressed my entire willingness to do so, on the following conditions." Will you please state, looking at the original in the Dutch language, whether the same represents what you said or expressed, and state who were the parties in the United States who had requested you to act.

1770 (Defendant's solicitor interposes same objection as to former question.)

Ans. Mr. Stewart promised to my learned friend Mr. Carpenter, yesterday, not to put before me questions which as an honest lawyer I could not answer. I consider this a question that I cannot answer and therefore I decline to do it.

(Counsel for the complainant states to the witness that if the question tended to elicit matters known to him only as counsel and not published to the public, he would not put the question, but as witness has stated that the paper in the Dutch language was an abstract of a speech made to the public and the same appears to have been published in pamphlet form and circulated to the public, he therefore supposed it was not private so as to prohibit the propounding of the question or to come within the restriction of confidential relations between counsel and client.)

Ques. 20. Will you please look at the paper shown you, a copy of which is made a part of this question, marked Jac. Wertheim, Exhibit B, and state what, if anything, you know about said paper?

Ans. That is a document that one of my clients handed to me and was attached to and referred to an affidavit that is signed by me.

Ques. 21. You have spoken of an affidavit made by you to which the prospectus Exhibit B was attached as an annex marked A; will you please look at the paper now shown you, and state whether or not the same is the affidavit to which you refer?

Ans. The affidavit which you show me was made and signed by me. I was asked by one of my clients to make that affidavit before the United States consul at Amsterdam. I have no objection to do so. Paper received and marked "in evidence and Exhibit C." The paper is dated 18th May, 1877.

Ques. 22. Are the matters and things in said affidavit stated facts within your own knowledge or matters derived from others, and if from others, state whom?

Ans. I decline to answer that question.

Mr. Stewart must be satisfied when he has the paper signed by me.

1771 Ques. 23. Do you know or can you state any other matter or thing material or of interest to the parties to this suit, plaintiff or defendant, and if yea, please state the same fully in your answer?

Ans. I cannot state anything to Mr. Stewart which can be of any use to him in this suit.

Cross examination by Henry R. Jackson, solicitor for defendant, George F. Drew, governor, trustee, &c.

Ques. 1. Do you not know that Mr. Boissevain, Mr. Mildeus, Mr. Den Tex, Mr. Zaddocks, Mr. Schutte are purchasers and holders of the Florida State eight per cent. bonds?

(Counsel for complainant objects to the question, as introducing matter not called for in the direct examination.)

Ans. I knew that they are holders and purchasers of said bonds because they told it to me personally.

Ques. 2. Are you not yourself the holder of some of the Florida eight per cent. State bonds?

Ans. I was so stupid as to invest some of my money in the Florida eight per cent. State bonds, at the rate of 80½ per cent., believing in the good faith of the State of Florida and the managers of the railroads. I was bitterly deceived, and I was unhappy enough to have more of these bonds out of the inheritance of my father—not I alone, but a great deal of widows, orphans, and charity institutions in Holland, who also believed it to be a good and safe investment, are sufferers.

(Complainant's solicitor objects to the answer as irresponsive and beyond the call of the question.)

Ques. 3. Did you buy these bonds upon speculation or as an investment of money?

Ans. I am 51 years old, and I have never in my life speculated, not for a penny.

(Complainant's solicitor objects to the question and answer for the reasons before stated.)

Ques. 4. Are you still the owner of these bonds, and how many do you hold?

Ans. I am still the owner; the bonds are here in court. The receipts for the bonds are at home in my trunk.

1772 Ques. 5. Did you not purchase the bonds upon the faith which you gave to the act of the legislature of Florida, under which they were issued, to the decision of the supreme court of Florida which pronounced them to be constitutional, and to representations which were made that they were secured as well by lien upon the line of railroad from Jacksonville westward as by the statu'ary obligation of the State?

(Complainant's solicitor objects to the question for the reasons before stated, and for the further reason that the same is leading and otherwise incompetent.)

Ans. One of my brothers, who is a stock broker, told me at the time of the issue of these bonds that this loan was a State loan, with the guarantee or lien upon the railroad so as I have stated in my affidavit of 28th May, 1877, which Mr. Stewart has shown you. I asked that my brother if he could prove me that and he said yes, and took me at the office of Mr. Holge & Boissevain, where all the official documents and a map lay for inspection. I went there. I saw the papers, and I believe at that time that it was just as you told me. The facts are narrated in my affidavit already submitted, marked Exhibit C, Jac. Wertheim.

I certify that the foregoing testimony of Jac. Wertheim was taken before me, as special examiner, on the 20th of May, 1879, in my own handwriting, and that all erasures, alterations and interlineations made upon said testimony were made in the presence of the witness and before the signing of the same.

JOSEPH H. DURKEE,
Special Examiner.

JACKSONVILLE, FLA., *May* 21, 1879.

1773 Proposition for a settlement tendered to the holders of eight per cent. Florida bonds, by Mr. J. Wertheim, attorney and counsellor of Amsterdam.

Exhibit A, Jac. Wertheim.

In the circuit court of the United States, 5th judicial circuit, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, ET AL.

Filed in evidence and marked Exhibit A. Jac. Wertheim, May 20th, 1879.

JOSEP H. DURKEE,
Special Examiner.

1774 **Proposition for a settlement tendered to the holders of eight per cent. Florida bonds, by Mr. J. Wertheim, attorney and counsellor, of Amsterdam.**

To the holders of eight per cent. Florida bonds:

GENTLEMEN: Having been requested last year by certain parties in the United States interested in the reorganization of the railways in Florida to present plans, in the event of certain contingencies, to holders of bonds in the Netherlands, I expressed my entire willingness to do so on the following conditions:

1st. That Mr. Charles D. Willard, solicitor at the Supreme Court at Washington, who for a long time had seemed to me to be a man of extensive knowledge, and honorable and punctual in attending to any business entrusted to him, should be appointed, together with myself, as legal counselor in America.

This desire was complied with.

2d. That I should be permitted to submit all propositions and plans through Messrs. Skreglinger & Co., to their correspondents, Messrs. Kremelberg & Co., of New York, for their examination and approval, before communicating them to the bondholders, in order thus to obtain a guaranty both with regard to the soundness and feasibility of the plans, and with regard to the persons to whom their execution was to be entrusted.

This desire was also readily complied with.

1775 Before presenting to you the resolutions to be adopted (after introducing the plan for reorganization), I deem it my duty to call your attention to the following points:

PRESENT CONDITION.

I.

In considering the present condition, our conclusions may be based upon the following facts:

1st. That by a decree of the supreme court of Florida, in January, 1876, the following decision was made: "These bonds are invalid, and were issued in violation of the constitution, and they are entirely null and void, and the State is not bound to pay them, and that the State holds the lien upon the road as trustees for bondholders."

2d. That on the 12th day of December, 1876, the legislature of the State of Florida adopted a resolution to the effect that "the four million bonds issued by the State under and by virtue of an act of the legislature of the State, approved January 24th, 1869, and the several amendments thereto, and purporting to be issued in aid of the J., P. & M. Railroad Company, were issued in violation of the constitution, and are a fraud upon the taxpayers of the State of Florida."

"That the State of Florida is not responsible for, and will not pay the interest that has accrued or that may hereafter accrue upon said bonds or the principal of said bonds when they ultimately become due; that the governor of the State is instructed to take all legal steps to free the people from the payment of the principal and interest upon said bonds for all time, and that he will see that the State suffers no detriment from said bonds or interest."

The consequence of these decisions, both of the highest authority in a judicial and administrative sense, is, that the holders have or can assert no rights against the State of Florida, and can only assert a claim

to the surplus that may remain of the proceeds of the sale (now announced) of the road after payment of the expenses, which are very considerable, and of the first mortgage given on the 472 Pensacola and Georgia bonds, according to a decree of the Supreme Court of the United States at Washington, October term, 1875, confirming a decision of the circuit court. The mortgage debt, including the arrearages of interest for eight years, amounts to $735,820. A discussion with re-
1776 gard to this condition is useless; it may be a kind of relief to the disappointed holders, but cannot change the accomplished facts.

My clients have endeavored, at great trouble and expense, to devise a plan for a settlement and to prevent the holders of the P. and G. bonds from executing their decree of October, 1875, but on the contrary they have brought it to pass that said holders gave their approval and support to the plans for a settlement (sic). In principle the plan amounts to this:

The holders of the 472 P. and G. bonds, the holders of the eight per cent. Florida bonds, and a clique of American speculators and interested parties purchase the road by the judicial execution through three trustees, to be appointed by themselves.

The payment is made in bonds, and for that which may fall short, in money.

A new company takes the road with sufficient capital to improve and run it, and fastens upon it a mortgage debt, maximum amount of which is $12,000 per mile. (See annex A.)

Your first question will in probability be, by whom is the settlement proposed?

II.

The persons from whom the plan emanates, and who, if it is accepted, are to execute it, are Messrs. Robert Walker, who, by a decree of the Supreme Court at Washington, dated April 24, 1874, was appointed receiver, and who has managed the roads for twenty-five months.

Hubbard L. Hart, steamboat owner and large landed proprietor at Palatka, on the St. John's River.

John Clark, director of the First National Bank of Jacksonville.

C. H. Allen, railway engineer.

Robert J. Dodge, receiver of the city of Washington; assisted by my correspondent, Charles D. Willard, solicitor, at Washington.

Messrs. Kremelberg declare in their letter of March 6, 1877, that all these gentlemen are men of high standing, and deserving of entire confidence. Walker and Allen are very well known as railway directors, and fully understand their business.

1777 Their answer (dated March 17th) to a repeated inquiry by telegraph was as follows:

"Character directors new company sufficient guarantee to execute memorandum plan."

III.

You will see by the memorandum plan, which is herewith annexed (annex A), on what bases and in what manner it is proposed to carry out the reorganization. This plan has already been approved and accepted by General Jackson and Colonel Simonton, who represent, with the exception of about thirty, all the Pensacola and Georgia Railroad bonds, which, to the number of 472, hold a first mortgage. The share in the capital to be raised, consisting of $2,832,000 shares, and $2,832,000 first mortgage bonds, paying an interest of 5 per cent. in gold, which would be awarded to you, will be in the proportion of 33⅓ per cent. in bonds and 16⅔ per cent. in shares, that is to say, $333⅓ for every bond of $1,000, at 8 per cent. old (gold?), including the unpaid coupons and $166⅔ in shares.

IV.

Is the plan for settlement acceptable?

The Messrs. Kremelberg report, March 6, 1877, "compromise. looks well enough when nothing else obtainable," and confirm the same March 13, 1877, by telegram and by letter. A statement of R. Walker, dated January 12, 1877, contains the following:

"I do not hesitate to declare that this is the only feasible plan for saving anything for the holders of the State bonds.

"I am fully convinced that the approval of this plan by the holders of the Pensacola and Georgia Railway bonds is a great concession.

"Basing my calculations on my long experience in the management of railways, and especially on my management of this line, I consider this road to be perfectly able speedily to pay off the mortgage, which, according to this plan, would be fastened upon it, and that the interest on the bonds can and will be regularly paid."

The Messrs. Kremelberg asked again whether they consider the plan acceptable, and if so, whether they are willing to act as trustees for the Dutch bondholders, answer by telegraph that they are.

1778 In the plan you will observe that priority is awarded to the 472 P. and G. bonds in the redemption of the bonds of the new company, in exchange for the delivery of their old titles, although only a single mortgage, the total amount of which is $12,000 per mile, is issued. This condition was the sine qua non of their acceptance.

Although apparently oppressive, even this grievance disappears when we consider that they only amount to about one-fourth of the mortgage debt, in principal and interest, which, beginning by the drawing, at the expiration of three years, will be constantly diminished.

Moreover this sum total of the net receipts of the receiver's report shows that the road during its management under sequestration, which, from the nature of the case, was costly, was able to meet an obligation equal to that now to be contracted.

I confidently leave it for you to decide whether, under the given circumstances, and in view of the opinion of competent and trustworthy persons, the plan, as now presented, is likely to be accepted.

V.

What is to be expected from this plan in future? In other words, will the road be able to meet its new obligations, and is the necessary capital secured? In reply to the first part of this question, it is necessary to remember that an income of $600 per mile must be earned.

From the official report presented to the Supreme Court of the United States, by Mr. Walker as receiver, it appears that in twenty-five months the net receipts for 236 miles were $296,488.61, or about $602.48 per mile per year.

Messrs. Kremelberg say on this subject: "After a conversation with a friend of ours who is thoroughly acquainted with the railways of the

South, we are convinced that the road needs capital in order to be placed in a condition to earn the necessary income. (Letter of March 6, 1877.)

"The road has got into a bad state, through neglect, and requires capital to be restored to a good condition, which cannot be done until the formation of the new company. The continuation of the road as far as Mobile, to join the already existing railways, will be necessary, and the road, if well managed, will be able to pay the interest on the capital mentioned in the plan of reorganization, since it appears
1779 from the receiver's reports, which will be made known to you,
that the road in good hands earned sufficient for its support, and also yielded a considerable surplus."

As to the question whether the necessary capital is secured, we will simply state that the shares and the bonds to be issued yield a sufficient surplus, after the payment and settlement of all debts, the conversion of which into coin, so far as this may be necessary to meet contracts of acceptance and deliveries, is secured, if the plan be accepted, by the new and financial relations of the future directors, who now form the committee of settlement.

The surplus of 2,000 shares, more or less, and 430 bonds, is in the opinion of Messrs. Walker & Allen, associate framers of the plan, more than sufficient to improve the road and the rolling-stock and to increase the same as required.

After the foregoing introductory remarks, and referring to the plan, I have the honor to propose to the bondholders the adoption of the following resolution:

The holders of eight per cent. Florida bonds of 1870 hereby declare that they approve the memorandum plan that was adopted by Frank R. Sherwin on the one side and General Jackson and Colonel Simonton on the other, a copy of which was deposited February 14th, 1877, among the papers of the notary, J. C. G. Pollones, at Amsterdam, and they hereby appoint Mr. Adolphus Engler, a member of the firm of Kremelberg & Co., of New York, as their trustee for the execution of the reorganization described in that plan.

To such bondholders as shall vote for this resolution an opportunity will be first given to deliver their bonds to the Bank of Amsterdam for the execution of the approved arrangement, on which occasion a declaration, as shown in annex B, shall also be handed in by them; and a receipt shall be given by the Bank of Amsterdam for the bonds delivered to it, subsequently to be exchanged for certificates.

The holders of certificates being bound by the provision contained in article five of the document signed on the 29th of October last, before the notary J. W. H. H. Druyvesteyn, which reads thus: "It (the committee) is also empowered to make arrangements concerning those rights and claims (the rights and claims arising from the ownership or the possession of the delivered bonds and coupons) or the pay-
1780 ment thereof; but for this purpose the previous approval of the
(reckoning according to amount) majority of the holders of certificates to be delivered according to article two shall be required." It is therefore proposed to them, after consultation with the committee, to adopt the following resolution:

The holders of the certificates issued by the committee having charge of the interests of the holders of eight per cent. bonds of the State of Florida bearing date of 1870, appointed at the meeting of October 3d, 1873, constituted by a document signed October 29th, 1873, before J. W. H. H. Druyvesteyn, a notary, having taken cognizance of the memorandum plan adopted on the 12th day of January, 18—, at Savannah, by Frank R. Sherwin on the one hand, and General Jackson and Colonel Simonton on the other, a copy of which was deposited on the 14th of February, 1877, among the papers of J. C. G. Pollones, a notary at Amsterdam, hereby declare that they approve the said plan as the basis of an arrangement, appointing Mr. Adolphus Engler, a member of the firm of Kremelberg & Co., of New York, as trustee, to carry out the reorganization referred to in said plan; and, in accordance therewith, that they authorize the aforesaid committee, according to the proposals of Mr. Jac. Wertheim, contained in his circular dated April 10th, 1877, to deliver to the Bank of Amsterdam the bonds delivered to the committee for them and in their name, presenting, at the same time, a declaration according to the form printed as annex B of the said circular of Mr. Wertheim; the committee to receive, on delivery of the bonds to the bank, a receipt or certificate therefrom, and to exchange this, after the bonds and shares to be issued by the said railroad company, which is to be formed, shall have been placed in the market, for such bonds and share, in order to call in (withdraw) the certificates to be issued by the committee, on (in return for the) delivery (surrender) of said bonds and shares.

1. The right to the line of railway now known as the Florida Central, situated between Jacksonville and Lake City, and the right to the Jacksonville, Pensacola & Mobile Railroad, situated between Lake City and the Chattahoochee River, and between Tallahassee and St. Mark's, and the right to complete said line westward as far as the city of Mobile, so far as this shall not have been secured by said plenipotentiaries at
1781 said sale, must be conveyed to the Jacksonville and Mobile Rail-
road Company by the undersigned on the one hand, and must be conveyed in such a manner that no lien or preference remains the last-named title or property, which shall take precedence of the first mortgage hereinafter to be mentioned.

The provisions contained in this article shall be executed by the undersigned on the one hand, if possible, within six months from the date of this agreement.

2. When, therefore, a perfect title shall have been obtained by the said Jacksonville, Pensacola & Mobile Railroad Company, that company shall give a certificate of obligation to the trustees aforesaid, stating that immediately after the transfer the aforesaid railway property, which as above stated, has been purchased by the said trustees, and thus the entire line of the Jacksonville and Mobile Railroad Company shall be pledged to the amount of 12,000 dollars, at most, per mile, which debt must be paid within forty years from the day of the delivery, with interest at five per cent. per annum, payable every six months in New York or Amsterdam, Holland, at the option of the bondholders, principal and interest to be paid in gold. To secure said payment the said line of railway, with all its buildings, storehouses, rolling-stock, implements, and workshops shall be pledged by a first mortgage.

That, in the first place, care shall be taken for the issue of a series of bonds at par, equal in amount to the value of the delivered bonds and matured coupons of the said Pensacola and Georgia and Tallahassee Railroad Company, in case these lines of railway, formerly known as the Pensacola and Georgia and Tallahassee Railroads, should be purchased by the aforesaid trustees for a sum less than the aggregate amount of the aforesaid bonds and matured coupons; but if the aforesaid roads be sold for a sum equal to or exceeding the aggregate amount of the aforesaid shares and matured coupons and the interest on those coupons, then that first series of shares shall cover the amount of the last named aggregate amount, and this first series of shares shall form a first lien upon said line of railway, with its appurtenances, to serve as security for the payment of principal and interest when they shall become due. That first series of bonds shall be delivered to the chosen trustees to be delivered to the owners of the delivered bonds and coupons for the security of the T. & G. and T. Railroad Companies, 1782 which last bonds and coupons shall be taken charge of by the trustees and delivered to the trustees of the internal improvement fund of Florida, to be cancelled as soon as all such bonds now in circulation shall have been delivered to the aforesaid trustees, either in exchange for the aforesaid new first mortgage bonds or otherwise.

That in the aforesaid mortgage it shall at the same time be provided that in default of payment of a year's interest by the new company, it shall be lawful to make seizure to the amount of the entire capital and of the income which may have become due, and to proceed to the sale of the aforesaid road and all the appurtenances, the proceeds of both then in the first place to be applied to the payment of the first series of bonds and of the income that shall have become due, and the surplus, when there shall be any, to be applied to the payment of the remaining or second series of bonds.

That in the mortgage which is to be made, the provisions shall be contained that three years after the establishment of the aforesaid company, a sinking fund of one per cent. per annum in gold, payable half yearly, on the bond capital, shall be set aside, to be applied annually, as set aside, to the redemption of the bonds of the aforesaid company at par, and that by drawing; at which drawing the aforesaid first series of these bonds shall have the preference.

A form of the above-described bond and of the instrument of hypothecation, approved by the aforesaid trustees, shall be attached, as an annex to the written bond, and also a copy of the charter of the aforesaid Jacksonville & Mobile Railroad, containing the authorization of the new company to issue and deliver such bonds and such mortgage.

It must moreover be provided in the aforesaid mortgage that a sufficient number of bonds is to be reserved and used in order to place the existing railway in the best condition, and to repair the road, the rolling-stock, etc.; that the new railway company shall be managed by not more than seven and not less than five directors, who shall be appointed by the owners or holders of the aforesaid State bonds, and whose appointment shall be approved by the chosen trustees. In case of a vacancy in the board of directors, in consequence of the death or resignation of a member or otherwise, notice shall be given to the trustees of a proposed new appointment, and a protest presented in writing and 1783 signed by the majority of the holders of the first series of bonds, shall be sufficient to prevent the vacancy from being filled; this provision, however, shall not remain in force for more than six years from the date of the establishment of the new company.

It is further provided that all moneys required to cover the costs and expenses for auction sale or sales, and for the preparation of proofs of ownership shall be borne by the undersigned on the one hand.

In testimony whereof we have signed this agreement, sealed it with our seal, and exchanged it on the twelfth day of January, 1877, at Savannah, Georgia.

(Signatures follow.)

Signed, sealed, and exchanged before me.

VINCENT L. STARR,
Notary Public.

1784 Extract from the report of Mr. R. Walker, ex receiver of the Jacksonville, Pensacola & Mobile Railway, to the Supreme Court of the United States, concerning his management during the period of twenty-five months, which report relates to the working of the road as follows:

During my receivership, my receipts amounted to....	D.	1,094,772 08
Certificate of the comptroller of the State of Florida, according to my report of September 8th, 1877	D.	2,308
Total receipts	D.	1,097,080 08

Of this amount there was received by me for the account of other lines	D.	303,571 06
Receipts of the roads in my possession	D.	794,509 02
Of this last amount there came into my possession on taking charge of the road on the 6th of May, 1874..	D.	4,300 74
Receipts during my receivership	D.	790,208 28

This total amount of the receipts was paid out as follows:

To connecting lines			D.	302,571 06
For building and clearing	D.	65,540 28		
For land at Baldwin	D.	75	D.	65,595 28
For improvements, or in other words, working expenses of previous managements, with which this period was encumbered	D.	114,984 83		
Working expenses of the receiver	D.	498,020 41		
			D.	613,005 24
Paid in by order of the Supreme Court			D.	115,908 50
Total			D.	1,097,080 08

1785 Placing the receipts proper over against the total expenses of the receiver, that is to say, the amount of the real expenses for working and those for improvements, we get the following account:

Receipts proper	D.	790,208 28
Working (running) expenses and improvements	D.	613,005 24
Net receipts	D.	177,203 04
Amount paid to receiver	D.	4,300 74
Total net receipts	D.	181,503 78

This statement, like all similar statements in my previous reports, does not show the road's capacity to earn money, since the receipts are diminished by the running expenses of previous managements. The following statement will remove this inaccuracy, since the receipts are there diminished by the real running expense, during the time of my management.

Actual receipts of the roads during the receivership..	D.	720,208 28
Actual running expenses	D.	498,020 41

Actual net receipts	D.	292,187 87
Amount paid receiver	D.	5,300 74
Total net receipts for 236 miles of road	D.	296,488 61

This account was presented by Mr. R. Walker on the 3d day of November, 1876, although his management had terminated about six months previously.

The delay was caused, according to information which I have received, by various circumstances over which the receiver had no control.

J. WERTHEIM.

AMSTERDAM, *April 10th*, 1877.
Translated by—

HENRY L. THOMAS,
Translator to Department of State.

1786 In the United States circuit court for the northern district of Florida. In equity.

J. FRED SCHUTTE ET AL.
vs.
WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company et al.

1787 United States circuit court, northern district of Florida. In equity.

J. FRED SCHUTTE ET AL.
vs.
WESTERN DIVISION OF THE WESTERN N. C. R. R. Company et als.

Present, John A. Henderson, representing W. G. M. Davis, counsel for complainants, and George P. Raney, counsel for the trustees of the internal improvement fund at Tallahassee, September 19, 1878.

ROBERT H. GAMBLE, witness for the trustees of the internal improvement fund, being duly sworn, deposeth and sayeth as follows:

I was comptroller of the State of Florida in and during the year 1869. I was in Tallahassee on the 20th of March, 1869. I attended the sale of the Pensacola and Georgia Railroad, and the Tallahasse Railroad made by the trustees of the internal improvement fund, at the railroad depot, at Tallahassee, on that day.

Question. Please state what you may know as to the terms upon which said roads were advertised to be sold on.

Answer. The terms were cash; I mean the advertised terms. (Witness handed a paper marked Exhibit R. H. G. (A) and filed herewith.) I think this is a true copy of the advertisement of sale of Pensacola and Georgia Railroad, as published. The advertisement of the Tallahassee
Railroad was substantially the same. I saw these advertise-
1788 ments in the New York Herald and a Savannah paper, I think,
the Republican, and a paper published in Tallahassee.

(Complainants' counsel objected to the testimony as not being the best evidence, referring to the testimony in reference to the advertisement.)

It was generally understood in the country that the sale would take place at 12 o'clock, at the depot, and I so understood myself. I left my office at 11 o'clock to go to the depot, and in the hall of the capitol I was met by Attorney-General Meek, and on my suggestion to him that it was time to go to the depot, he remarked that there was going to be a meeting of the board of internal improvement immediately, and asked me to attend. I expressed surprise that there should be a meeting, and asked the purpose of it, to which he replied that it was for the purpose of arranging the preliminaries of the sale, and to decide who was to cry the road. I went to the attorney-general's office, where the board usually met. From the attorney-general's office I went to the depot.

Please state what took place at the depot.

A. After assembling at the depot, which was about 12 o'clock, Mr. Webster, the commissioner of the State land office, and a member of the board of trustees, read a paper, stating that the purchaser of the Pensacola and Georgia Railroad would have to pay in cash some forty or fifty thousand dollars—I have forgotten the exact amount—and the balance of the purchase money at such time as the board might require, and a similar paper in regard to the Tallahassee Railroad, except that a smaller amount in cash was required. The cash payment was in the aggregate for both roads, sixty thousand dollars, but I cannot recollect the exact amount for each.

This announcement of a change in the terms was a surprise to many of those who were present. Mr. M. D. Papy came to me immediately, manifesting great surprise, and asked me when this change of
1789 terms took place. I told him I was utterly surprised myself, and we walked a few steps to Mr. Meek, and asked him when that change took place. Mr. Meek stated that the change had been decided upon that morning in a meeting of the board of the internal improvement.

The sale then took place. There were two bidders for the road, George W. Swepson and E. M. Cheney. They were both knocked off to Mr. Cheney, who directed that the sale should be entered in the name of F. Dibble and associates.

The Pensacola and Georgia Railroad sold for about twelve hundred and twenty thousand dollars, and the Tallahassee Railroad for about one hundred and ninety or ninety-five thousand dollars.

The estimate of the Tallahassee Railroad was made by Edward Houstoun, George W. Swepson, M. D. Papy, and myself, and some members of the board who were standing by, but whom I do not now recollect, that the bid for the Tallahassee Road would make about 94 or 95 cents on the dollar for the outstanding bonds of this road, and that deducting those that were known to be in the sinking fund it would bring these, the outstanding bonds, up to par.

What was the estimate in regard to the Pensacola and Georgia Railroad?

(Counsel for the complainant objects to the above question as being indefinite and irrelevant and as seeking to establish a fact upon the conjectures of spectators who witnessed a large transaction.)

A. That the road sold for more than an equal of the par value of all the bonds that were out; that was the estimate of Mr. Swepson, who had been to the comptroller's office several times to ascertain how many bonds were out, and who was at the sale. This was also the estimate of Col. Houstoun, Mr. Papy, and myself.

Col. Houston was at that time president of both roads. Mr. Papy was the attorney of the road. I was a director and bondholder, but I am not a bondholder now.

1790 The trustees of the internal improvement at this time were Gov. Reed, governor of the State; Mr. Conover, State treasurer; Mr. Adams, commissioner of immigration; Mr. Webster, register of lands; Mr. Meek, attorney-general, and myself, as comptroller.

I at the time gave the subject attention, but I can now only say that my recollection is that there were then two hundred and two or two hundred and four thousand dollars Tallahassee bonds, and about $1,218,000 P. & G. bonds outstanding at that time. I had no information whatever as to who F. Dibble and associates were. I knew Frank Dibble afterwards.

I learned from Mr. Calvin Dibble and Mr. Frank Dibble that besides themselves there were Mr. A. Huling, John L. Requa, E. M. Cheney, Wilkinson Call, and James M. Baker, and J. P. Sanderson, and George W. Swepson. Mr. Swepson became a member after the sale.

Subsequently when I asked Mr. Swepson how he happened to go into such an association, he replied that I did not know all the arrangements; that with a governor, and a supreme court, and a board of internal improvement all against him he thought it better to make the best terms he could, or words to that purpose. I don't recollect if that was his exact language.

Adjourned to Saturday morning at half past 8 o'clock.

September 21, 1878. Adjourned till the 30th inst.

NOVEMBER 30, 1878.

Testimony of R. H. **GAMBLE** resumed.

Present, John A. Henderson, representing W. G. M. Davis, counsel for complainants, David S. Walker, sr., and George P. Raney, counsel for the trustees of the internal improvement fund.

1791 (Counsel for complainant objected to the testimony touching George W. Swepson's connection with F. Dibble and associates as altogether irrelevant and insufficient.)

Witness handed papers marked R. H. G., Exhibit B, R. H. G., Exhibit C, R. H. G., Exhibit D, purporting to be copies of resolutions of the board of trustees of the internal improvement fund of March 29th, April 7th, and April 8th, 1869, which were read by witness and filed.

I went to New York to carry out the provisions of the resolutions, that is, to deliver the deed and receive the balance of the purchase money for the railroad. I found at the Astor House, in New York, Gov. Reed, Mr. Adams, Mr. Meek, and Mr. Requa. After a delay of some days I enquired of Mr. Calvin Dibble what was the cause of the procrastination in settling this matter, and was informed that they were waiting for Mr. F. Dibble; and on a second application to know why there was still further delay, Mr. Requa, who was present at the time, asked me if I had any personal interest in the matter. I told him that I owned some bonds, but that that was not the object of my wishing the business settled, but that I had other business to attend to. He said they were still waiting for Mr. Franklin Dibble, but that if I desired it they would cash the bonds that I owned. I declined accepting it on the ground that I was there to settle for the board of trustees and that I would not receive the money for my bond until all was paid.

After a day, or probably two days, of further delay, I was informed that they were then ready to come to a settlement and was invited to come into a room at the hotel. I went to the room in company with Mr. Meek, Mr. Calvin Dibble, and Mr. Adams, and found in the room Mr. Swepson.

Mr. Calvin Dibble as we got in the room remarked, addressing himself to Mr. Meek and myself: I hope, gentlemen, you will not require us
to to have the actual money present; remarking that he would
1792 not like to travel the streets of New York with four or five hundred thousand dollars in his hands.

He handed to Mr. Meek a paper which Mr. Meek after reading, addressing himself to Mr. Swepson, said, "Will you, Mr. Swepson, take this check for so much money?"

Mr. Swepson took the check, and said, after reading it, that he would do so. I asked them, "What is the amount of the check?" Mr. Swepson handed the check to me, and I read it and found that it was a check of Calvin B. Dibble, on Dibble, Worth & Co., for, to the best of my recollection, $472,064. I asked them, "How have you arrived at this amount?" Mr. Swep son showed me my own receipt for a large number of the bonds of these railroads and an acknowledgment of a banker that he had subject to Mr. Swepson's order another large amount of the bonds.

We then went into an estimate to determine what proportion of the purchase money was represented by these bonds and found that the check called for the balance of the purchase money.

The subject was then again referred to whether the money should be produced, and Mr. Swepson remarked, "What is the use, gentlemen, of having the money brought here when here is the order of your board that the money shall be turned over to Mr. Dibble and myself, and we tell you that we will take that check for so much money?"

Mr. Meek then said to me that he saw no necessity for requiring a different payment from that proposed.

I said to him that I saw no necessity for the currency being brought there as Mr. Swepson and Mr. Dibble had said that they would take the check as so much money.

Mr. Swepson and Mr. Dibble then gave Mr. Meek and myself a receipt for the amount called for by the check.

Mr. Swepson then endorsed an order on the receipt I had given him for the bonds that were locked up in the comptroller's office that I should turn those bonds over to the board of interna*na*l improvement; and he
also gave me an order on a banking house who held the other
1793 bonds that have been referred to for the bonds; and we then
delivered the deed.

As we were leaving the room, I stopped Mr. Swepson and said to him that friends had placed in my hands (referring to my memorandum-book) one hundred and three thousand dollars of Pensacola & Georgia & Tallahassee Railroad bonds, and that I would like to get the money for them. He said that he was not then prepared to take them up, but that he would be in Tallahassee soon and would take them up. He also said to me that the $1,700 of bonds that he understood I had as my own property he would pay at once. I told him I would not receive the money on my bond until others that I represented were paid, but that there were $45,000 of the $103,000 that I had spoken to him about that belonged to two ladies in Florida, in whom I took an interest, and I would like to be able to telegraph them that their money was paid. He replied that he thought he could accomplish that if I would meet him next day—naming the hour. I waited the next day at the place designated by him, and his not coming, I went to the bank that I understood he did business with, and asked the president if he could tell me where Mr. Swepson was. He told me Mr. Swepson had dined with him the day before, and had left his home just in time to take the train for North Carolina the evening before.

(Counsel for complainant objected to the testimony for its irrelevancy, and particularly to so much of it as is hearsay.)

The first time I saw Mr. Swepson again was in Tallahassee, when I tried in vain to collect the pay for my bonds, ($1,700 that I owned.) I asked him what he paid Mr. Meek to carry out that fraud in New York, and the pretended payment of the $472,000. He asked me why I thought he had paid him anything. I told him that circumstances had come to my knowledge that satisfied me that Mr. Meek had suddenly come into possession of money there; and he replied, "Well, I did give him $5,000."

1794 (Counsel for complainant objected to this testimony as irrelevant, incompetent, and indirect.)

A paper marked R. H. G., Exhibit E, purporting to be a copy of proceedings of the board of trustees, Jan. 17, 1869, handed to witness and was read by him and filed. Witness said that he signed the original of which said exhibit, to the best of his recollection, is a copy.

Q. You say in the above papers that the difference between the sum represented by the bonds therein referred to and the sum bid for said roads was turned over to Mr. Swepson, confidential agent of the board, to take up the outstanding bonds. Please state whether any money was in fact turned over to Mr. Swepson or Mr. Dibble, as such agents, and if not, what was turned over to them or either of them.

A. There was nothing turned over to them except the check, which purported to be the balance between the amount we received in bonds and the aggregate amount agreed to be paid for the road.

Witness here referred to that portion of his testimony where he says he was surprised to learn at the depot, on the day of the sale of the roads, that it was not to be a cash sale, and asked to make the following statement:

As I left the comptroller's office to attend the sale, I met Mr. Meek in the hall of the capitol, and asked him, "Is it not time to go to the depot to attend the sale?" He replied, "Yes; but there is a little business before. We are going to have a meeting of the board of trustees, to determine who is to cry the road." And he asked me to attend. We went into the attorney-general's office, where the board usually met, and I was made chairman of the meeting. After the appointment of chairman, and an agreement as who should cry the road, there was much whispering among various members of the board, which I did not participate in; and being embarrassed by this undertoned conversation in which I was the only one excluded, I got up from my chair and 1795 remarked, "As we have finished the business for which we have come together, we will now adjourn," and as I got my hand on the knob of the door and half opened it to go out, Mr. Meek remarked, "Stop a moment; we are not quite through." I asked him what there was to do, and he replied, "Nothing much." I then got into conversation with a member of the board at the door, and continued in conversation until the other members joined me going out, not observing that any such resolution had passed. I was much surprised, as others were, when the resolution changing the terms of the sale, by requiring a payment of the earnest money and the balance when called for by the board, was announced at sale. I am confident, as chairman of that meeting, I took no vote on such a resolution until it was read at the sale.

Cross-examination:

It is understood between counsel that the records of the internal improvement board shall be accessible to W. G. M. Davis for the purpose of getting copies of any proceedings with reference to the sale of the road on the 20th of March, 1869, this being part of an understanding with Gen. Davis covering other records and papers.

I knew that George W. Swepson was negotiating for the purchase of the bonds of the Pensacola and Georgia Railroad, and it was my impression that he would be the purchaser of the road. I sold him some bonds that I held at, I think, 35 cents on the dollar, in anticipation of the sale. The price at which the road was sold was a matter of great surprise to me and to many others.

The terms of the sale of the roads, as announced by Mr. Webster at the depot on the day of sale, were the same as those contained in the resolution purporting to have been adopted by the board of trustees at the meeting before the sale, and on that day, and as said resolution is recorded, as I have seen since the sale. I think the effect in the terms of the sale was to make the road bring more than would otherwise have been bid.

1796 I am aware of no relation existing between Mr. Papy and Mr. Swepson at the time of the sale. Mr. Papy was then attorney for the P. & G. Railroad. Col. Edward Houstoun was the president of said road. I had no knowledge of any relation between Mr. Houstoun and Mr. Swepson at the time of the sale. I do not know that it was then contemplated between Houston and Swepson that Houstoun was to be interested in the road in the event that Swepson became the purchaser. But I do know now that Houstoun had acted as agent for Swepson in buying up the bonds of the road previous to the sale.

I think the salesman of the road at that sale reported the sale to the board of trustees. I think his report was in writing, and that it appears on the minutes of the board.

The Mr. Papy with whom the attorney-general was authorized to confer in the preparation of the deed of conveyance is the same Mr. Papy referred to in my testimony as attorney for the P. & G. road.

There was in the fact of Governor Reed being at Astor House in New York, at the time spoken of in my testimony, nothing that connected him in my mind with the transaction that then and there took place. I was aware at the time of the delivery of the deed that Mr. Swepson was the confidential agent of the trustees in taking up the bonds of the roads.

After Mr. Swepson had said that he would receive the check spoken of in my testimony, as so much money, Mr. Meek received the orders for bonds and the check and delivered the deed. Mr. Meek and I then, acting under the resolution of the board, turned the check over to George W. Swepson, as confidential agent of the board, and took his receipt therefor.

We reported our action to the board on our return, and it was ratified by them. The report has been herewith filed, or a copy of it. On my own motion I had Geo. W. Swepson arrested at Tallahassee, Fla., under criminal proceedings in connection with this check. I had previous to this arrest frequently tried to have the board of trus- 1797 tees take some action to compel Swepson to account for the amount of this check, and failing to have anything effective done, I had him arrested. I think these proceedings were instituted some time in 1872—it may have been in the latter part of 1871. I do not know what has become of the check. I have not seen it since the day it was delivered to Swepson. The receipt was deposited with the treasurer of the board of trustees. What became of it afterward I do not know.

(The above testimony as to proceedings against and arrest of Swepson is taken subject to the objection by counsel of the trustees, that it is not the best testimony, that the records of the court are the best testimony, and no ground has been laid for the introduction of secondary evidence.)

Swepson was carried before Squire Tooer, a justice of the peace, and by him bound over and required to give bond. He refused to do this, and was taken before the supreme court on a writ of habeas corpus, when he gave him some kind of security by the deposit of some railroad stock, and pending that the board of trustees did not sustain me in my action, and I let the matter drop, as far as I was concerned:

(The above testimony taken subject to the same objections as are last stated.)

I introduced a resolution before the board of trustees, in August or September, I think, 1869, to call Mr. Swepson to an immediate settlement, as financial agent of the board, which did not meet with the approval of the board; one of the objections being that this would not be treating Mr. Swepson with proper courtesy. This was the remark of Gov. Reed, and Mr. Adams was either directed or requested to correspond with Mr. Swepson, with a view to ascertain what he had done in reference to taking up these bonds.

Redirect:

Q. Was that check ever paid to Swepson?

1798 A. I can only say that in applying to Mr. Swepson to take up the bonds which I held, he led me to believe that the check had not been paid.

Recross:

I have no direct knowledge whether it has ever been paid. What Mr. Swepson said that led me to believe that the check had not been paid was more by implication than by direct assertion.

(Signed) R. H. GAMBLE.

Sale of the Pensacola & Georgia R. R.

The Pensacola and Georgia Railroad Company having failed to pay the interest on their bonds and the amounts due the sinking fund (see act approved January 6, 1855, entitled "An act to provide for and encourage a liberal system of internal improvement in this State"), notice is hereby given that on Saturday, March 20, 1869, at the office of the said company, at Tallahassee, the trustees of the internal improvement fund of the State of Florida will sell at public outcry, to the highest bidder, the Pensacola and Georgia Railroad, including the road-bed, iron, equipments, workshops, depots, and franchise, and all its property of every kind.

Terms cash.

By order of the board of trustees of the internal improvement fund.

FRANK W. WEBSTER,
Secretary and Salesman.

FEBRUARY 9, 1869.

(Endorsed:) Exhibit R. H. G. (A.). Filed September 19, 1878. W. K. Beard, examiner.

1799 R. H. G., EXHIBIT B.

TALLAHASSEE, FLA., *March* 29, 1869.

The board met.

Present, R. H. Gamble, comptroller; A. R. Meek, attorney-general; S. B. Conover, treasurer; J. S. Adams, commissioner of immigration; F. W. Webster, surveyor-general.

On motion, it was resolved that the attorney-general be requested and directed to prepare a deed of conveyance of the P. & G. Railroad and Tallahassee Railroad to the purchaser at the public outcry of March 20, 1869, and submit the same when prepared to the consideration of this board; and when such conveyance receives the approbation of this board, and is executed by them, that the attorney-general and comptroller be appointed special agents of this board to proceed with such deed to the city of New York, there to consummate the purchase and sale of the roads; and when they have received the amount payable by the purchasers, that they are to deliver to said purchasers such deed of conveyance; and in his discretion, the attorney-general is authorized to act upon conference, and in concurrence with Mr. Papy, the attorney of a portion of the purchasers, in drawing said deed.

FRANK W. WEBSTER,
Secretary.

(Endorsed:) R. H. G., Exhibit B. Filed November 30, 1879. W. K. Beard, examiner.

R. H. G., EXHIBIT C.

TALLAHASSEE, FLA., *April* 7, 1869.

The board met.

1800 Present, Harrison Reed, governor; A. R. Meek, attorney-general; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general.

The following resolution was offered and adopted:

Resolved, That the deed of the Tallahassee and P. & G. Railroad, prepared by the attorney-general, be executed by the members of this board.

The board then adjourned.

FRANK W. WEBSTER,
Secretary.

(Endorsed:) Exhibit R. H. G., C. Filed November 30, 1878. W. K. Beard, examiner.

R. H. G., EXHIBIT D.

TALLAHASSEE, FLA., *April* 8, 1869.

The board met. All members present.

Resolved, By the trustees of the internal improvement fund of the State of Florida, that Calvin B. Dibble, of the firm of Dibble, Worth & Co., of New York City, and George W. Swepson, of Raleigh, N. C., be and they are hereby appointed confidential agents of said trustees, with authority in each to take up the outstanding first mortgage bonds of the Pensacola and Georgia and the Tallahassee Railroad Companies, and that the attorney-general and comptroller are hereby directed to turn over to said Dibble and Swepson, or either of them, all moneys that may be received by them in behalf of said trustees for said roads for the purpose above set forth.

FRANK W. WEBSTER,
Secretary.

(Endorsed:) Exhibit R. H. G., D. Filed November 30, 1878. W. K. Beard, examiner.

1801 R. H. G., EXHIBIT E.

TALLAHASSEE, FLA., *June* 17, 1869.

The board met pursuant to call.

Present, R. H. Gamble, comptroller; A. R. Meek, attorney-general; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general.

The report of Messrs. Gamble and Meek, as agents of the board (see resolution of March 29, 1869), was presented, and, on motion, unanimously adopted, and their action approved.

The report was as follows:

To the trustees of the internal improvement fund of the State of Florida:

By resolution of your board, adopted March 29, 1869, we were directed and empowered to proceed to New York City with the deeds of the Pensacola & Georgia and Tallahassee Railroads, executed by you to F. Dibble on behalf of himself and associates, there present said deeds and receive payment for the roads conveyed by said deed.

We beg to report that the duty devolved upon us by said resolution was duly performed; that we received eight hundred and six thousand six hundred dollars first-mortgage bonds of the Pensacola & Georgia Railroad Company, at par, and one hundred and fifty-three thousand and some hundred dollars of first-mortgage bonds of the Tallahassee Railroad Company, at between ninety four and ninety-five cents on the dollar, and that the difference between the sum represented by these bonds and the sum bid for said roads was turned over by us, as required by a resolution of your board, to George W. Swepson, as confidential agent of said board, to take up the outstanding bonds of said companies.

The receipt of Mr. Swepson for four hundred and seventy-two thousand and sixty-five dollars, we have passed over to the the treasurer of this board.

1802 We respectfully ask for approval of our actions.

(Signed) A. R. MEEK,
Attorney-Gen'l.

(Signed) R. H. GAMBLE,
Comptroller.

TALLAHASSEE, FLA., *May* , 1869.

(Endorsed:) Frank W. Webster, secretary. R. H. G., Exhibit E. W. K. Beard, examiner. Nov. 30, 1878.

In the United States circuit court for the northern district of Florida.
In equity.

J. FRED. SCHUTTE ET AL.
vs.
WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company et al.

Present, John A. Henderson, representing W. G. M. Davis, counsel for complainants, and David S. Walker and George P. Raney, counsel for the trustees of the internal improvement fund, at Tallahassee, November 29, A. D. 1878.

T. W. Brevard, witness for the trustees of the internal improvement fund, being duly sworn, deposeth and saith as follows:

I occupied the relation of counsel for some of the holders of the bonds of the Pensacola & Georgia and of the Tallahassee Railroad Companies, issued under the internal improvement act during the years 1869 and 1870, subsequently to and at the time of the sale of the railroads at Tallahassee, in March, 1869. I represented these bonds. This was advertised as a cash sale. I held these bonds with a view to receive the pro rata valuation that was fixed by sale for them, it being un-
1803 derstood that the money would be applied to the payment of the bonds, that being my understanding and the declaration of trustees. I was in Tallahassee during the month of January and February, 1870. I am acquainted with the provision of the act of legislature of Florida, approved June 24, 1869, entitled "An act to perfect the public works of the State," and the act amendatory thereof, approved January 28, 1870, passed at the regular session of 1870. The purchasers of the railroad through Mr. Swepson made payment upon the bid for the property under the sale that was had in March, 1869, amounting to something more than one million of dollars. This payment was made in the first mortgage bonds of the companies, the bonds being received as cash, except that in the case of the Tallahassee Railroad bonds, which sold for something less than the actual bonded debt. Possession of the property was delivered to the purchaser under this payment, which is the only payment that was ever made of which I have any knowledge, and which left a balance, at the price bid, unpaid, to a very large amount. I had a very strong interest on behalf of the parties I represented in requiring the payment of this balance, in order that it might be applied to the outstanding bonds, a portion of which I represented, and in order to prevent any complication, and to see that the property was kept in the States where it would not be encumbered by any debts that the parties in possession might make. After the passage of the bill amendatory of the act of 1869, in apprehension that Gov. Reed might approve the act, and issue the bonds authorized by that act, in advance of the payment of the claims which I represented, I prepared a bill, which it was my purpose to file, to restrain him from doing so. In the mean time, I had several interviews with Gov. Reed in regard to the matter, informing him of my purpose. In these interviews Gov. Reed informed me that his views coincided with my own, and that he entertained no doubt whatever that the bonds represented by me, and all bonds of that class which were outstanding unpaid, constituted
1804 a first lien upon the railroad property, and that the bonds authorized by the act of 1870 could not issue legally until the original outstanding first mortgage bonds were paid off and retired. He requested me not to institute the proceedings to which I have referred; that they were unnecessary altogether, inasmuch that his fixed purpose was to issue none of the bonds authorized by the act of 1870 until the entire balance of the purchase money was paid up and the old bonds satisfied.

I told Gov. Reed, in reply, that if he would give me in writing an assurance of his views as expressed to me, and at the same time a pledge that no bonds of the character authorized by the act of 1870 should be issued until the purchasers of the railroad property had complied with the conditions of the purchase by payment of the entire balance of purchase price bid, and then unpaid, I would feel authorized to relinquish my purpose of instituting legal processes to restrain him. To this Governor Reed assented. This interview was in the governor's office.

I then went to the comptroller's office, on the same floor of the capitol, and there prepared the letter, of which a substantial copy is contained on the 16th and 17th pages of the answer of the trustees of the internal improvement fund in this cause. Having prepared the letter, I returned to the executive chamber and submitted it to Governor Reed, when the accompanying endorsement was made and signed by him.

My impression is that the original of that letter and endorsement is appended, as an exhibit, to an answer of E. C. Anderson and others, prepared by General Henry R. Jackson and myself, to a petition filed on behalf of the Western Division of the Western North Carolina Railroad Company by A. S. Sullivan in the United States circuit court at Jacksonville. A substantial copy of the letter and endorsement are to be found on the 155th and 156th pages of the printed record (vol. 1) of case The State of Florida *vs.* E. C. Anderson et al. in the Supreme Court of the United States.

1805 I made it a point to see many members of the legislature during the session that that bill was being passed by its friends, and to inform them of the condition of the properties, and of the existence of the large lien which was outstanding against them, with the very idea, that being my purpose, to prevent the passage of any act that would authorize the persons holding the properties to use it as a basis of credit until the old liens in favor of the original first-mortgage bonds were satisfied.

I filed a bill some time about the middle of the year 1870, as I recollect, on behalf of Joseph Cohen and others, holders of said P. & G. and Tallahassee bonds, in the circuit court of the United States at Tallahassee, against the trustees of the internal improvement fund, and against the persons then in possession of the railroad property, and perhaps others having relation to the company.

Setting up the transaction connected with the sale, the fact that a large balance of the purchase money was unpaid, and a large amount of the first-mortgage bonds were outstanding, and asking a decree for a resale of the property to satisfy the said balance; and that if the said property should fail to bring the amount to which complainants were entitled, that a money decree be entered against the said trustees, and the other defendants, jointly and severally.

(Complainant's counsel objects to this as not the best evidence.)

I notified Collins, who was agent for S. M. Hopkins & Co., of New York, who was then understood to be in negotiation with General Littlefield and others, as to the sale of the State bonds issued under the act of 1870, of the encumbrance resting upon the railroad properties in favor of the outstanding first-mortgage bonds. In the month of June, 1871, I prepared a letter addressed to Chairman Statis, and corporations arrears committee, Nos. 193, 194 and 195, Gresham House, London, of which a substantial copy appears on pages 331, 332, 333, 334, and 335 of vol. 1 of the printed record above referred to. 1806

That letter I had printed in pamphlet form and mailed copies to various addresses besides the said chairman. I cannot now recall the names of all persons to whom they were sent, but remember very distinctly that copies were mailed to S. M. Hopkins & Co., of New York, and to John Collison, of London, or at London, at what I then understood to be his address, but which I do not now remember, postage paid. Subsequently, as I now remember, John Collinson was in Tallahassee. I endeavored, but failed, to have an interview with him upon this subject, he having left Tallahassee at an earlier hour than I had been led to suppose he would get off. In company with General Littlefield, and in a special train, I ascertained that he had left in the direction of Jacksonville. A very few minutes after the departure of the train, and, feeling and being determined to give him full notification of the state of the railroad properties, I at once proceeded to the telegraph office and addressed to him a telegram, which was at once forwarded to Live Oak, requesting the operator to direct its delivery to Mr. Collinson on the arrival of the special train. As I now recollect that telegram, it notified Mr. Collinson of the fact that a large number of the outstanding first-mortgage bonds of the original issue upon the railroad property were outstanding and unpaid; that the holders of these bonds were determined to press for their legal remedies, and that he would be dealing with an unsafe security if he should invest upon the faith of their property. I cannot undertake to say that this dispatch was ever delivered to Mr. Collinson, but was informed by the operator at Tallahassee that it was, according to advises received by him from the operator at Live Oak.

(Complainant's counsel objects to the insufficiency of this testimony, the telegram itself being the best evidence of its contents, and the office receipt at Live Oak the best evidence of its delivery.)

1807 Subpœnas were served and service perfected on the trustees of the internal improvement fund in the suit instituted by Joseph Cohen et al., above referred to, and I believe upon the other defendants.

(Complainant's counsel objected to the sufficiency of this evidence, the return of the subpœnas being the best.)

Cross-examined:

I think that actual possession of the property was delivered to the purchasers after the transaction in New York. My knowledge of the transactions in New York is derived altogether from the statement of others. I have no personal knowledge of them. I understood that there was, and I suppose there is, no doubt that a check was delivered to represent the balance of the purchase money at about the time of the transfer of the deed.

Q. Do you or not know whether Gamble & Meek, representing the trustees of the internal improvement fund, then, or at any time afterwards, and if so, when, turned over the said check to any one, and if so, who, as the confidential agent of the trustees; and if yea, to what purpose was it turned over?

A. I have no personal knowledge upon that point. I was a party to an arrangement with the holders of the property for the payment of the bonds which I represented, which arrangement was made subsequent to the issue of the State bonds referred under the act referred to. This arrangement was in writing, of which I have no copy now. It was subsequent to the taking of the decree in favor of the bondholders in the United States court, at Jacksonville. I cannot remember all the entire arrangements, but the most prominent features of it, as I now recall it, was that any sale under the decree was not to be pressed, provided the parties then in possession of the railroad should pay off the amount due the bondholders in monthly instalments of the amount agreed upon. There was some payments under that agreement, but they failed to carry out the arrangements.

There was also an agreement made with D. P. Holland, to which I
was a party. The first arrangement, above referred to, was with
1808 the J., P. & M. R. R., M. S. Littlefield as president. The arrange-
ment with Holland was in writing, of which I have no copy, but
the terms of the arrangement are substantially set forth on page 105,
vol. 1, of the printed record. The decree above referred to was for the
benefit of the unpaid bondholders, and provided for all who had filed
their claims with the master appointed in the case, or all who could file
such claims. I think that Joseph Cohen had transferred his bonds
prior to the taking of this decree.

The bill filed by Joseph Cohen was not affected by this transfer of his bonds, because there was other complainants embraced in the bill. Proceedings under the Cohen bill were suspended by reason of the strong assurances that were constantly made by the trustees and by the parties in possession of the road that the outstanding claims against it would be satisfied.

Q. Were these assurances made and accepted as well before as after the sale of the State bonds?

A. I think the State bonds had left Tallahassee before the bill was filed.

Q. How long did that assurance affect the progress of that bill.

A. I don't remember.

The above testimony as to the arrangements with the J., P. & M. Railroad Company and D. P. Holland is taken subject to the following objections, made by counsel of the trustees of the internal improvement fund, to wit: It is not within the line or scope of the direct testimony. The agreement being in writing, verbal testimony cannot be introduced to prove the terms of such agreement, and the testimony is irrelevant.

T. W. BREVARD.

NOVEMBER 30, 1878.

C. H. FOSTER, witness for trustee of the internal improvement fund, being duly sworn, deposeth and saith:

I am clerk of the United States circuit court at Tallahassee, and
have been such clerk since the summer of 1872. I am unable to find
any bill on file by Joseph Cohen and others against the trustees
1809 of the internal improvement fund et al. to sell the road for the
balance of the purchase money due on the sale of March 20th,
1869. I searched for this bill at the request of Geo. P. Raney. I did
not examine the præcipe docket to see whether or not *to see whether* a
subpœna had issued upon the filing of such a bill.

(Signed) CHAS. H. FOSTER.

I hereby certify that pursuant to the order made in the above stated cause of J. Fred. Schutte et als. vs. The Western Division of the Western North Carolina Railroad Company et als., by the circuit court of the United States, fifth circuit, northern district of Florida, appointing me examiner, that I did on the 19th day of September, 1878, and 29th and 30th of November, 1868, take the testimony of R. H. Gamble, T. W. Brevard and Chas H. Foster, witnesses for the trustees of the internal improvement fund of Florida, as the same appears upon the preceding and above pages, numbered from 1 to 37, inclusive, and that such examination took place, and such testimony was taken down in writing by me in the presence of John A. Henderson, representing W. G. M. Davis, counsel for complainant, and of Geo. P. Raney and David S.

Walker, counsel for the trustees aforesaid; that the testimony of each of said witnesses was read over to them respectively and signed by them, as the same appears in said paper, in the presence of said parties; that such witnesses were duly sworn to tell the truth, the whole truth, and nothing but the truth, and that these pages are true history of the proceedings in such matters.

Said testimony being taken at Tallahassee, Leon County, Florida.

In testimony whereof I hereto set my hand and seal this the 30th day of November, A. D. 1878.

[SEAL.] W. K. BEARD,
Examiner.

1810 *Testimony of Harrison Reed and others, taken before A. D. Basnett, master.*

In the circuit court of the United States, 5th circuit, northern district of Florida.

J. FRED. SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

Filed the 6th day of May, 1879.

PHILIP WALTER, *Clerk.*

1811 In the United States circuit court for the northern district of Florida. In equity.

J. FRED. SCHUTTE, JAN PRINS, ET AL.
against
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

Be it remembered that on this Wednesday, April 9th, A. D. 1879, pursuant to notice, I met at my office in the city of Jacksonville for the purpose of taking testimony on the part of the complainants in the above-entitled cause, and by agreement of counsel an adjournment was ordered until to-morrow, Thursday, April 10th, at 10 o'clock a. m.

A. D. BASSNETT,
Examiner.

THURSDAY, *April* 10.

Met pursuant to adjournment, and hearing continued until to-morrow, Friday, at 10 o'clock a. m.

A. D. BASSNETT,
Examiner.

FRIDAY, *April 11th*, 1879.

Met pursuant to adjournment.

Present, W. G. M. Davis, esq., counsel for complainant, and George P. Rainey, esq., counsel for the trustees of the internal improvement fund of the State of Florida, of defendants.

ALMON R. MEEK, a witness on the part of the complainants, being first duly sworn by me, deposed and testified as follows:

My name is Almon R. Meek; reside in Jacksonville, Florida;

1812 am a practicing lawyer by occupation. In the spring of 1869, while attorney-general of the State, and a member of the board of the internal improvement, after the deeds under sale of the Pensacola and Georgia and Tallahassee Railroads were executed, at a meeting of the board of trustees, a resolution was offered directing me to proceed to New York City, and there receive payment for the roads and deliver the deeds to the purchasers; at my request the resolution was so changed as to join Col. Gamble, the comptroller, with me in the commission, and as amended was adopted by the board of trustees. Col. Gamble and myself, within a few days after the adoption of the resolution, proceeded to New York, and there received, under instructions from the attorney of the board at the time, Col. Papy, about a million dollars of the bonds upon the two railroads sold, which left a balance of about four hundred and seventy thousand dollars, as then estimated. The question then, at the time of receiving the bonds, was asked Col. Gamble and myself as to what manner in which said balance of four hundred and seventy thousand dollars should be paid, accompanied with the statement that they, the purchasers, were ready to make payment in greenbacks. Col. Gamble and myself were not anxious to take the responsibility of receiving the four hundred and seventy thousand dollars, unless necessary to properly close up the transaction, under our authority from the board, as the resolution authorizing us to act in this matter required us to turn over whatever monies we might receive in payment to George W. Swepson and Calvin B. Dibble, or either of them, as confidential agents or agent for the purpose set forth in the resolution, and as George W. Swepson was present with us at the time, and was willing to receipt to us for the four hundred and seventy-odd thousand dollars, we closed up the transaction by permit'ing him to do so, and taking his receipt as for cash received by him. Knowing on my part as a matter of fact that Mr. Swepson had obligated himself to furnish the money with which to make the payment of said four hundred and seventy odd thousand dollars, and had made arrangements in New York by which he could make that payment in money, and if so paid we would be under the resolution required to turn over the money to him, we felt that our duty would be performed by the acknowledgement of the receipt of the money by Mr. Swepson. At the time it was suggested by some one of those present that some statement or evidence should be in the transaction, 1813 other than the naked receipt of Mr. Swepson, upon which a check was drawn representing the four hundred and seventy odd thousand dollars, in the name of Calvin Dibble on Dibble, Worth & Co., Calvin Dibble being at the time a member of F. Dibble and associates, and was accepted by Mr. Swepson as the money we were to turn over to him under the resolution, upon which we made a delivery of the deeds. The date of this transaction in New York was April 22d, 1869. The business was transacted in the room of J. L. Requa, in the Astor House, New York, There were present, I remember, Col. Gamble, Mr. Swepson, Calvin Dibble and perhaps Franklin Dibble and myself, and I think no other parties. The statement referred to above that they, the purchasers, were ready to make payment of the four hundred and seventy odd thousand dollars, was made to us by Mr. Swepson immediately upon the delivery of the deeds of the road to the purchasers; the deed appended to the answer of the trustees of the internal improvement fund, filed in this case and marked G, was executed and delivered to Mr. Swepson for the purposes in the deed set forth. I first knew Mr. Swepson personally about the 20th of March, 1869, the day of the sale of the roads. For a number of months previous to that time I had know of him as a man of large means through representations of a number of persons, chiefly and principally Col. Houston, the president of the roads, and M. D. Papy, esq., for one or two months previous to the sale attorney for the board. Mr. Swepson was represented by Col. Houston and Mr. Papy, and at Tallahassee, by those who knew him or of him, to be a man worth several millions of dollars, variously stated at from two (2) to five (5) millions and considered able to control almost any sum of money he might desire, and it was in view of his conceded large means that Col. Gamble and myself were not required or authorized to require surety for the proper application of the moneys we were directed to turn over to him as agent of the board. It was the understanding of the board of trustees, that Mr. Swepson was the principal owner at the time of the stock of the Florida Central Railroad Company.

Cross-examination by Mr. **RANEY**:

1814 No money was physically in the transaction in New York in the matter of passing the deeds, no cash actually passed. And the testimony being first read over by me to the witness, he signed the same in my presence as true and correct.

A. D. BASSNETT, *Examiner*.
A. R. MEEK.

An adjournment is here ordered until 3.30 p. m. this day.

A. D. BASSNETT, *Examiner*.

Friday, April 11th, met pursuant to adjournment, and adjourned until Saturday, April 12th, at 10 o'clock a. m.

Saturday, April 12th, met pursuant to adjournment, and adjourned until Monday, 14th April.

A. D. BASSNETT, *Examimer*.

Monday, April 14th, met pursuant to adjournment and adjourned to Tuesday, April 15th, at 10 o'clock a. m.

A. D. BASSNETT, *Examiner*.

Tuesday, April 15th, met pursuant to adjournment and adjourned until Wednesday, April 16th, at 10 o'clock a. m.

A. D. BASSNETT, *Examiner*.

Wednesday, April 16th, met pursuant to adjournment and adjourned to Thursday, April 17th, at 10 o'clock a. m.

A. D. BASSNETT, *Examiner*.

Thursday, April 17th, met pursuant to adjournment and adjourned to Friday, April 18th, at 10 o'clock a. m.

A. D. BASSNETT, *Examiner*.

Friday, April 18th, met pursuant to adjournment and adjourned to Saturday, April 19th, at 10 o'clock a. m.

A. D. BASSNETT, *Examiner*.

Saturday, April 19th, met pursuant to adjournment and adjourned to Monday, April 21st, at 10 o'clock a. m.

A. D. BASSNETT, *Examiner*.

1815 Monday, April 21st, met pursuant to adjournment, and adjourned to Tuesday, April 22d, at 10 o'clock a. m.

A. D. BASSNETT, *Examiner*.

Tuesday, April 22nd, met pursuant to adjournment, and adjourned to Wednesday, the April 23, at 10 o'clock a. m.

A. D. BASSNETT, *Examiner.*

Wednesday, April 23d, met pursuant to adjournment, and adjourned to Thursday, April 24th, at 10 o'clock a. m.

A. D. BASSNETT, *Examiner.*

Thursday, April 24th, at 10 o'clock a. m.

A. D. BASSNETT, *Examiner.*

THURSDAY, *April 24th.*

Met pursuant to adjournment, and, on application of W. G. M. Davis, esq., counsel for complainants, it is hereby ordered that on Monday next, being the 28th day of April, 1879, the further examination of witnesses in the part of the complainants will be held at my office, and notice of the same ordered to be served on counsel for defendants, and thereupon an adjournment was ordered until Monday, April 28th, at 10 o'clock a. m.

A. D. BASSNETT, *Examiner.*

MONDAY, *April 28th*, 1879.

On application of John G. Walker, as counsel for defendants, it is ordered that Wednesday, April 30th, at 10 o'clock a. m., be fixed for the taking of the testimony cf E. M. L'Engle, T. W. Brevard, and Harrison Reed on behalf of defendants.

A. D. BASSNETT, *Examiner.*

MONDAY, *April 28th*, 1879.

Met pursuant to adjournment, at 10 o'clock a. m.

Present, Hon. H. Bisbee, jr., of counsel for complainants, and Hon. J. M. Baker, of counsel for the Florida Central Railroad Company, defendants herein.

HARRISON REED, a witness on the part of the complainants, being duly sworn, deposes and testifies as follows:

1816 My name is Harrison Reed; reside near Jacksonville, Fla.; and of lawful age.

I was governor of the State of Florida from June, 1868, to January, 1873. In 1869 I delivered four millions of State bonds. I believe, on recollection, that it was the spring of 1870, I issued to the Jacksonville, Pensacola & Mobile Railroad Company four millions of State bonds to aid in the construction of the road, and received in exchange four millions of railroad bonds. There was one million of these bonds issued by the Florida Central Railroad Company, and three millions by the J., P. & M. R. R. Co. I delivered one million of State bonds on the order of the president of the J., P. & M. R. R. Company to Edward Houston; the other three millions, I cannot recollect who received them, but Col. Sanderson came with the certificates and demanded the whole issue of four millions. The certificates were those required by the law as to the number of miles of the road. The first three millions of dollars of bonds were numbered from No. 1 to No. 3000, inclusive; I can't now remember whether I delivered these bonds so numbered to Colonel Sanderson or to some other representative of the J., P. & M. R. R. Co. The other million, numbered from 3001 to 4000, were delivered to Edward Houston on the order of the president of the J., P. & M. R. R. Co. The certificates I mention were delivered to me by Colonel J. P. Sanderson. Colonel Sanderson represented himself as attorney of the entire line of road from Jacksonville to Quincy, as vice-president of the Florida Central Railroad Company.

The million I delivered to Houston was exchanged for a like number of Florida Central Railroad bonds. I took Houston's receipt for the million of dollars of bonds I delivered to him. I do not know what relation Colonel Houston held in relation to the Florida Central Railroad Company at this time, and the Jacksonville, Pensacola & Mobile Railroad gave you a legal opinion touching your duties and power to exchange the four millions of dollars of State bonds.

Q. State whether or not J. P. Sanderson, as the att'y representing both the Fl'a Central Railroad Company——

(Question objected to by Judge Baker for the reason that the same is improper, and would not be binding upon either of the companies, and for the further reason that the same is irrelevant to any of the issue in the cause.)

Answer. I heed that the law only authorized the issue of
1817 bonds on one hundred miles of constructed road from Jackson-
ville west. Colonel Sanderson construed the law differently, and said they were entitled to sixteen thousand dollars per mile on the entire line of road owned or operated by the company. I called in Mr. Papy, and he and Colonel Sanderson agreed and prepared a written opinion, upon which I issued the bonds in accordance, the whole four millions.

State whether or not there was any agreement in reference to taking up the outstanding bonds issued by the P. & G. & T. Railroad Company.

(Objected to by Judge Baker as immaterial to any of the issues of the cause, and for the further reason that the testimony would be secondary and illegal.)

At the time of this first delivery of the bonds the roads had been sold by the State and paid for subsequently. The million of bonds delivered to Houston were returned, it being understood that the negotiation for the sale of the entire issue bonds had failed. Afterwards Col. Houston demanded the redelivery of the one million of bonds he had returned, representing that the negotiation of the whole issue had succeeded. At this time the question had been raised by certain stockholders in the Florida Central, that they had not received pay for their stocks, and by holders of outstanding P. & G. bonds, endorsed by the internal improvement company, that they had not been taken up. I then required on the redelivery of the bonds which were delivered to T. B. Coddington, under the direction of Col. Houston, that before the million of bonds should be delivered to the purchasers, provision should be made for the payment of all these claims.

(The above answer objected to as irrelevant and not responsive to the question.)

State whether or not anything was said; and, if so, what, with reference to the consolidation of the roads of the two companies, to induce you or to remove objections which you had to *to* the issuing of so many bonds.

(Question objected to because it seeks to draw out testimony which would be irrelevant, illegal, and secondary, and which would not be binding upon the parties interested.)

Ans. It was represented by Sanderson and Houston and Littlefield that the J., P. & M. R. R. Co. owned the whole line of road from

1818 Jacksonville to Quincy and from Tallahassee to St. Mark's, with a branch to Monticello, and the J., P. & M. Co. claimed that it included also the branch from Live Oak to the Georgia line. The reason given why the companies were kept separate in their organization was for the protection of parties interested in their private accounts, and the office of the J., P. & M. Co. was established at Jacksonville as the company owning and controlling the entire line of road, and therefore the complainants announced that they had no further questions to ask witnesses.

Cross-examination by Judge **Baker**:

I think the whole four millions of bonds were delivered at the same time; the one million delivered to Colonel Houston were delivered on the order of M. S. Littlefield, president of the J., P. & M. R. R. Co. Colonel Sanderson presented two certificates, one as to the length of the road operated *for* Jacksonville to Lake City, and one as to the line of road operated from Lake City west; my recollection is that both thes' certificates were signed by Littlefield. Sanderson brought them both to me and said they complied with the law. The million dollars of bonds delivered to Houston were first issued to him about the first day of June, 1870; they were returned by Houston, I think, in August of the same year, and were redelivered in December or January next to Coddington, as above stated. At the time Houston returned the State bonds to me I returned to Colonel Houston the Florida Central Railroad bonds. There was no objection made by the Florida Central Railroad Company as to the redelivery of the million of bonds. I don't recollect whether it came to the knowledge of the Florida Central Company that the bonds had been returned to me by Houston. I don't recollect that I had any additional authority to redeliver the bonds to Houston or Coddington, nor the original authority for the company or companies. Houston was present when the bonds were delivered to Coddington.

And here the examination of witness was closed, and the testimony of witness being read over by me to witness he signed the same as true and correct; all erassures and interlineations made by me before signing by the witness.

A. D. BASNETT,
Examiner.
HARRISON REED.

1819 And therefore adjourned until to-morrow morning, Tuesday 29th of April, 1879.

A. D. BASTNETT,
Examiner.

TUESDAY, *April 29th*, 1879.

Met pursuant to adjournment.

Present, W. G. M. Davis, esq., solicitor for complainant, and Attorney-General Raney, of counsel for the board of internal improvement of the State of Florida, one of the defendants herein.

Cross-examination of Harrison Reed continued by Mr. **Raney**:

In your direct testimony you say that at the time of this first delivery of the bonds the roads had been sold by the State and paid for. Please state by whom, when and where, and in what way they were paid for.

Answer. The board of internal improvement appointed the comptroller and attorney-general to go to New York to receive the pay and deliver the titles. I happened in New York at the time these parties went there, and I received from them the information that the purchase had been completed according to the terms of sale and the conveyance delivered. I knew nothing of the details, how it was made or in what manner.

Redirect examination by General DAVIS:

Please state what you mean in your first examination when you speak and requiring "that before the million of bonds should be delivered to the purchasers provision should be made for the payment of all these claims."

Answer. I refused to deliver that one million of bonds to the representatives of the companies until I could have some guaranty that the outstanding claims against the internal improvement fund and the Florida Central Railroad Company should be provided for. I knew Mr. Coddington, of New York, as a man of high character as a business man, and I consented to place the bonds in his hands in trust for the payment of these claims when the bonds should be delivered to the purchasers. The claims against the internal improvement fund were those of outstanding funds of the P. & G. R. R. Co.

I had previously, I think, received from the president of the J., P. &
M. R. R. Co. a draft upon S. W. Hopkins & Co., of New York,
1820 the reputed agents for the sale of the State bonds for an amount
equal to the outstanding bonds of the P. & G. R. R. Co., as stated
by the president of that company. This draft was not paid, and my recollection is that I made it obligatory upon Mr. Coddington to deposit in New York to the credit of the State of Florida sufficient amount arising from the sale of the State bonds to take up this balance unpaid. I think the amount of the draft was for some $227,000. I don't know where the draft now is. I made a personal demand upon Hopkins & Co. for the payment of this draft and they said it was all right and that it would be paid in ten days. I waited the ten days but it was not paid and never has been paid. My recollection is that the draft was payable out of the proceeds of the State bonds.

And the testimony being read over to the witness by me, he signed the same as true and correct.

A. D. BASSNETT, *Examiner.*
HARRISON REED.

JAMES M. BAKER, being duly sworn, testified as follows:

Direct examination by Wm. G. M. Davis, solicitor for complainants.

I first saw Mr. Geo. W. Swepson, March 20, 1869, at Tallahassee R. R's. I had no intercourse with him at that time, but it was understood that he came there for the purpose of bidding upon the railroad property. I saw him frequently a few days after in Jacksonville, Fla., during the negotiation between him and F. Dibbs and associates, and participated in the negotiation between him and them. He was reputed to be a man of large wealth and we dealt with him with, or upon, that understanding, but I know nothing of my own knowledge concerning his wealth, or what it consisted of, except that he was able to pay in a large amount of the P. & G. & Tallahassee R. R. bonds as a part of the purchase money bid for the roads. A part of that negotiation was that Mr. Swepson should buy up the outstanding P. & G. & Talahassee R. R. bonds on behalf of Dibble and associates and pay them in to the trustees of the internal fund on balance of the purchase money. I, as one of the associates, believed he had the authority to do this.

The above testimony is taken subject to objection of solicitor for trustees of the internal improvement fund that it is immaterial and irrelavant to the issue of the case.

JAMES M. BAKER.

1821 A. D. BASSNETT, *Examiner*.

And therefore an adjournment was ordered until 4 o'clock p. m.

A. D. BASSNETT, *Examiner*.

TUESDAY, *April 29th*, 1879.

Met pursuant to adjournment.

Present, W. G. M. Davis, esq., solicitor for complainants; Attorney-General Raney, solicitor for defendant The Board of Internal Improvement of the State of Florida; and James M. Baker, esq., solicitor for defendant The Florida Central Railroad Company.

JOHN A. HENDERSON, a witness on the part of the complainants, being first duly sworn, testified as follows:

Direct examination by General DAVIS:

Please look at the printed paper herewith submitted to you, and say whether you have any knowledge of the execution of a written instrument therein mentioned and described as a deed of trust stated to have been made by the Jacksonville, Pensacola and Mobile Railroad Company; what is your knowledge, and how you obtained it.

Answer. I have knowledge of the execution of a deed of trust by the Jacksonville, Pensacola and Mobile Railroad Company to F. H. Flagg, D. G. Ambler and Converse L. Chase; that my knowledge was obtained first in having written said deed of trust at the dictation of General W. G. M. Davis and having attested the execution of the same on the 2d day of October, A. D. 1871, by subscribing thereto as a witness to the same, the same having been executed by the J., P. & M. R. R. Co. by M. S. Littlefield, its president, to which there was attached the seal of the company.

Do you know where that deed is now?

I do not.

To whom was it delivered?

To C. L. Chase, as far as I can answer.

Do you know where C. L. Chase is now?

I have understood to-day since my arrival that he is now in New York City. Previous to this information I had supposed him to be in the Northwest.

1822 About what time did Chase leave the State of Florida?

Sometime during the year 1872. He was here last in January or February, 1873, but only for the time being, and has not returned since.

Do you know whether any of the parties named in said trust deed accepted the trust?

Converse L. Chase and Francis H. Flagg accepted the trust and entered into possession of the property under said deed of trust.

What did Flagg and Chase do in acceptance of said trust?

They entered into the possession and management of the said Jacksonville, Pensacola & Mobile Railroad.

How long did they continue in possession and management of said railroad?

From the date of the execution of that deed until the appointment of

J. C. Greeley as receiver, under the authority by the circuit court of the State of Florida for Duval County, Judge Gillis presiding, in the suit of the State of Florida and the trustees of the internal improvement fund against the J., P. & M. R. R. Co.

What line of railroad did Flagg and Chase, trustees, take possession and management of?

The line of road from Jacksonville to Chattahoochee with branches to Monticello and St. Mark's.

What do you know as to the publication of the paper you now have in your hand, known as the Floridian?

On the 10th day of October, A. D. 1871, the Floridian, a newspaper published at Tallahassee, Florida, a copy of which of that date I now hold in my hand, and which is now filed herewith, published an editorial under the caption of important changes in the J., P. & M. R. R.

(Counsel for complainants files herewith the paper, marked Exhibit A., A. D. B., examiner.)

Please look at this paper, entitled the Floridian, dated October 17th, 1871, and say whether you have read the article therein on the first page, entitled the Jacksonville, Pensacola & Mobile Railroad Company, and whether or not said article contains to the best of your knowl-
1823 edge a correct statement of the contents of the deed of trust which
you have deposed you drew and witnessed by.

(J. M. Baker, esq., objects to the introduction of the evidence as being secondary, and the proper foundation not having been laid for the introduction of such secondary evidence, the original deed being the only proper evidence, and further objects to all evidence in relation to said trust deed, upon the same ground that it is improper, secondary evidence.)

Answer. According to my best recollections the said article is a true copy of the deed of trust before referred to.

Question. Have you had occasion to refer to said deed of trust since its execution; if so, how often, and did the contents become familiar to you?

Answer. I was the attorney for the trustees under said deed of trust, and as such had occasion time and again to refer to said deed of trust. I was at one time familiar with all its provisions, and have still a general recollection of the said deed.

(Same objection by Judge Baker on the same grounds as above.)

Question. Is Francis H. Flagg dead or alive?

Answer. He died in or about the year A. D. 1874.

(By Judge Baker, solicitor for the Florida Central Railroad Company, a general objection is made to all of the foregoing testimony as irrelevant and immaterial.)

Cross-examination by Judge Baker. No questions.

And the foregoing testimony being read over by me to the witness, he signed the same as true and correct, all erasures and interlineations made by me before signing.

A. D. BASNETT, *Examiner.*
JOHN A. HENDERSON.

And therefore an adjournment was ordered until to-morrow morning at 10 o'clock a. m.

A. D. BASNETT, *Examiner.*

1824 WEDNESDAY, *April 30th*, 1879.

Met pursuant to adjournment.

Present, W. G. M. Davis, esq., counsel for complainants, and J. M.

Baker, esq., counsel for the Florida Central Railroad Company, one of the defendants herein.

EDWARD M. CHENEY, a witness on the part of the complainants, being first duly sworn by me, deposes and testifies as follows:

I became a director of the Jacksonville, Pensacola & Mobile Railroad Company on its first organization in the year 1870, and have been a director of the said company ever since. When the company was first organized it had its offices at Tallahassee, at the offices of the old Pensacola & Georgia Railroad Company. Afterwards the headquarters of the company were removed to Jacksonville. The offices of the president and superintendent being removed to Jacksonville, while some of the minor offices remained at Tallahassee.

The meetings of the directors after the removal were held at the president's office in Jacksonville. They were held in a building situated near the depot at Jacksonville, and which building was altered over by the company with the intention of making it hold all the offices of the company. The president and superintendent occupied the two rooms which were altered over for that purpose. The company never completed the alterations designed in the building. It is located on property formerly belonging to the Florida Central R. R. Co., and known as railroad property. This property is now claimed by the Florida Central Railroad Company, and is within a few hundred yards of the present depot.

I don't know the exact date of the removal of the offices from Tallahassee, but it occur'ed a short time after May, 1870. The occasion was caused a short time after this date, as the J., P. & M. R. R. and the Florida Central R. R. were then under one management and the removal was made for convenience in the management.

From the time of the removal of the offices to Jacksonville, and I
think for a short time before the removal, until Mr. Greeley was ap-
pointed receiver, the entire line from Jacksonville to the western termi-
nus was run as one line of railroad, under the name of the Jack-
1825 sonville, Pensacola & Mobile Railroad, and under the manage-
ment of the directors and officers of that road. The name of the
Florida Central Railroad was dropped, and the whole line of road was
known as the J., P. & M. R. R., and no part of the road known as the
Florida Central Railroad. All contracts made in regard to the road
were made in the name of the J., P. & M. R. R. Co. All the letter
headings and freight bills were headed with the name of the J., P. & M.
R. R. Headings and new supplies were printed for all the offices with these
headings. The officers of the road were employed and paid by the su-
perintendent of the J., P. & M. R. R. Co., and no other officers received
any control over the road or any part of it. The superintendent had
control of the road under the supervision of the president and directors.
Prior to May, 1870, and in that month, J. P. Sanderson was president
of the Florida Central Railroad Company. He was also at that time
vice-president of the J., P. & M. R. R. Co. The attorneys for the J., P.
& M. R. R. Co., in May, 1870, and from its organization to his death,
was J. P. Sanderson. Mr. M. D. Papy was also an attorney occasion-
ally, associated with Sanderson, of the road (the J., P. & M. R. R.) during
such time. The attorney of the Florida Central Railroad Company was
Mr. Papy, as also Col. Sanderson, who was its president.

C. L. Chase and F. H. Flagg, under a deed of trust, took possession of the whole line of road as trustees under such deed, and ran the whole line of road under the name of the Jacksonville, Pensacola &

Mobile Railroad. They took entire possession of the road and took the place of the directors of the road in its management and control.

(J. M. Baker, esq., counsel for defendant, the Florida Central Railroad Co. objects to the introduction of the foregoing testimony upon the ground that the same is illegal, secondary, and irrelevant.)

Cross-examination by Judge **Baker**:

Question. Do you know whether there was any formal action taken by the directors and stockholders of the J., P. & M. R. R. Co., relating to the alleged consolidation of the two roads about which you have testified, and, if so, whether or not any record was left of the same;

1826 Answer. After the organization of the J., P. & M. R. R., numerous meetings were held by the stockholders and directors, the stockholders all being directors, at which resolutions were passed and arrangements were made looking to the consolidation of the J., P. & M. R. R. and the Florida Central Railroad. I cannot now recollect the details, and I do not know what records were made, as it was the duty of the secretary to keep the records and make the minutes, and I never looked over them, but the result of these arrangements, whatever they were, was the practical consolidation of the two roads and the remova of the offices to Jacksonville.

Question. Did or not the company keep minutes of the proceedings of directors and stockholders?

Answer. The company had its record books, and I think the secretary was always present and took minutes of the proceedings; I think he took them on separate pieces of paper and copied them afterwards in the records; I think it was the general custom of each meeting to read and approve the minutes of the preceding meetings.

I can simply say that the usual course was for all resolutions to be put in writing. These were handed to the secretary, and whether or not he recorded them in the books of the company I cannot say. I was not an officer of the Florida Central Railroad Company. I can't give the exact date of the consolidation of the J., P. & M. R. R. and the Florida Central R. R. Co., but it was after May, 1870, or shortly after that date, when the two roads were under one management. I do not know whether the Florida Central had any officers or not. When I said Mr. Papy was attorney of the F. C. R. R., I meant in May, 1870.

I gave very little personal attention to the details of the running the road, as these matters were under the control of General Littlefield as president, and the officers of the road. I had a general knowledge of the business of the road. I did not make myself familiar with the mode in which accounts were kept.

And, the testimony being read over to the witness by me, he signed the same as true and correct. All erasures and interlineations made by me before signing.

A. D. BASNETT, *Examiner*.
ED. M. CHENEY.

1827 And thereupon an adjournment was ordered until 4 o'clock p. m.

A. D. BASNETT, *Examiner*.

Met pursuant to adjournment.

Present, W. G. M. Davis, solicitor for complainants, and James M Baker, solicitor for the Florida Central Railroad Company, one of the defendants herein.

Edward M. L'Engle, a witness on part of the Florida Central Rail road Company, one of the defendants herein, being by me first duly sworn, deposes and says:

Witness handed a printed paper, being a letter dated Jacksonville, Fla., Feb. 8th, 1871, addressed to "Messrs. Holge, Boissevain, bankers, Amsterdam, Holland," and signed "E. M. L'Engle, of counsel for the Florida Central Railroad Company," and is asked what he (witness) knows about the sending of said letter and the receipt of it in Europe?

Answer. The said printed paper is filed as Exhibit B to my answer in this suit. I wrote the original letter of which this is a copy. It was sent prepaid, addressed to Holge, Boissevain, bankers, Amsterdam, Holland. It was sent through the mail in the summer of 1871; I think in the month of June.

(Mr. John Collinson, counsel for complainants, objects to witness going on and answering further, as not being responsive to the question.)

Answer. Continued.

In the summer of 1871, I think in the month of June, Mr. John Collinson, of London, England, being in Jacksonville, Florida, told me that the letter had been received in Amsterdam by the persons to whom it was addressed and that he had read it in Europe. I do not recollect whether he said that he had read it in Amsterdam, but it was either in Amsterdam or in England.

(Counsel for defendant, the Florida Central R. R. Co., herewith files as an exhibit the copy of the letter handed to witness. Same filed and marked by me Exhibit A, E. M. L.

Solicitor for complainants objects to the printed paper testified to, on the ground that it is not legal evidence, and objects to the statement of the witness as to what was said to him by John Collinson.)

1828 Question by Judge **Baker**. State if you know what connection, if any, John Collinson had with the negotiation or sale of the bonds of the State of Florida mentioned in said letter.

Answer. He told me that he was interested in the negotiation and sale of said bonds, or of some of them—I mean pecuniarily interested. I do not know the particulars of his interest.

Solicitors for defendant, the Florida Central R. R. Co, here offers in evidence a printed copy of an original bill, filed in the circuit court, for Duval County, Fla., in which Edward M. L'Engle is the complainant and Milton S. Littlefield, Aaron Barnett, and others are defendants. The paper being handed to witness, he is asked:

Will you please look at the paper and state whether or not you have made search in the office of the clerk of the circuit court for Duval County, for the original bill of which this paper purports to be a copy, and whether or not you have been able to find said original bill on file in such office?

(Counsel for complainants objects to the introduction of the paper and to the question asked witness.)

Answer. I have myself made a thorough search in the clerk's office of the circuit court for Duval County, Florida, for the original complaint in the suit mentioned, of which original complaint this printed paper is a copy; I have also caused search to be made by the clerk of said court for said original; I could not find it; I have not been able to find it, and the clerk has repeated that he could not find it. The said original bill was filed by me in the said clerk's office of said court at my request. The original is not within my control, and I do not know where it is.

Question. Look at said printed paper and state whether or not it is a copy of the said original bill filed by you in the circuit court for Duval

County, as above stated, and, if you say it is, state your means of knowing that it is such copy.

Answer. It is a correct copy of the said original bill or complaint filed by me in said suit in said court. I know that it is a correct copy because I caused it to be printed about the time at which the said original complaint was filed. I compared it with the said original, canceled all inaccuracies and errors, and made it to conform to said original exactly. The said printed paper has been in my possession ever since.

1829 Solicitor for defendant, the Florida Central Railroad Company, here offers in evidence the printed copy referred to and the same is marked Exhibit B, E. M. L.

Solicitor for complainants repeats his objections to said paper being offered in evidence.

Solicitor for defendant, the Florida Central Railroad Company, here offers in evidence a certified copy of an injunction issued in the above case on May 11, 1872, by Hon. F. I. Wheaton, judge of said 4th judicial circuit of Florida, and certified to be a true copy by Chas. L. Mather, clerk of the said circuit court for Duval County, under the seal of said courts.

Certificate dated May 15th, 1872. Filed and marked C, E. M. L.

Question. Was that bill filed during the existence of Code Practice in the State of Florida?

Answer. The practice known as the code, being an adoption of the code of New York to this State, was in force when that suit was commenced.

Cross-examination by General DAVIS:

Question. Do you know how Messrs. Baker, Niblack, and Call were paid by Littlefield for their interest in the railroads sold by the trustees and purchased by F. Dibble and associates, and through whom was such payment made?

(Solicitor for defendant, the Florida Central Railroad Company, objects to the question as not being proper on cross-examination, that the witness was not examined in relation to the subject-matter contained in the question.)

Answer. Recognizing as well taken, I decline to answer the question unless required to do so by the court.

Question. When did you become counsel for the Florida Central Railroad Company, who appointed you, and how long did you remain such counsel?

(Question objected to, upon the ground that it is not legal or proper cross-examination, as the witness in his direct examination did not testify as to subject-matter contained in the question.)

Answer. Same answer as before.

Question. When did you first become the owner of stock in the Florida Central Railroad Company?

1830 (Same objection by Judge Baker.)

Answer. I make the same answer as before.

Counsel for complainant insists that the witness shall make a more specific answer to the question.

Question repeated.

When did you first become owner of stock in the Florida Central Railroad Company?

(Same objection as before by Judge Baker.)

Answer. I make the same answer as I did to the first cross-interrogatory.

Question. Have you or not on this examination prompted the counsel for the defendant as to the questions which he should ask you and consulted him as to the answers you should make thereto?

Answer. The question being an impertinent one, I decline to answer it.

The complainant's solicitor insists upon an answer to the question, because he founded it upon what he has observed during the examination.

And the testimony being read over by me to the witness, he signed the same as true and correct, all interlineations and erasures made by me before signing.

A. D. BASNETT,
Examiner.

E. M. L'ENGLE.

And thereupon an adjournment was ordered until to-morrow at 4 o'clock p. m.

A. D. BASNET,
Examiner.

THURSDAY, *May 1st*, 1879.

Met pursuant to adjournment.

Present, James M. Baker, esq., counsel for defendant, the Florida Central Railroad.

E. M. L'ENGLE, a witness on the part of the defendant, the Florida Central Railroad Company, recalled.

Direct examination by Judge BAKER:

Defendant's counsel hands witness a paper, in writing purporting to be a letter dated January 21st, 1871, addressed to Colonel E. Houston and signed J. P. Sanderson," and asks him in whose handwriting that letter is, if he knows, and by whom signed, and whether he knows where the said letter came from, and, if so, state all he knows about said letter. 1831

Answer. The letter is in the handwriting of and is signed by J. P. Sanderson, who at the date of the letter was the president of the Florida Central Railroad Company. I am very familiar with his handwriting. I often during his lifetime saw him write and sign his name. I was his law partner. He died in June, 1871. The said letter is a copy taken in a letter-press book which was used by said Sanderson in his lifetime. It was the book which he used to copy official letters in as president of said railroad company. Said book was put in my possession by said Sanderson before he died, and I have had possession of it ever since. I cut out of said book the leaves on which this letter is copied. I cut them out to-day for use upon this examination at the request of the counsel for the Florida Central Railroad Company and in his presence.

Signed as true and correct.

A. D. BASNETT, *Examiner.*
E. M. L'ENGLE.

Solicitor for defendant, the F. C. R. R. Co., here offers said paper in evidence and the same is marked Exhibit D, E. M. L., and filed May 1, 1879. Four leaves, Nos. 119, 120, 121, 122.

Solicitor for defendant, the Fla. Cen. R. R. Co., further offers in evidence a certified copy of a bill in chancery in the U. S. cir. c't. 5th cir. N. dist. of Fla., and other pleadings, orders, and proceedings, being a transcript of the record in the case of Francis P. Percher, complainant, and the Florida Central Railroad Company; the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, Edward Houstoun, and others, defendants, and certified by J. E. Townsend, clerk of said court, under the seal of said court, on the 9th day of May, 1874, said transcript marked Exhibit E, E. M. L, and filed May 1, 1879.

Counsel for the defendant, the Florida Central Railroad Company, offers in evidence a certified copy, under the seal of the supreme court of the State of Florida and attestation of the clerk thereof, and certificate of the chief justice of said court, of the opinion of said court delivered by Associate Justice Wescott and the order in judgment of said 1832 court, delivered and made at the January term, A. D. 1875, of said court, in the cause wherein the State of Florida and the trustees of the internal improvement fund of the State of Florida, et al., are respondents and the Florida Central Railroad Company and others are appellants, said paper marked Exhibit F, E. M. L., filed May 1, 1879.

T. E. BUCKMAN, on the part of the defendant, the Florida Central Railroad Company, being produced as a witness, was by me first duly sworn, and deposed and testifies as follows:

Direct examination by Judge BAKER:

I am the clerk of the circuit court, for Duval County. Have charge of all records and papers in that court. Application has been made to me to search for the original bill of complaint in the case of Edward M. L'Engle versus Milton S. Littlefield, the Florida Central Railroad Company and others, in the circuit court, for Duval County, Fla., being the original of the exhibit which I hold in my hand marked B, E. M. L., handed to me by the examiner in this case, marked, filed April 30th, 1879. A. D. Basnett, examiner. I have made search in my office for the original, and have not been able to find any of the papers in this case, and have not been able to find the original of said exhibit. I have been clerk of said court for more than two years last past, and to the best of my recollection have never seen any of the papers in the case in the office, and to the best of my belief they are not in my office, and I do not know where they are.

And the foregoing testimony being first read over by me to the witness, he signs the same as true and correct.

T. E. BUCKMAN.
A. D. BASNETT,
Examiner.

And thereupon an adjournment was ordered until Saturday, May 3d, at 10 o'clock a. m.

A. D. BASSNETT,
Examiner.

Met pursuant to adjournment.

Present, James M. Baker, counsel for defendant, the Florida Central Railroad Company.

HARRISON REED, recalled on the part of the Florida Central 1833 Railroad Company, one of the defendants, deposes and testifies as follows:

Direct-examination by Judge **BAKER**:

I was governor of the State of Florida in the years 1870 and 1871; my recollection is that in December, 1870, I received from certain bankers in Amsterdam, Holland, a telegraphic dispatch enquiring whether provision had been made for the payment of the interest on the State bonds issued to the J., P. & M. R. R. Co.; prepared a dispatch immediately in answer, stating that no provision had been made for the payment of the interest, and I think I stated in the dispatch prepared, that no provision would be made. I sent this dispatch to Col. J. P. Sanderson at Jacksonville, and after advice by the railroad company as I understood the dispatch which appears in Exhibit B attached to the answer of E. M. L'Engle in this suit as follows:

[(On the margin:) Mess. Holje, Boissevain, bankers, Amsterdam, Holland: Gent., on December 18th, 1870, Gov. Harrison Reed, of Florida, received a telegraphic dispatch from you. Being negotiating four millions bonds issued by|

"Bonds recently recalled by the company, no provision will therefore be made for interest," was sent to the Amsterdam bankers by me as governor, as a reply.

And the foregoing testimony being first read over by me to the witness he signs the same as true and correct.

HARRISON REED.
A. D. BASNETT,
Examiner.

JAMES L. TAYLOR, being offered and sworn as a witness on the part of the Florida Central Railroad Company, deposes and says:

I reside in Savannah, Georgia; I have resided there since November, 1876; I am general freight and passenger agent for the Atlantic & Gulf Railroad. of Georgia. Previous to November, 1876, I resided in Tallahassee, Florida. I was connected with the railroad service in different capacities for nine or ten years previous to 1876, in Tallahassee, Florida. I was general freight and ticket agent and auditor, and in my capacity as auditor I had charge of books and accounts of the railway service. I was acquainted with James H. Bull during his life-time, he being now dead, and familiar with his handwriting, In the year 1870 said Bull was employed as clerk in the office of Robert Walker, general superintendent of the Jacksonville, Pensacola and Mobile Railroad Company. I
1834 am acquainted with the said Robert Walker, who, at that time,
was the general superintendent, as above stated. I am acquainted with his signature and can identify it. I am acquainted with James Anderson. In the year 1870 he was superintendent of the Florida Central Railroad Company. He subsequently acted as general superintendent of the entire line from Jacksonville to Quincy. I know his handwriting and signature. He lives in South Carolina at present. I knew F. H. Flagg during his life-time, he was secretary and treasurer of the Tallahassee Railroad Company, when I first knew him, and also Pensacola & Georgia Railroad Company; afterwards he was secretary and treasurer of the Florida Central Railroad Company, and of the Jacksonville, Pensacola & Mobile Railroad Company. I was acquainted with his handwriting and signature. [Witness is handed a paper writing purporting to be a disbursement and expenses and earnings for the month of July, 1870, of the Jacksonville, Pensacola & Mobile Railroad Company, together with other information concerning the operation of said railroads during said month, submitted by Robert Walker, general

superintendent, to J. P. Sanderson, vice-president, and is asked as follows:]

Question. In whose handwriting is said paper, and by whom is it signed?

Answer. It is in the handwriting of James H. Bull, of whom I have testified, and is signed by Robert Walker, general superintendent, of whom I have testified.

Said paper writing is offered in evidence by the "Florida Central Railroad Company," and is filed marked Exhibit No. 1.

A. D. BASNETT,
Examiner.

Witness is handed a paper writing purporting to be a statement of disbursements, expenses, and earnings for the month of August, 1870, of the Jacksonville, Pensacola and Mobile Railroad Company, and of the Florida Central Railroad Company, together with other information concerning the operation of said railroads during said month, submitted by Robert Walker, general superintendent, to J. P. Sanderson, vice-president, and is asked as follows:

Question. In whose handwriting is said paper, and by whom is it signed?

1835 Answer. It is in the handwriting of James H. Bull, of whom I have testified, and is signed by Robert Walker, general superintendent, of whom I have testified; said paper writing is offered in evidence by the Florida Central Railroad Company and is filed marked xhibit No. 2.

A. D. BASNETT, *Examiner.*

Witness is handed a paper writing purporting to be the annual report made by James Anderson, general superintendent of the operations of the Florida Central Railroad for the period commencing April the 31st, 1871. Said report being made to the president and directors of the Florida Central Railroad Co., and dated April 10th, 1871, and is asked the following:

Question. In whose handwriting is said paper, and by whom is it signed?

Answer. The handwriting of said paper down to the signature is in the handwriting of James Anderson, of whom I have testified, and the signature is his. A sheet of paper attached to said report purporting to be a detailed statement of the operating expenses of the Florida Central Railroad Company from the 1st of April, 1870, to the 31st of March, 1871, I recognize to be in the handwriting of Frank B. Papy, who was at the date of said report connected with the road in the capacity of general freight and ticket agent, and with whose handwriting I am familiar. Said paper writing offered in evidence by the Florida Central Railroad Company, and filed marked Exhibit No. 3.

A. D. BASNETT, *Examiner.*

Witness is handed a paper writing, dated January 19th, 1871, addressed to James Anderson, general superintendent, by F. B. Papy, G. F. & T. A., per Taylor, purporting to be a statement of earnings of the Jacksonville, Pensacola & Mobile Railroad and of the Florida Central Railroad for the month of December, 1870; said paper is handed to witness, and he is asked the following:

Question. In whose handwriting is said paper, and by whom is it signed, and what you know about it?

Answer. The handwriting is my own, made out by me in my cleri-
cal capacity by direction of F. B. Papy, general freight and ticket agent
of the Jacksonville, Pensacola & Mobile Railroad and of the Florida
1836 Central Railroad Companies. It was taken from the books of
said companies, which were kept in the railroad office in Tallahas-
see, Florida.

Said paper is offered in evidence by the Florida Central Railroad Company, and is filed, marked Exhibit No. 4.

A. D. BASNETT, *Examiner*.

Witness is handed a letter dated August 2d, 1870, Jacksonville, superintendent's office, F. C. R. R., addressed Col. J. P. Sanderson, president, signed James Anderson, superintendent, and another letter dated June the 30th, 1870, addressed by the same to Col. J. P. Sanderson, president F. C. R. R., and another letter dated Florida Central and Tallahassee Railroads, Tallahassee, Florida, March 28th, 1871, addressed by the same as general superintendent to Col. J. P. Sanderson, president; said three letters are handed to witness, and he is asked the question:

Question. In whose handwriting they are and by whom signed?

Answer. In the handwriting of James Anderson, of whom I have testified, and signed by him.

Said three letters are offered in evidence by the Florida Central Railroad Company, and are filed, marked Exhibits No. 5 & 6 & 7.

A. D. BASNETT, *Examiner*.

Witness is handed a letter from F. H. Flagg, treasurer, to J. P. Sanderson, president F. C. R. R. Company, dated Tallahassee, Florida, February the 7th, 1871, and is asked:

Question. In whose handwriting is said letter and by whom signed?

Answer. The letter is in the handwriting of F. H. Flagg, of whom I have testified, and is signed by him.

Said letter offered in evidence by the Florida Central Railroad Company, and is filed as Exhibit No. 8.

A. D. BASNETT, *Examiner*.

During a portion of the time I was employed in the railroad office in
Tallahassee. The accounts of the Florida Central Railroad Company
and the Jacksonville, Pensacola & Mobile Railroad Company were
1837 kept in said office. Generally speaking, the same books were
used by both companies, but separate accounts were kept in them
with each company. This was the case during the years 1870 and 1871.
The earnings were kept separately in this way: The passage earnings
were distributed to each of said companies by the auditing officer at
Tallahassee according to the ticket reports. The freight earnings of
the two roads were distributed to the respective companies by the audit-
ing officer at Tallahassee according to the way bills sent up by the sev-
eral station agents. Mail earnings were distributed according to the
mileage of each company. Wharfage earnings were all earned at Jack-
sonville, and were accordingly credited to the Florida Central Railroad
Company. Miscellaneous earnings were distributed according to the
facts and circumstances of each case. The expenses of each company
were distributed thus: Where vouchers showed that expenditures were
made for the benefit of one or the other company exclusively, they were
entered and distributed accordingly; where service was rendered by the
same person to both companies—as, for instance, by the agent at Lake
City, who represented both companies, the cost of his services and labor

in the depot were distributed equally. The expenses of the locomotive and car departments were distributed between the two companies by the Jacksonville, Pensacola and Mobile Railroad Company charging the Florida Central Railroad Company a fixed monthly rental for cars and locomotives, a percentage agreed upon, the two companies was distributed between them as to other expenditures. The reports of Robert Walker filed in evidence this morning show this: In 1870 and 1871 the same persons performed official duties for both companies; both companies had the same treasurer, same general superintendent, same general freight and ticket agent, same master of roadway. This was generally the case during those two years, though there may have been exceptions at particular times. Both companies joined in the compensation of those persons who acted jointly for them. My impression is that during a short time in 1871 the road from Lake City to Quincy was called the Tallahassee Railroad, and papers concerning it were made out under that name; my impression is that in 1870 and 1871 the Jacksonville, Pensacola & Mobile Railroad Company owned the rolling stock and nearly all the motive power used on the Florida Central Railroad.

1838 The foregoing testimony being first read over by me to the witness, he signs the same as true and correct.

JAMES L. TAYLOR.
A. D. BASNETT, *Examiner.*

And thereupon an adjournment was ordered to 4 o'clock p. m.

A. D. BASNETT, *Examiner.*

Met pursuant to adjournment.

Present, J. M. Baker, esq., solicitor for the Florida Central Railroad Company, one of the defendants herein.

E. M. L'ENGLE, a witness on the part of the Florida Central Railroad Company, one of the defendants, recalled.

Direct examination by Judge BAKER:

I am acquainted with the handwriting and signature of F. H. Flagg, formerly secretary of the Florida Central Railroad Company, who, in his lifetime, lived in Tallahassee, Florida. A paper writing purporting to be a copy of proceedings of a meeting of the directors of the Florida Central Railroad Company held November 21st, 1870, certified by F. H. Flagg, secretary, to be a true copy from the board of directors of said company, is handed witness, who is asked whether the signature is that of F. H. Flagg, and whether the seal is that of the Florida Central Railroad Company.

Answer. It is the signature of F. H. Flagg, the certificate is in his handwriting, the impression of a seal on said paper is that of the seal which the Florida Central Railroad Company used at that time. I know he was the secretary of the company at that time.

The foregoing testimony being first read over by me to the witness, he signed the same as true and correct.

E. M. L'ENGLE.
A. D. BASNETT, *Examiner.*

The said paper is now offered in evidence by the Florida Central Railroad Company, and filed by me, and marked Exhibit No. 9, E. M. L.

A. D. BASNETT, *Examiner.*

1839 The Florida Central Railroad Company, one of the defendants, further offers in evidence articles of impeachment exhibited by the assembly of the State of Florida in the name of themselves and the people of the State of Florida against Harrison Reed, governor of *the* Florida, charging him with high crimes and misdemeanors, contained in four different articles, certified under the certificate of W. D. Bloxham, and the seal of the State of Florida, which is filed by me, and marked Exhibit No. 10, E. M. L.

A. D. BASNET, *Examiner*.

WILLIAM M. DAVIDSON, a witness on the part of the defendant, The Florida Central Railroad Company, being first duly sworn, deposes and testifies as follows:

Direct examination by Judge BAKER:

Was engaged in the year 1870 and 1871 as agent at Baldwin of the Florida Central Railroad Company. J. P. Sanderson was president of said company a part of the time at least, while I was agent at Baldwin; a part of the time I made my report to Robert Walker, as general superintendent; a part of the time to James Anderson, first superintendent of the Florida Central Railroad, and then general superintendent of the entire line from Jacksonville to Quincy, and to F. B. Papy, general freight and ticket agent, and my remittances were made to Mr. Flagg, treasurer of the Florida Central Railroad and the J., P. & M. R. R., the latter road being known as part of the time as the Tallahassee Railroad. My abstracts and freight way-bills were made out as follows: If the freight was for any station on the Florida Central Railroad, Jacksonville and Lake City included, the entire amount was reported in the Florida Central columns; if the freight was destined for some point beyond Lake City then my way bills would show Florida Central and J., P. & M., or Tallahassee, proportions in different columns. Abstracts of freight were made out in accordance with way-bills. The accounts of the two roads were always kept separate and distinct in my office, and in my monthly statements I always signed myself as Florida Central Railroad agent. On all blanks used in my office, and on all blanks used on all the line of the road, there was a column for the Florida Central Railroad earnings. The proportions allowed each road was
1840 changed two or three times while I was at Baldwin. My orders were received from the general freight and ticket agent as to the different proportion to be allowed to the different roads. The accounts of the two roads in my office were kept as entirely separate and distinct as are the accounts of the two roads to-day. In Feb., 1872, I left Baldwin and was sent into Alabama as the traveling agent of the line from Jacksonville to the Chattahoochie. I received such an appointment from Mr. Papy, general freight and ticket agent. J. H. Gardner was general manager at that time, and had been for about three months. There was no change made in the manner of keeping my books in the office at Baldwin, or in the mode of making abstracts and way-bills after Mr. Gardner became general manager, but remained the same until I left my office.

And the testimony being first read over by me to the witness, he signed the same as true and correct.

A. D. BASNETT,
Examiner.

W. M. DAVIDSON.

And thereupon an adjournment was ordered until Monday morning, May 5th, 1879, at 10 o'clock a. m.

A. D. BASNETT,
Examiner.

MONDAY MORNING, *May 5th*, 1879.

Met pursuant to adjournment.

Present, J. M. Baker, of counsel for the defendant, the Florida Central Railroad Company, and adjourned until 4 o'clock p. m.

A. D. BASNETT,
Examiner.

Met pursuant to adjournment at 4 o'clock p. m.

Present, Hon. J. M. Baker, counsel for the defendant, The Florida Central Railroad Company, counsel for complainants not attending.

1841 ROBERT BRADEN, a witness on the part of the Florida Central R. R. Company, one of the defendants, being first sworn, deposes and says:

Direct examination by Judge BAKER:

Live in Jacksonville; have been in the employment of the Florida Central Railroad since the latter part of the year 1867, and am now in the employ of said company; for several years I have had the charge of making the manifests for all freights forwarded from Jacksonville, and making reports both of freights forwarded and received; I had two books of entries for the business—one for freight forwarded and one for freight received; I had charge of such books, and they were kept by me; I kept them up to last year.

Witness is shown copies of abstracts of freights forwarded from Jacksonville, and is asked:

Question. State what those abstracts are, and from what place they were taken from, and by whom?

Answer. They are abstracts of freights forwarded from Jacksonville, from the office of the Florida Central Railroad Company, to different points on the Florida Central Road and other connecting roads. They were taken from the records which were kept by me, and are copies of the pages on said book indicated therein. They are copies from the records of said books, and were made by Mr. Roby, a clerk in the auditor's office, and myself, and were made to-day.

Question. In what order were they taken from the books?

Answer. From page 3, October 1st, 1869; next, page 46, Jan'y 1st, 1870; next, page 134, Aug. 1st, 1870; next, page 213, Jan'y 2d, 1871; next, page 2, April 3d, 1871; next, page 3, October 2d, 1871; next, page 155, January 1st, 1872; next, page 302, August 12th, 1872. These are copies of manifests made out daily, at the respective dates.

Question. Explain what the headings of said reports mean.

1842 Answer. The first heading "Ex." stands for expenses; the heading "A. & G." stands for the Atlantic and Gulf Railroad, extending from Live Oak to Savannah; the heading "P. & G.," wherever it occurs, stands for the Pensacola & Georgia Railroad; the heading "J., P. & M.," wherever it occurs, stands for the Jacksonville, Pensacola & Mobile Railroad; the heading "Talla.," wherever it occurs, stands for the Tallahassee Railroad (these last three roads are the different names by which the road from Lake City to Quincy was designated at different times); the heading "F. C." stands, wherever it occurs, for the Florida Central Railroad.

The figures under each of the above headings indicate the amount due to the several roads upon the amount of that specific article of freight, and was so done for the purpose of keeping the accounts of such roads separate and to enable each road to have the proper credit.

This mode has been in use ever since I was in office and first took charge of the books, and is now in use.

Solicitor for defendant, the Florida Central Railroad Company, here offers in evidence the abstract shown witness, and is by me filed and marked Exhibit No. 11, E. M. L.

A. D. BASSNETT, *Examiner.*

Witness is now shown a paper purporting to be an abstract of freight received at Jacksonville, and is asked from what book these abstracts were taken, and by whom and when and what does it purport to be?

Answer. It is taken from the record of freight received at Jacksonville by the Florida Central Railroad, and from the book of the record of such freight kept by me acting in the capacity above stated. These abstracts were taken by me to-day, and they are copies of abstracts of freights received at Jacksonville as entered in the reports of the dates indicated by the Florida Central Railroad.

Question. In what order were they taken from the books?

First, as they appeared on said record-book of date of October 8, 1869.
Next, January 7, 1870. Next, July 29, 1870. Next, January 14,
1843 1871. Next, June 30, 1871. Next, August 1 to August 8, 1872.
The heading "Ex." "A. & G." "P. & G." "J., P. & M." "& Talla," and "F. C," to the different columns in said report mean respectively the same railroad companies as before testified to by me in relation to the abstract of freight forwarded to Jacksonville.

The different columns for the different roads were so kept separate so that each company should receive its proper distribution of freight charges. The same mode of entering freight received at Jacksonville by distributing the same in different columns has been used by me now since entering the offices of the company in 1867.

The figures appearing in the different columns of these abstracts were taken from the way-bills received at Jacksonville from the different points on the road from Lake City to Quincy and other points, and entered in said books at said time by me.

Solicitor for defendant, the Florida Central Railroad Company, here offers in evidence the paper shown to witness, and the same is filed by me and marked Exhibit No. 12, E. M. L.

A. D. BASNETT, *Examiner.*

And the foregoing testimony being first read over by me to the witness, he signed the same as true and correct.

A. D. BASNETT, *Examiner.*
R. BRADEN.

And thereupon the time for taking testimony under the rule extending the time for taking the testimony in this cause having expired, the same, so far as taking testimony, is closed.

And upon request of solicitor for the complainant, I herewith note and report to your honorable court the following protest:

Complainant's solicitors being informed by the examiner that testi-
mony was adduced before him by the solicitor of the defendant,
1844 the Florida Central Railroad Company, on Friday and Saturday,
the 2d and 3d of May, protests against the report of such testi-

mony by the examiner to the court, because no notice was given to the solicitor of complainant of the intention of said defendant to examine witnesses or introduce and prove documents on these days, and because, besides the want of notice to take testimony at such time, counsel for the complainant was not furnished with the names of the witnesses to be examined, which protest was made by General Davis in writing, on the morning of May 5th, 1879, at 10 o'clock a. m.

And I, therefore, report the same to your honorable court, and the testimony in this case is now closed.

A. D. BASSNETT, *Examiner*.

May 5th, 1879, six o'clock p. m.

I, Arthur D. Basnett, duly appointed as examiner in this cause, to take testimony and report the same to the court, do hereby certify that I have taken all the foregoing testimony contained in sixty written pages, numbering from one to sixty inclusive, and the same is recorded in my own handwriting, or under my immediate supervision. I further certify that all erasures, alterations, interlineations and marginal notes upon the testimony of any witness, were made before the signing of such testimony by the witness, and under his direction. And I further report that all exhibits herewith returned by me were filed before me at the date indicated on the file mark thereon, and at such periods and in such order as the marks thereon indicate.

ARTHUR D. BASNETT,
Examiner.

MAY 6TH, 1879.

MEMORANDUM.—Record, pages 1-61 inclusive. Exhibits A and B, filed by complainants. Exhibits A, B, C, D, E and F. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, filed by defendant, the Florida Central
1844½ Railroad Company. Bill of costs, order, protest and record.

A. D. BASNETT, *Examiner*.

Correct.

P. WALTER, *Clerk*.

1845 Articles of impeachment exhibited by the assembly of the State of Florida, in the name of themselves and of all the people of Florida, against Harrison Reed, governor of Florida, in maintenance and support of their impeachment against him for high crimes and misdemeanors in office, for incompetency and malfeasance, and conduct detrimental to good morals:

ARTICLE I. That said Harrison Reed, governor of Florida, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, unmindful of the high duties of his office, of his oath of office, and of the requirement of the constitution that he shall see that the laws are faithfully executed, did unlawfully and in violation of the constitution and laws of the State of Florida, cause to be issued, and did himself sign his official signature, as governor, to a large number of State bonds to the amount of five hundred and twenty eight thousand ($528,000) dollars in excess of the amount of bonds authorized to be issued by the act of the legislature of the State of Florida, entitled "An act to alter and amend an act entitled an act to perfect the public works of the State," approved June 24, A. D. 1869, approved January 28, 1870, with intent then and there to violate the said act, whereby the said Harrison Reed, governor of Florida, did then and there commit and was guilty of a high crime in office, of incompetency, and malfeasance.

Article II. That in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, said Harrison Reed, governor of Florida, unmindful of the high duties of his office, of his oath of office, and in violation of the constitution of the State of Florida, and contrary to the provisions of an act entitled "An act to alter and amend an act entitled an act to perfect the public works
1846 of the State," approved June 24, A. D. 1869, approved January
28, 1870, did then and there, with intent to violate the constitution of the State and the act aforesaid, and without authority of law, fraudulently conspire to issue State bonds to the amount of one million of dollars ($1,000,000) for the purpose of purchasing the stock of the Florida, Atlantic and Gulf Central Railroad Company, for the use and benefit of persons and parties and with full knowledge of and consent to said purpose, and in collusion with such persons and parties for his and their pecuniary benefit, whereby said Harrison Reed, governor of Florida, did then and there commit and was guilty of a high crime in office and of incompetency and malfeasance.

Article III. That said Harrison Reed, governor of Florida, unmindful of the high duties of his office and of his oath of office, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, did cause to be issued, and did himself sign his official signature as governor to one million dollars of the State bonds for the purpose of purchasing the stock of the Florida, Atlantic and Gulf Central Railroad Company, for the use and benefit of persons and parties, contrary to and in violation of the constitution of the State of Florida and of the laws of the State of Florida, and especially in violation of an act of the legislature of the State of Florida, entitled "An act to alter and amend an act entitled an act to perfect the public works of the State," approved June 24, A. D. 1869, approved January 28, A. D. 1870, and with intent to violate the laws of the State of Florida, and especially said act, whereby the said Harrison Reed, governor of the State of Florida, did then and there commit and was guilty of a high crime in office and of incompetency and malfeasance.

Article IV. That Harrison Reed, governor of Florida, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, unmindful of the high duties of his office and of his oath of office, and in violation of the constitution and laws of the State, and especially of an act entitled "An act to alter and amend," &c., did cause to be issued, and did himself sign his official signature as governor to four million dollars of State bonds for the use and benefit of the Jacksonville, Pensacola and Mobile Railroad Company in the State of Florida, having full notice of the fraudulent title of said company to the property of the Pensacola and Georgia and Tallahassee Railroads, and with intent to violate the constitution and laws of the State of Florida, and especially of the act of the legislature of the State of Florida, entitled "An act to alter and amend an act entitled an act to perfect the public works of the State," approved June 24, A. D. 1869, approved January 28, 1870, whereby the said Harrison Reed, governor, &c.

1847 State of Florida,
Office Secretary of State, ss:

I, W. D. Bloxham, secretary of state, do hereby certify that the foregoing is a correct transcript of the original now on file in this office.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this second day of May, A. D. 1879.

{ GREAT SEAL OF THE
STATE OF FLORIDA. }

W. D. BLOXHAM,
Secretary of State.

Exhibit No. 10.

Filed May 3rd, 1879.

A. D. BASNETT, *Exam'r.*

1848 A, E. M. L.—*A. D. Basnett, exam.*—*Filed April 30th,* 1879.

JACKSONVILLE, FLA., *February 8th,* 1871.

Messrs. HOLJE, BOISSEVAIN,
Bankers, Amsterdam, Holland:

GENTLEMEN: On December 8th, 1870, Governor Harrison Reed, of Florida, received a telegraphic dispatch from you substantially as follows:

"Being negotiating four million bonds issued by your State, the Jacksonville, Pensacola and Mobile Railroad, beg to know by telegraph from you whether provision made for payment interest, whatever result railroad traffic; financial position of State really sound, and bonds undoubted security?"

To this dispatch Governor Reed replied as follows:

"Bonds recently recalled by the company; no provision will therefore be made for interest."

1849 It was hoped that Governor Reed's telegram would have the effect of causing the bonds to be returned, as the railroad companies desired they should be. This has not been done, but on the contrary more bonds than were then out have been sent to Europe for negotiation, though no money, I infer, has yet been realized. I feel it to be my duty, therefore, to make a statement of facts to you, which I hope that you will lay before others who may be interested with you in the negotiations.

When the legislature of Florida enacted the laws under which the bonds your telegram inquired about were issued, it was believed by the two railroad companies, hereafter named, that the proceeds of the State bonds when sold would be honestly and legitimately applied to the extension, through the western portion of this State, of the lines of railroad already built from the eastern to the middle portion. That extension was so much desired by the two companies owning the completed railroads that they were willing to mortgage, and did mortgage, their roads to the State, in order to secure the issuing of State bonds upon which to raise money to enable the newly organized company to build said extension. The railroads which so pledged their mortgage bonds to the State were the Florida Central Railroad, sixty miles long, and the Tallahassee Railroad, one hundred and fifty miles long. The former gave its mortgage bonds to the amount of one million dollars; the latter to the amount of three million dollars; and this latter road consolidated its line with that proposed to be built westward from the completed road and the two companies became one, under the name of the Jacksonville, Pensacola and Mobile Railroad Company. But the Florida Central Railroad, commencing at Jacksonville, and running westward sixty miles, was not included in the consolidation. Subsequently, and after three million of the State bonds had been sent to Europe, it was discovered that the president of the Jacksonville, Pensacola and Mobile Railroad, who had been active in procuring the legislation, and

inducing the completed roads to give to the State their bonds in exchange for the State's bonds which were issued to him, had made, even before he got the bonds, secret contracts with some of his creditors, by which the larger portion of the proceeds were to be diverted from the purposes for which the bonds were issued, and were to be applied in payment of individual debts. This produced such dissatisfaction, and caused such investigations by the companies which had mortgaged their roads to the State, as resulted in both of the companies, through their several directories, rescinding the action by which their roads were mortgaged, and recalling the bonds. The million of bonds issued by the State, on the security of a like amount pledged to the State by the Florida Central Railroad, had not then gone into the hands of the president of the Jacksonville, Pensacola and Mobile Railroad, but were held by a party till certain conditions precedent were performed, before delivery to the president of the Jacksonville, Pensacola and Mobile Railroad. That million of bonds then were returned to the State, and the bonds of the company, upon the security of which the others were issued, were withdrawn from deposit with the State, and were in the hands of the party already referred to, to be returned to the company for cancellation, when they were by that party, without the au-
1850 thority or knowledge of the railroad company, or of any of its
officers, and in violation of the company's resolutions of recall and rescission, delivered to an agent of the president of the Jacksonville, Pensacola and Mobile Railroad, who by influences best known to himself effected with the governor of the State their re-exchange for the State bonds, which latter were hurriedly and secretly sent out of the State and to Europe before any legal process could be obtained for their detention. This redelivery to the governor of Florida of the Florida Central Railroad Company's million of bonds is a gross fraud on that company, and none who are advised of it, and buy or advance money on the State's bonds, for which they were exchanged, will have any legal or moral right to ask that they receive any benefit or advantage from the security so wrongfully obtained.

The same may be said of the three million of State's bonds issued on the pledge of the same amount of bonds of the Tallahassee or Jacksonville, Pensacola and Mobile Railroad. No one who, having notice of that company's rescission of its action and recall of its bonds, advances money on, or buys the State's bonds for which the others were pledged, will have legally, or morally, any locus standi in curia as against that railroad company. The creditors and stockholders of the railroad companies will assert their right, resist the wrongs that have been perpetrated and attempted, and seek, successfully, redress in the judicial tribunals. You have had the above-mentioned action of the railroad companies brought to your notice by the telegram of Governor Reed, who sent it after consulting with the said companies, and at their instance, and you have incurred all the legal disqualifications to urge against the railroad companies any claim based on their supposed suretyship for any bonds of the State.

An examination of the laws under which the State's bonds were issued discloses that the governor has caused half a million more of bonds to be issued than the law provides for. The law allows the issue of $16,000 per mile upon so much of said roads as may be completed and in running order; only 210 miles were, when the bonds were issued, completed, and only a mile and a half have been completed since, and no more is being completed. This would allow of an issue at the time it was made of only $3,360,000. Add the liberal allowance of ten miles for side tracks, &c., if such unreasonable construction of the law be claimed, and it legalizes only $3,520,000 of the bonds.

To secure the principal and interest of the Jacksonville, Pensacola and Mobile Railroad Company's bonds (but not of the bonds of the Florida Central Railroad), the law gives the State of Florida a statutory lien, valid as a first mortgage on that company's road and property, and authorizes the governor, on failure of the company in any payment of principal or interest, to seize and sell the road at auction, and authorizes the State to purchase and to pay for it with any evidence of indebtedness the State may hold against the road, while every other bidder would, in case of purchase, have to pay cash. This summary process is not applicable to the Florida Central Railroad, but to the other road only. What would be the result in case of failure of the Jacksonville, Pensacola and Mobile Railroad to pay principal or interest on its bonds? The State, if no resistance, or if unsuccessful resistance through the courts were had, might seize, sell, and buy, 1851 paying for the purchase with the road's obligations, while the State might not, perhaps could not, or would not pay her own; nor is there any way known to our system of government by which a State can be compelled to pay its obligations. You will thus perceive the character of the securities offered you, and the taints of fraud that affected them from their first issue, and that still do, and will act advisedly. This communication is made in the interests of the stockholders of the companies whose bonds have, by misrepresentation and bad faith, been obtained and exchanged with the State of Florida for the State's bonds, which you have been, and may still be, negotiating for. The stockholders do not intend to submit to the fraud which has been attempted on them. They seek to have the State's bonds brought back, and a re-exchange effected, and it is to that end that this letter is written. Such a course will prevent litigation. Persistence in the wrong will insure it. Attempts may be made to give credit to the bonds by professional and perhaps by judicial opinions from this State, but the facts that I state are incontestable, and I can give you much more and more detailed information concerning the worthlessness of the securities that you are negotiating for, and I will do so if desired. But I have said enough to make discreet men repudiate the securities and abandon negotiations.

I will say further, that since the mortgage of the railroads to the State, 128 miles of the completed road, being all except twenty-two miles, on which the State has any statutory lien, have been sold by the United States under a judicial process in their favor, issued from a United States court, thus divesting the company's title, and vesting it in the individual purchaser. That sale of course relieves that much of the road of the lien created in favor of the State of Florida by the mortgage before mentioned. You are at liberty to show this letter to whom you please, and to give it the widest publicity, and will oblige me by acknowledging its receipt. I will presume on a very slight acquaintance to refer you, touching myself, to Hon. H. S. Sanford (late U. S. minister to Belgium), at Brussels.

Respectfully,

E. M. L'ENGLE,

Of Counsel for the Florida Central Railroad Company.

1852 (Copy.)

At a meeting of the directors of the Florida Central Railroad Company held November 21, 1870, upon motion of Mr. Papy, a committee was appointed to take in consideration the past issue of bonds, and also to report upon the policy of issuing bonds of the company and the amount.

The president appointed Messrs. Papy, Baker, and Huling said committee.

The board then adjourned to 4 p. m.

4 p. m.—The directors convened pursuant to adjournment, Colonel Sanderson, president, in the chair.

Mr. Papy presented the following report:

The committee finding that the bonds signed by G. W. Swepson, president, and countersigned by H. H. Thompson, treasurer, are in such
form as that they cannot be used to carry out the intention of
1853 their issue when they were adopted, report the following resolution in respect thereto:

Resolved, That the resolution adopting the bonds to be issued by this company, signed by George W. Swepson, president, and H. H. Thompson, treasurer, at a meeting of the board of directors held on the 2d of June, A. D. 1870, be, and the same is hereby, rescinded, and that said bonds be destroyed.

M. D. PAPY, *Chairman.*

On motion, the report was received and adopted.

On motion of Mr. Foster, the resolution was unanimously adopted.

Mr. Papy made the following report:

The committee report the following resolutions in reference to the issue of bonds of the company and the securing the same:

Resolved, That the president cause bonds, payable to bearer, to be prepared, signed, and executed in due form, which shall be issued for purposes of the company, not exceeding seven hundred thousand dollars in amount, with interest at seven per centum per annum, not having more than thirty years to run, with coupons, for interest, attached, payable in New York semi-annually.

Resolved, That said bonds and the interest thereon shall be a first lien or mortgage on the Florida Central Railroad, its equipments, workshops, depots, franchises, and property of every kind; and that the president cause to be prepared and executed such deed of trust or other necessary instrument of writing, under the seal of this company, as may be needful to make the first lien or mortgage in favor of said bonds and the interest thereon effectual to all intents.

M. D. PAPY, *Chairman.*

On motion, the report was received and adopted.

On motion of Mr. Huling, the resolutions were unanimously adopted.

Adjourned to 4 o'clock next day, at which time the following resolution was adopted:

Resolved, That this board approve of the form of the trust deed read to the directors to secure the first lien or mortgage of the bonds, and interest thereon, authorized to be issued, and that the president of this company is authorized to select the trustees to whom said deed is to be made, not to exceed three in number.

Adopted.

[SEAL.]

I hereby certify that the foregoing is a true and correct copy from the records of the board of directors.

{ SEAL OF FLORIDA CENTRAL RAILROAD COMPANY. } F. H. FLAGG, *Secretary.*

(Indorsed:) Exhibit No. 9. Filed May 3, 1879. A. D. Basnett, exam.

1854 B, E. M. L.—*A. D. Basnett, exam.* *Filed April 30th*, 1879.

In circuit court, Duval County, Florida.

EDWARD M. L'ENGLE, PLAINTIFF,
vs.
MILTON S. LITTLEFIELD, AARON BARNETT, Edward Houstoun, Mariano D. Papy, George W. Swepson, the Florida Central Railroad Company, the Jacksonville, Pensacola and Mobile Railroad Company, Converse L. Chase, Francis H. Flagg, J. H. Gardiner, Harrison Reed, the governor of the State of Florida, J. P. C. Emmons, the attorney-general of said State, Robert H. Gamble, the comptroller of said State, Simon B. Conover, the treasurer of said State, and John S. Adams, commissioner of lands and immigration of said State, who are, as such officers, trustees of the internal improvement fund of the State of Florida, the Gulf Steamship Company, and Sidney W. Hopkins, L. Lewis Spring, Charles Fouke, Frank H. Collins, and Robert J. Carpenter, merchants and copartners doing business in the city and State of New York under the firm name of S. W. Hopkins & Co., defendants.

The plaintiff, in behalf of himself and of all others, who, being stockholders of the Jacksonville, Pensacola and Mobile Railroad Company, or of the Florida Central Railroad Company, shall, in due time, come in and seek relief by and contribute to the expense of this action, complaining, alleges as follows:

That, under and by virtue of the provisions of an act of the legislature of the State of Florida entitled "An act to incorporate the 1855 Atlantic and Gulf Central Railroad Company, and for other purposes," approved January 24, 1851, and of the provisions of another act of the legislature of the State of Florida entitled "An act to amend an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company," approved January 7, 1853, the Florida, Atlantic and Gulf Central Railroad Company was incorporated, and by that name the stockholders and members of said company, their successors and assigns, were authorized to construct and operate a railroad from some tributary of the Atlantic Ocean, within the limits of the State of Florida, having a sufficient outlet to the ocean to admit of the passage of sea steamers thence running through the State, in the most eligible direction, to some point, bay, arm, or tributary of the Gulf of Mexico, west of the Apalachicola River, in West Florida, having a sufficient outlet for sea steamers.

That, in accordance with the rights conferred by these acts, said company constructed a railroad from the town of Jacksonville, in Florida, to the town of Lake City, in said State, and operated the same for a number of years, and surrendered their right to build any portion of the line west of Lake City.

That, in accordance with the authority granted by an act of the legislature of Florida entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6, 1855, the said Florida, Atlantic and Gulf Central Railroad Company, for the purpose of constructing the railroad authorized by its charter, issued a large amount of bonds.

That, under the provisions of the said act, and the contract therein expressed, these bonds constituted a first lien or mortgage on the said road-bed, iron, equipments, workshops, depots and franchise of the company.

That by said act and contract, it was provided that on failure of the company to pay the sinking fund of one per cent., the trustees, named in the act, should take possession of and sell the said road and all the property of said company.

That said company failed to comply with the requirements of the statute aforesaid, and the trustees took possession of the road and sold it, in conformity with the statute and contract aforesaid, at public auction, on the 4th of March, 1868.

That, at said sale, William E. Jackson and his associates became the purchasers of said road and other property of said company.

That the said purchasers, by an act of the legislature of the State of Florida, approved July 29, 1868, were vested with the powers and franchises granted to the Florida, Atlantic and Gulf Central Railroad Company, by the act aforesaid, entitled "An act to amend an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company," approved January 7, 1853, and they, and their successors and assigns, were authorized and empowered to exercise the said powers and franchises, so far, and only so far, as they appertained to the railroad constructed, as aforesaid, by the Florida, Atlantic and Gulf Central Railroad Company, from Jacksonville to Lake City, in Florida, and were made a body politic and corporate, under the name of the "Florida Central Railroad Company."

That the said road, if a public work at all, is, and has long been, a completed public work.

1856 That the Florida Central Railroad Company, under its charter (which charter is a contract between the individual stockholders upon the one side, and the State and corporation on the other side), is invested with no functions, rights, or powers, except such as pertain to a completed road, and that, in point of fact, the sole purpose for which the corporation exists, and for which the charter was granted, is the operation, control, management, and maintenance of a completed line of railroad extending from Jacksonville to Lake City, aforesaid.

That the plaintiff is a stockholder in said Florida Central Railroad and a member of said corporation, and is also a stockholder in the Jacksonville, Pensacola and Mobile Railroad, hereafter mentioned, and a member of that corporation.

That on the 20th of March, 1869, the Pensacola and Georgia Railroad Company was a corporation, organized and existing under the laws of the State of Florida, with a line of railroad completed from Lake City, Florida, to Quincy, Florida, and engaged in the business of common carriers.

That on the day aforesaid, the Tallahassee Railroad Company was a corporation existing under the laws of the State of Florida, with a line of railway completed from Tallahassee, Florida, to St. Mark's, Florida and engaged in the business of common carriers.

That both of said railroad companies accepted and issued bonds under the provisions of the act of the legislature of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6, 1855, and became subject to all the provisions of said act.

That on the 20th of March, 1869, the trustees of the internal improvement fund of the State of Florida, under the authority vested in them by the third section of said act of the legislature of the State of Florida, upon and because of a failure on the part of said railroad companies to provide and pay the sinking fund as required in said act, on the bonds issued by the said companies, duly sold at public sale the aforesaid railroads, and all the property of each of said companies of every kind, for the sum of $1,415,000, and at that sum one Franklin Dibble and his associates became the purchasers of the said railroads, and of all the property of each of said companies.

And that on the 8th day of April, 1869, the said trustees of the internal improvement fund of the State of Florida made and delivered to said purchasers deeds of conveyance of said railroads and property, which deeds were duly recorded in the office of the clerk of the circuit court of Leon County, Florida, on the 22d and 23d days of October, A. D. 1869.

That the purchasers aforesaid paid the said trustees $960,000 on account of the purchase money of said roads, in first mortgage bonds of said companies (issued under the said act of January 6, 1855), at the par value thereof, and the said purchasers received credit therefor.

That the remainder of said purchase money never has been paid, nor the payment thereof in any manner secured, as the plaintiff is informed and believes.

That one George W. Swepson, in consideration of a large and controlling interest in the stock transferred and conveyed to him by the said Franklin Dibble, and the other persons associated with him
1857 in said purchase, and by the consent of the trustees of the internal improvement fund of Florida, acting by their duly appointed agents, and for other considerations promised to and received by him, undertook to pay the remainder of said purchase money, and to do other things for the benefit of said purchasers (and of the corporation which they, in conjunction with other persons acting with them, intended to be created into by act of the legislature). And the said trustees, acting by their duly appointed agents, accepted said Swepson as their debtor in the place of the said purchasers.

That on the 24th of June, 1869, the legislature of Florida passed an act entitled "An act for the relief of Franklin Dibble, E. M. Cheney and their associates," purchasers of the railroad from Tallahassee to St. Marks and of the railroad from Quincy to Lake City, and incorporating the Tallahassee Railroad Company, by which the said purchasers and their associates were created a body corporate, under the name of the Tallahassee Railroad Company, and were vested with like powers, franchises, and privileges as were granted to the Pensacola and Georgia Railroad Company, and the Tallahassee Railroad Company by the acts incorporating said companies.

That on the 24th of June, 1869, by an act of the legislature of Florida, approved on that day, entitled "An act to perfect the public works of this State," and by an act amendatory thereof, approved January 28th, 1870, a corporation called the Jacksonville, Pensacola and Mobile Railroad Company was created, empowered to build and operate a railroad from Quincy to Pensacola, in said State, and to consolidate its road, or line of intended road, with those of the beforementioned Tallahassee Railroad Company, and of the said Florida Central Railroad Company, and to exercise other powers and privileges.

That the Tallahassee Railroad Company, already mentioned, and the said Jacksonville, Pensacola and Mobile Railroad Company, as this plaintiff is informed and believes, did, in the manner provided for by said last mentioned act, consolidate their said roads under the name of the latter company, and redistributed the stock.

The plaintiff further says, on information and belief, that before said consolidation, or afterwards, the said George W. Swepson, in consideration that the defendant, Milton S. Littlefield, would pay to the trustees of the internal improvement fund of Florida the remainder of said purchase money of the said railroad, which remainder, or any part thereof, the said Swepson had not paid as he undertook to do, and for other considerations undertaken by said Littlefield to be performed, he, the said Swepson, transferred and conveyed to said Littlefield, all of his, the said Swepson's, property and interest in the said Tallahassee Railroad Company, or in the said Jacksonville, Pensacola and Mobile Railroad Company, and in the Florida Central Railroad Company (one of these defendants), in which last mentioned company, as in the Tallahassee Railroad Company, or the Jacksonville, Pensacola and Mobile Railroad Company, he, the said Swepson, had a majority of the stock interest.

And the property so transferred and conveyed was of value much greater than the unpaid purchase money due to the said trustees.

That, as the plaintiff is informed and believes, said Littlefield received
said transfer of interest, with and upon the distinct promise made
1858 by him that he would, out of his own resources, pay such unpaid
purchase money. And the plaintiff avers, on his own knowledge,
that when the said Littlefield received the said transfer and conveyance, and always before that time, he knew that the said Swepson had not paid said remainder of the purchase money of the said railroad, or any part thereof.

That the said Milton S. Littlefield was elected president of the Jacksonville, Pensocola and Mobile Railroad Company at the time of its organization, and has continued to be president ever since. And that afterwards he was elected president of the Florida Central Railroad Company; and that defendant, Aaron Barnett, claims now to be the president thereof, and to have been elected as such on the 9th or 10th of April, 1872.

That the Jacksonville, Pensacola and Mobile Railroad Company was granted, by the acts incorporating it, the right to build a railroad from Quincy, Florida, westward to the Alabama State line, and that to aid it in doing so, the governor of the State of Florida was, by said acts, directed to deliver to the president of said company coupon bonds of the State, to an amount equal to $16,000 per mile, for the whole length of railroad owned by said company, in exchange for first mortgage bonds of said company; and said acts provided that the State should have a statutory lien on said road as security against loss.

That said acts also provide that the governor, for the purpose of further aiding said Jacksonville, Pensacola and Mobile Railroad Company to speedily construct its road, shall deliver to the president of said company, other coupon bonds of the State of Florida, to the amount of $16,000 per mile, upon receiving from the president of said company first-mortgage bonds of like amount on any portion of the line of railroad between Quincy and Jacksonville, not exceeding one hundred miles of any part of railroad between those points, which provision is contained in the 4th section of the act approved January 4th, 1870.

That, as president of the Jacksonville, Pensacola and Mobile Railroad Company, the said Littlefield received from the governor of Florida four million dollars of said bonds of said State, of which one million were issued in exchange for a like amount of bonds of the Florida Central Railroad Company, delivered to said governor, by said Milton S. Littlefield, which one million of State bonds were issued under section 4, of the act of 1870, above referred to.

That it is claimed by said Littlefield, and by the governor of the State of Florida, that the said million of dollars of bonds of the Florida Central Railroad Company, delivered to said governor and in exchange for which the million of State bonds were delivered to said Littlefield, constitute a lien upon the line of said road and the property owned by the said Florida Central Railroad Company, or are valid, legal and subsisting obligations of said company to the State of Florida.

Plaintiff says further, on information and belief, that the said million of dollars of bonds of the said Florida Central Railroad Company were deposited with the State about the 4th of January, 1871, without the knowledge or consent of the stockholders or directors, generally, of said company, or of its president, and against the wishes of them, or some of them; and that it was done with the knowledge and consent, and secretly, and by the contrivance of the defendant, Milton S. Littlefield, and in fraud of said company and of the stockholders and 1859 creditors thereof, and in violation of its charter and of the powers and privileges thereof, which never contemplated that said company should engage in the building of any other than its own line of road, or incur any obligation, or pledge its credit, for any other than the purposes mentioned in the charter.

And the plaintiff says that the State of Florida, acting through its officers, was a party to the fraud, and cannot allege ignorance of the facts, or of the law governing said corporation.

That the said Milton S. Littlefield, through himself and his agents, sold most of the said four million dollars of bonds, and, as the plaintiff is informed and believes, received a very large amount of money therefor; the plaintiff cannot say with positiveness or certainty how much, but to the best of his information and belief, more than $1,000,000.

That said bonds were issued by the State, and received by the said Littlefield, as president of the said railroad company, for the purposes stated in said act of the legislature, which were to aid the Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road westward from Quincy to the Alabama line. And the stockholders and creditors of said company, confided in him to receive the said funds and apply them to the purposes for which they were intended. But, instead of carrying out that trust and confidence, the said Milton S. Littlefield has received the said money, or a large proportion of it, and has diverted it from the legitimate uses of the corporation, and has misapplied it to his own personal and private uses and purposes, and has applied only a small proportion thereof to the purposes for which said bonds were issued.

That said Milton S. Littlefield has not given, and fails to give, any sufficient account on the application of said funds; that he has made no report of his receipts and disbursements, or of his administration of said roads, and of the affairs of said companies, since he has been president of them, respectively. And holding, as he does, the majority of the stock in both companies, he exercises an arbitrary and absolute control over their affairs, and by his votes shapes the directory of each company as he pleases.

That he makes, or permits to be made, nominal transfers of small amounts of stock in each company to such persons owning no stock, or insufficient thereof, as he wants elected directors thereof, in order to give them an apparent qualification as such, and causes them, by his votes, to be elected directors, when, in fact, they do not in good faith own any, or, if any, a sufficiency of stock in said companies, and are not really qualified to act as directors in the respective companies, under the respective charters thereof; and causes himself, or such person as he may select, thus to be elected president, and thus he shuns and escapes all investigation into his, or such other person's conduct, as president of said companies respectively.

That the said Milton S. Littlefield has purchased, and claims as his own property, a large amount of the capital stock of the Jacksonville, Pensacola and Mobile Railroad Company, and of the Florida Central Railroad Company, and a large number of the first mortgage bonds of the Pensacola and Georgia Railroad Company, or of the Tallahassee Railroad Company, or of both (for the non-payment of the sinking fund of which bonds, the said roads were, as has been herein stated, 1860 sold by the trustees of the internal inprovement fund of the State of Florida), which stock in the Jacksonville, Pensacola and Mobile Railroad Company, or a large amount of which, he obtained by purchase with money realized and obtained from the assets and earnings of said Jacksonville, Pensacola and Mobile Railroad Company, and Florida Central Railroad Company, and not with his individual private funds, all of which purchases so paid for belong to the said corporations.

That the following are some of the purchases of stocks of said railroad made by said Littlefield with funds belonging to the Jacksonville, Pensacola and Mobile Railroad Company, or to the Florida Central Railroad Company, or to both, and claimed now by said Littlefield to be his own property, viz:

From James M. Baker, Silas L. Niblack, and Wilkinson Call, he purchased 3,750 shares of stock in the Jacksonville, Pensacola and Mobile Railroad Company, being 1.250 shares from each of them.

On information and belief, plaintiff further says that said Littlefield also in the same manner purchased stock in the Jacksonville, Pensacola and Mobile Railroad Company from Alonzo Huling, F. Dibble, Calvin Dibble, and other persons, paying for the same, directly or indirectly, with funds belonging to the said corporation.

The plaintiff further says, on information and belief, that the stock so purchased by Milton S. Littlefield, and paid for, or contracted to be paid for, directly or indirectly, out of the funds belonging to the Jacksonville, Pensacola and Mobile Railroad Company, and to the Florida Central Railroad Company, constitute, with that which he has otherwise acquired, a majority of the stock of said companies, respectively, claimed by the said Littlefield as his property, and by voting which, directly or indirectly, he controls the organization and management of said companies, respectively, and upon which he claims and assumes the right to receive the dividends, if any there be.

All of which stock, so purchased, belongs to the corporations, respectively, to be divided among the several stockholders pro rata, or has become extinct as stock, thereby increasing by so much the value of each of the remaining shares of stock.

Plaintiff further says that said Milton S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, in the latter part of the year 1869, or early in the year 1870, made a contract, in writing, with certain commissioners representing the Western Division of the Western North Carolina Railroad Company, whereby more than one million dollars of the funds of the said Jacksonville, Pensacola and Mobile Railroad Company were contracted by said Littlefield, as president, to be paid to said commissioners in satisfaction of a debt due by said Littlefield personally and individually, or which was contracted by said Swepson and assumed by said Littlefield, and for which the said railroad company was in no wise responsible.

On information and belief plaintiff says that a part of said money has been paid out of proceeds of the bonds of the State of Florida, issued to said Jacksonville, Pensacola and Mobile Railroad Company, under the act aforesaid, approved June 24, 1869, and that said contract is still subsisting.

Plaintiff further says that among the many other misappropriations and diversions by the said Milton S. Littlefield of the funds 1861 belonging to the Jacksonville, Pensacola and Mobile Railroad Company and the Florida Central Railroad Company, he recites, on information and belief, the following, viz:

He caused to be paid out of said funds the following amounts to the following persons, viz: To Jennie Hunter, $300; Alonzo Huling, $5,000; F. A. Dockray, $5,000; J. L. ReQua, $5,000; A. G. Cattel, $735.60; J. B. Clark, $75,000; to some persons unknown, "for balance of judgment vs. Pensacola and Georgia Railroad, with interest," $30,000; to J. S. Meech, $12,600; to R. R. Swepson, $50,000; to First National Bank of Knoxville, $19,684.36; to C. F. Burton, $10,000; John Rankin, $9,225.17; J. R Campbell, $1,976.87; W. W. Hubbard, $500; W. Cummings & Co., $466; Drew & Davis, $377.53; to some unknown person for Grocers' Bank judgment vs. Road, $5,790; Mrs. E. Holland, $300; John T. Deweese, $20,000; to some unknown person, "balance due on Jacksonville property," $2,590.04; to Governor Reed "on account," $3,500; D. P. Holland "on account," $4,630; T. B. Coddington, $57,895.33; S. W. Hopkins, T. B. Coddington, R. Stewart and others, "for traveling expenses to and from Florida, hotel fares, ocean cables and other expenses while there," $6,216.38; I. B. Clark, for expenses to Florida, $100; G. B. Carse, do. do., $60; R. Stewart, Washington, $100; to divers unknown persons for "legal expenses, defending suits by N. W. Woodfin and L. P. Bayne," $17,850; to a person unknown, having a "draft from Florida," £4,433.19.3 (in English currency); to Baring Brothers & Co., for A. Barnett's claim £19,349.14.1 (in English currency); to Clewes, Habrecht & Co., for G. W. Swepson, £3,717.18.7 (in English currency); to the commissioners of the Western Division of the Western North Carolina Railroad Company, £10,000.00.0 (English currency).

Plaintiff further says, on information and belief, that said Littlefield has, as president aforesaid, pledged the proceeds of said State bonds for the payment of the following additional amounts to or on account of the following persons, viz: R. H. Gamble, $15,000; F. H. Flagg, $4,000; T. B. Coddington, $25,000; L. P. Bayne & Co., $200,000; J. H. Porter, $10,000; D. P. Holland, $17,365; Western Division of the Western North Carolina Railroad Company, $350,000; Governor Harrison Reed, $223,750; and that all of said additional amounts are gross and fraudulent misapplications sought to be made of said proceeds.

Plaintiff further says, on information and belief, that said Milton S. Littlefield has drawn for himself, upon the proceeds of said bonds, at one time $1,178.50, and at various other times £4,981.10.5 (English currency), and the plaintiff says, on information and belief, that nearly all, if not the entire amount of the last stated sums, were misapplied and squandered by said Littlefield for his own purposes.

The plaintiff further says, on the information of S. W. Hopkins & Co., of New York and London, that the said Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, offered to them, and sold to them, the said four million of State bonds, being four thousand bonds, at the price of £100 sterling for each bond, when, at that very time, said Littlefield knew that said bonds were contracted to be sold, or were sold by his agents, for the price of £138.1.10 sterling.

That on or about the 2d of October, 1871, the said Milton S. Littlefield, 1862 without authority of the stockholders, first had and obtained, as this plaintiff is informed and believes, executed, as president of the Jacksonville, Pensacola and Mobile Railroad Company, a lease of said company's road for the term of two years, to the defendants, Converse L. Chase and F. H. Flagg, for the purposes specified in said lease; among which were, that they should receive the income and profits of said road and apply the same to the payment of certain specified indebtedness thereof, and to the extension of said road westward.

That under said lease one J. H. Gardiner was appointed superintendent of said road, and that under color of said lease the said C. L. Chase, F. H. Flagg and J. H. Gardiner assumed, with the consent of said Littlefield, its president, the exclusive management and control of the Florida Central Railroad, and received its income; and applied it, as this plaintiff is informed and believes, to the payment of the debts of the Jacksonville, Pensacola and Mobile Railroad Company, and to the extension of said railroad westward, and to other purposes of said last mentioned corporation.

That said lease provides that the proceeds, when realized, of the million dollars of bonds, before mentioned, issued by the State of Florida and received by said Littlefield, as president aforesaid, in exchange for a like amount of bonds of the Florida Central Railroad Company deposited with the governor of said State, should be applied to the extension of the said Jacksonville, Pensacola and Mobile Railroad westward, and not to legitimate purposes of the Florida Central Railroad Company.

That, as plaintiff is informed and believes, said million, or thereabouts, of said bonds are deposited with or under the control of John Collinson, of London, in the kingdom of England, and have not yet been sold.

Plaintiff states, on information and belief, that the said C. L. Chase, F. H. Flagg and J. H. Gardiner have not accounted to the respective companies for the receipts of said roads, respectively.

The plaintiff further says, on information and belief, that on or about the 30th of November, 1871, the said Milton S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, and the said C. L. Chase and F. H. Flagg, as trustees, under the lease or deed of trust heretofore mentioned, dated October 2d, 1871, did, by their attorneys duly authorized thereto, and in fraud of the rights of the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company, and of said Florida Central Railroad Company, enter into a written agreement with one L. P. Bayne, and L. P. Bayne & Co., and one S. W. Hopkins & Co., of New York, and with one N. W. Woodfin, of North Carolina, representing the Western Division of the Western North Carolina Railroad Company, whereby it was provided, among other things, that out of the proceeds accrued and to accrue of $1,200,000 of bonds of the State of Florida, issued to the said Jacksonville, Pensacola and Mobile Railroad Company, by said State, under and for the purposes specified in the act of the legislature of said State, already mentioned, approved June 24, 1869, which bonds were then in the hands or under the control of said John Collinson, and of which the million of bonds issued upon the security of a like amount of bonds of 1863 the Florida Central Railroad Company, as already stated, were a portion, there should be paid to the said L. P. Bayne, for himself, and L. P. Bayne & Co., $200,000; and to said Western Division of the Western North Carolina Railroad, $300,000; and by the same contract, it was agreed that the Jacksonville, Pensacola and Mobile Railroad Company undertook to secure to the said Western Division of the Western North Carolina Railroad Company the payment of the further sum of $300,000, and to the said L. P. Bayne and L. P. Bayne & Co., the further sum of $140,000.

The plaintiff further says that all of the money above mentioned, provided by said contract to be paid, was for the payment of debts of said Milton S. Littlefield, as an individual, and not of debts of said Jacksonville, Pensacola and Mobile Railroad Company or of the Florida Central Railroad Company; and that, in entering into said contract, the said Milton S. Littlefield and the said C. L. Chase and F. H. Flagg committed a fraud upon the rights of stockholders in said companies, respectively.

Plaintiff further says, on information and belief, that the performance of the terms of said contract has, thus far, been prevented by the intervention of other parties having interests in said fund, but that the same may, unless prevented by this court, be still carried out.

The plaintiff further states, on information and belief, that said Milton S. Littlefield, as president of said Jacksonville, Pensacola and Mobile Railroad Company, and of the said Florida Central Railroad Company, without the advice or consent of the stockholders or directors of said companies (and in violation of section four of the act of the legislature of Florida, already mentioned, approved June 24, 1869, for the incorporation of the Tallahassee Railroad Company), and the said Aaron Barnett, claiming to be a large stockholder and the president of the Florida Central Railroad Company, and one John Scriven and other persons unknown to the plaintiff, are negotiating together to effect a lease of the said Jacksonville, Pensacola and Mobile Railroad, and of the said Florida Central Railroad, to said John Scriven, who is a citizen of the State of Georgia, and owns a large interest in a railroad out of the State of Florida, or to the Atlantic and Gulf Railroad Company, a corporation created by and existing under the laws of the State of Georgia; among the terms whereof, as the plaintiff is informed and believes, it is designed that the said Milton S. Littlefield shall surrender and assign to such lessee, or to some one else for him, a moiety or a majority of the stock claimed by the said Littlefield as belonging to him in the said Jacksonville, Pensacola and Mobile Railroad Company, and in the said Florida Central Railroad Company, and that all the assets of said companies, including unexpended proceeds of bonds of the State of Florida issued to said Jacksonville, Pensacola and Mobile Railroad Company, as herein stated, and such of said bonds as may still be unsold, shall be delivered to said lessee for the purpose of paying to the trustees of the internal improvement fund of the State of Florida the remainder of the purchase money, still unpaid, of the Pensacola and Georgia and the said Tallahassee railroads, and for which, not the said corporations, but the individual purchasers of the said last mentioned roads, especially said George W. Swepson and Milton S. Littlefield, who took their stock, as herein stated, with the charge that they should pay the said debt, are liable to the said trustees.

1864 Plaintiff further says, on information and belief, that another proposition which the said persons who are negotiating together are considering, in violation of said section of said act of the legislature, is that the said John Scriven or the said Atlantic and Gulf Railroad Company shall lease, for a long term of years, the said Jacksonville, Pensacola and Mobile Railroad, and the said Florida Central Railroad, paying yearly a stipulated rental, all of the funds and assets of said companies now in hand being left with said companies to be applied, by said Littlefield, to the payment of the unpaid purchase-money of the Pensacola and Georgia Railroad, and of said Tallahassee Railroad, and to other debts, for which, as the plaintiff claims, neither the said Jacksonville, Pensacola and Mobile Railroad Company nor the said Florida Central Railroad Company is liable.

On information and belief, plaintiff also says, that said Littlefield or said Barnett, or both of them, are negotiating with C. L. Chase and others to make another lease of said railroads to him and those acting with him, the terms of which are similar to those already stated.

And the plaintiff says, that unless the relief hereby prayed is granted, or a portion of it, one of the said propositions, or some other equally injurious to the stockholders of said road, and in violation of said act, and which may work a forfeiture of the charter of the company created by said act, may be adopted and carried into effect to the great damage of the plaintiff as a stockholder in the said Jacksonville, Pensacola and Mobile Railway Company and in said Florida Central Railroad Company.

The plaintiff further says, that under the management of the said Jacksonville, Pensacola and Mobile Railroad, and of the said Florida Central Railroad, as it now is, and for twelve or more months has been, the incomes thereof are improvidently used and applied. The said Milton S. Littlefield, as president, is receiving an extravagant salary of, as the plaintiff is informed, ten thousand dollars per year, and has clerks and servants in his employ at an expense to the said companies, as the plaintiff is informed, of several thousand dollars a year; that, as plaintiff is informed, said Littlefield employs in England, New York, Florida and elsewhere, at the expense of said companies, but for the advancement of his own individual purposes, and not for the advantage of the companies, one or more attorneys-at-law in each of said countries and places, and that said president, clerks, servants and attorneys are of no use or benefit to said companies.

That, on or about the 19th of May, 1871, said Littlefield transferred and assigned to defendant, Aaron Barnett, by indenture, recorded in Leon County, Florida, in the clerk's office thereof, 41,963 shares of the stock of the Jacksonville, Pensacola and Mobile Railroad Company (which he, the said Littlefield, claimed and claims to own), and all other shares which he then owned, or thereafter might acquire, in the stock of said road, and 4,410 shares of stock in the Florida Central Railroad Company, which he, the said Littlefield, claimed and claims to own, and all other shares in the said company's capital stock which he then owned or thereafter might acquire; which transfer and assignment was in trust, to secure a certain company, known as the Gulf Steamship Company (a
corporation created by the laws of Florida, but whose charter, as
1865 plaintiff is informed, has been repealed), in the payment by the
Jacksonville, Pensacola and Mobile Railroad Company of all moneys which might come due thereafter by said railroad company to said Gulf Steamship Company, for work done by said company, in extending the railway of the Jacksonville, Pensacola and Mobile Railroad Company westward from the Chattahoochee River.

That, by the terms of said assignment and transfer, said Milton S.

Littlefield reserved the right to vote said stock so assigned at all proper times and places.

That said stock of both companies, so assigned, is made up, in large part, of the stock purchased and paid for, or contracted to be paid for, by said Littlefield, with money belonging to the said companies, as herein stated; and plaintiff says, on information, as to a large portion of said stock so acquired, that the said Barnett knew when he received said stock that said Littlefield had purchased it with money belonging to the said corporations.

That said Gulf Steamship Company has not done any work in extending the said railway westward from Chattahoochee River, and has in nowise become entitled to receive any compensation therefor, or upon any other consideration, from said railroad company. That said Aaron Barnett was a member of said Gulf Steamship Company, and, as its agent, received said stock in trust, and, at the time of receiving it, had notice that the said unpaid purchase-money of the said Pensacola and Georgia Railroad Company, and of the said Tallahassee Railroad Company, had not been paid to the trustees of the internal improvement fund of the State of Florida.

Plaintiff states, on information and belief, that the defendants M. D. Papy or Edward Houstoun, or both of them, also claim to hold, or in some way have control over, a portion of the stock in the Florida Central Railroad Company, which said Milton S. Littlefield claims to own, which, as herein stated, has been assigned and transferred to said A. Barnett, in trust, and that said Papy or Houstoun, or both of them, claim the right to vote, and do vote, the said stock, or some of it.

That, as plaintiff is informed, said Papy, or Edward Houstoun, or both of them, claim to hold or control said stock, or a portion of it, and also a number of the first-mortgage bonds of the said Pensacola and Georgia Railroad Company, or of the said Tallahassee Railroad Company, which are claimed to be the property of said Littlefield, or in which he has some legal or equitable interest by virtue of, and for the performance of, some trust, unknown to plaintiff, and which plaintiff calls on them to set forth and substantiate.

And he says further, that, if the said stock and bonds belong to the said Littlefield, they and all stock owned by him, as well as all of his other property, should be held subject to payment of demands of the said corporations and of the stockholders whose money and assets he has misapplied and converted to his own use.

Plaintiff further says, on information, that the defendants herein named, as constituting the mercantile firm of S. W. Hopkins & Co., claim or are alleged to have an interest in the last mentioned trusts, and in the bonds and stocks affected, or claimed to be affected, by these trusts, and also in the bonds of the State of Florida, herein mentioned, and that therefore they are made parties defendant to this suit.

Plaintiff further says, that the trustees of the internal improve-
1866 ment fund of the State of Florida have commenced suit against
the Jacksonville, Pensacola and Mobile Railroad Company, and
other defendants, to recover the sum of $472,000, unpaid purchase
money, due as herein stated, and interest thereon from the day of the
sale of said roads, and have prayed for and obtained the appointment
of a receiver of the said roads, and of the other property of said com-
pany, and have prayed for and obtained an order that said receiver take
the absolute and exclusive control of not only the Jacksonville, Pensa-
cola and Mobile Railroad, but also of the Florida Central Railroad, and
the receiver, who is Jonathan C. Greeley, has so taken possession and

control of said railroads, and the said trustees seek to have the net earnings, not only of the Jacksonville, Pensacola and Mobile Railroad, but also of the Florida Central Railroad, go into the hands of said Greeley and be applied, under the order of the court, to the payment of the purchase money still unpaid, and have obtained an order to that effect.

Plaintiff further says that said Milton S. Littlefield and said Aaron Barnett, in violation of their duty as president of said Florida Central Railroad Company, and in disregard of the interests of said company, and of stockholders therein, have permitted and still permit said receiver to take and hold possession of said railroad, and have made no attempt to recover it, nor to defend said suit.

That said Littlefield, as president of said Jacksonville, Pensacola and Mobile Railroad Company, has made no attempt to recover possession of said road, nor, as plaintiff is informed, does he intend to defend said action, but will allow judgment to be had by default against said corporation.

Plaintiff further says, on information and belief, that Aaron Barnett, one of these defendants, has received from Milton S. Littlefield, individually, or as president of one of said railroad corporations, a large sum of money, amounting to about $100,000, for the purchase from him, the said Barnett, of steamboats, and for other considerations, uses and purposes which were not intended in and by the act of the legislature of Florida entitled "An act to perfect the public works of the State," approved June 24th, 1869, and the amendments thereto.

That the payments and advances, so made to said Aaron Barnett, were made out of the proceeds of the bonds of the State of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, as herein stated, under said act; and that said Barnett, at the time he sold said steamboats and received said money therefor, and for other considerations, uses and purposes not contemplated by said act, knew that said money was the proceeds of the said bonds, and was affected and charged with the trust imposed by said act, and that said trust was violated by the payments made to him.

Plaintiff further says, on information and belief, that said Aaron Barnett received from said Littlefield, individually or as president of said railroad company, a large number of the said bonds of the State issued to the Jacksonville, Pensacola and Mobile Railroad Company for the purposes specified in said act of June 24th, 1869. That said bonds were not delivered to said Barnett for any legitimate lawful purpose or use of said Jacksonville, Pensacola and Mobile Railroad Company, under the authority of the said act, but for speculative purposes outside of said act, and for uses and upon considerations foreign thereto; all of which was well known to said Littlefield and to said Barnett.

1867 And the plaintiff says, that said Barnett has not applied either said money or said bonds, or the proceeds of said bonds, to the legitimate uses of said Jacksonville, Pensacola and Mobile Railroad Company as intended and prescribed by the act aforesaid.

Wherefore the plaintiff demands judgment—

1st. That the delivery of one million dollars of bonds of the Florida Central Railroad Company to the governor of the State of Florida, in exchange for one million dollars of the State bonds, be declared to be a fraud perpetrated upon said company and the stockholders; and that said bonds be declared to have no binding legal validity as obligations of said company.

2d. That the defendant, Milton S. Littlefield, be required to render a full, true and accurate statement in detail of his receipts and expenditures, and of those of his agents, from the proceeds of the State bonds, and from the income and assets of said Jacksonville, Pensacola and Mobile Railroad Company, and said Florida Central Railroad Company, respectively, and a statement of the considerations upon which such expenditures were made; and that a reference be had to ascertain and report such receipts and expenditures, and the sources thereof and consideration therefor.

3d. That the defendant, Milton S. Littlefield, be required to surrender all stock in either of said railroads, and all railroad bonds and other property purchased or paid for, in whole or in part, directly or indirectly, with the receipts or assets of said railroad companies, or either of them; and that such purchases be declared to inure to the benefit of said railroad companies, respectively, with whose funds, wholly or partly, the purchase may have been made; and that such stocks, bonds and other property be delivered for safe keeping to the receiver who may be appointed in this suit, and be held subject to the order of this court.

4th. That the defendants, Papy and Houstoun, be required, by the final decree of this court, to deliver to a receiver all stock and evidences of title thereto in the Florida Central Railroad Company, and all bonds of the Pensacola and Georgia Railroad Company, and of the Tallahassee Railroad Company, held or controlled by them, or either of them, wherein the said Milton S. Littlefield, or the said Jacksonville, Pensacola and Mobile Railroad Company, or the said Florida Central Railroad Company, has a legal or equitable interest. That the said Barnett be required to deliver to a receiver all stocks, and evidences of title thereto, in the Jacksonville, Pensacola and Mobile Railroad Company, and in the Florida Central Railroad Company; and all bonds of the Pensacola and Georgia Railroad Company, and of the Tallahassee Railroad Company; and all other property held or controlled by him, wherein the said M. S. Littlefield, or the said Jacksonville, Pensacola and Mobile Railroad Company, or the Florida Central Railroad Company, has a legal or equitable interest, and all bonds of the State of Florida, issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company, received by him from that company, or from its president, or its or his agents or attorneys, or from Milton S. Littlefield, or George W. Swepson, or their agents, or the agent of either of them; and all proceeds of such bonds of the State of Florida, so received by him, the consideration for the reception of which by him was different from the purposes for which said bonds were issued.

1868 5th. That the lease of the Jacksonville, Pensacola and Mobile Railroad, made on the 2d October, 1871, by defendant, Milton S. Littlefield, be annulled and set aside. That said C. L. Chase, F. H. Flagg and J. H. Gardener be required to render a full and accurate statement of the receipts from and the expenditures on account of the Jacksonville, Pensacola and Mobile Railroad, and of the Florida Central Railroad, severally and respectively, and a statement of the sources of such receipts, and of the considerations and purposes of such expenditures; and to pay to a receiver or other person, under the order of this court, all moneys received from the income or assets of said roads respectively, and not expended legitimately and legally for the sole and exclusive use, benefit, and advantage of said corporations, respectively, from which moneys may have been received, and that a reference be had to ascertain these facts.

6th. That the defendants, F. H. Flagg and C. L. Chase, be enjoined from receiving any of the proceeds of State bonds of Florida issued to the Jacksonville, Pensacola and Mobile Railroad Company, and from expending any of such proceeds in their hands.

7th. That the said M. S. Littlefield, president as aforesaid, and his successors, and the said F. H. Flagg and C. L. Chase, their agents and attorneys, be enjoined from carrying out, or attempting to carry out, any part of the agreement made by them through themselves or their attorneys on the 30th day of November, 1871, or about that time, with L. P. Bayne, L. P. Bayne & Co., and S. W. Hopkins & Co., of New York, and N. W. Woodfin, of North Carolina, representing the Western Division of the Western North Carolina Railroad Company, which provided for the payment to the parties above mentioned, or any of them, of any portion of the unexpended proceeds of the bonds of the State of Florida issued to the Jacksonville, Pensacola and Mobile Railroad Company, under the act of the legislature of Florida, approved June 24th, 1869, and the amendments thereto; or for the payment to any of said parties of any other moneys by said Jacksonville, Pensacola and Mobile Railroad Company, from any other source which said agreement may provide for the payment of.

8th. That the president of the Jacksonville, Pensacola and Mobile Railroad Company, and of the Florida Central Railroad Company, and the successors of each of them, and the said corporations, be enjoined from leasing said roads, or either of them, or any part thereof, to John Scriven or his associates, or to the Atlantic and Gulf Railroad Company, or any other person or corporation, until the ownership of the stock of said companies be determined by the court, and until duly qualified directors and other officers of said companies have been elected by the votes of holders of a legal and bona fide majority of shares of stock, to be ascertained and determined by the court; and that under all circumstances the said corporations and their officers, respectively, be enjoined from leasing said railroads on terms violative of the rights or interests of any stockholder or creditor, or violative of the law governing said corporations, and that if any lease has already been made that it be vacated and set aside.

9th. That the defendants, Aaron Barnett, M. D. Papy, and Edward Houstoun, be enjoined from selling, transferring, assigning, pledging, making advances upon, or charging, or otherwise disposing
1869 of or encumbering any of the stock of the Jacksonville, Pensacola and Mobile Railroad Company, or of the Florida Central Railroad Company, or any of the Pensacola and Georgia Railroad Company's bonds, or of the Tallahassee Railroad Company's bonds, or any of the bonds of the State of Florida, which they, or either of them, may hold or control in the manner hereinbefore set forth, and especially that the said Barnett may be enjoined from selling, assigning, transferring, hypothecating, charging, making advances upon, or otherwise disposing of or encumbering any of the stock of the Jacksonville, Pensacola and Mobile Railroad Company, or of the Florida Central Railroad Company, which he holds, or held, in trust, by indenture to him by M. S. Littlefield, executed on or about the 19th of May, 1871, to secure the Gulf Steamship Company in certain undertakings then had by and between said Littlefield and said Gulf Steamship Company; and that said Papy, Houstoun, and Barnett be enjoined from voting any of said Jacksonville, Pensacola and Mobile Railroad Company's, or Florida Central Railroad Company's stock, in any meeting of stockholders of said companies, or either of them.

10th. That said Milton S. Littlefield be enjoined, until further order of the court, from selling, transferring, assigning, pledging, or otherwise disposing of or encumbering any of the stock in the Jacksonville, Pensacola and Mobile Railroad Company, or in the Florida Central Railroad Company, owned or claimed by him, or in which he has or claims to have an interest, legal or equitable.

That he be enjoined from voting in any stockholders' meeting any stock in either of said companies which was purchased or paid for, in part or in whole, directly or indirectly, with any money or assets of said railroad corporations, or either of them; and that he be required to deliver to a receiver, to be appointed by the court, all such stocks and bonds, to be held subject to the judgment in this suit.

11th. That the said Jacksonville, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company, and the president of each of said companies, and the said Milton S. Littlefield and said Aaron Barnett, be enjoined, until the further order of this court, from using or in anywise disturbing the bonds of the State of Florida, if unsold, or their proceeds if sold, which were issued in exchange for bonds of the Florida Central Railroad Company.

12th. That the trustees of the internal improvement fund of the State of Florida be enjoined from proceeding in their said suit, or upon their alleged cause of action, against the Jacksonville, Pensacola and Mobile Railroad Company till they have exhausted George W. Swepson and Milton S. Littlefield; and that they be enjoined from proceeding at all and under any circumstances against the Florida Central Railroad Company..

13th. That the said Jacksonville, Pensacola and Mobile Railroad and the said Florida Central Railroad be taken out of the hands of the receiver appointed in said suit of said trustees, and that they be put in the custody and control of a receiver to be appointed for the purposes of this suit, and that the order in said suit appointing a receiver be vacated; and that the earnings of said roads and all property of said companies in the hands of the receiver appointed at the instance of the said trustees, be delivered and paid to the receiver herein prayed to be
1870 appointed.

14th. That Aaron Barnett be required to deliver and pay to the receiver herein prayed for, or to such other person as the court may name, the money received by him out of the proceeds of bonds of the State of Florida issued to the Jacksonville, Pensacola and Mobile Railroad Company, or out of the funds or assets of the said Florida Central Railroad Company, with interest thereon from the time of his receiving the same.

15th. That a receiver, or receivers, be appointed for the purposes of this suit with the necessary and usual powers, and that he or they be instructed and empowered as herein prayed.

16th. That the plaintiff may have such other relief as may be just and requisite for the protection or enforcement of his rights, and that he may recover his costs in this suit.

E. M. L'ENGLE,
In pro. per.

Edward M. L'Engle being sworn says that he has read the foregoing complaint, and knows the contents thereof; and that the statements therein, when made on his own knowledge, are true, and that when made on information and belief he believes them to be true.

E. M. L'ENGLE.

Sworn to and subscribed before me the 11th day of May, A. D. 1872.

W. A. McLEAN,
County Judge.

1871 In the circuit court of Duval County, Florida.

EDWARD M. L'ENGLE, PLAINTIFF,
vs.
MILTON S. LITTLEFIELD, AARON BARNETT, Edward Houston, Mariano D. Papy, George W. Swepson, The Florida Central Railroad Company, The Jacksonville, Pensacola and Mobile Railroad Company, Converse L. Chase, Francis H. Flagg, J. H. Gardiner, and Harrison Reed, governor, J. P. C. Emmons, attorney-general, Robert H. Gamble, comptroller, Simon B. Conover, treasurer, and John S. Adams, commissioner of lands and immigration of the State of Florida, Trustees of the Internal Improvement Fund of the State of Florida, and the Gulf Steamship Company, and S. W. Hopkins & Co., defendants.

JACKSONVILLE, FLORIDA, *May* 11*th*, 1872.

On the sworn complaint in the above-entitled action and on the notice therein made by the plaintiff for a preliminary injunction against the defendants, and sufficient reason appearing why the same should be granted, it is hereby ordered that until the further order of the court the said defendants and each of them hereafter named, their officers, agents, attorneys, employees, and servants, and each of them, be,
1872 and they hereby are, severally and respectively enjoined and restrained as follows, that is to say:

1st. The defendants Converse L. Chase and Francis H. Flagg are enjoined from receiving, as trustees or otherwise, any of the proceeds of State bonds of Florida issued to the Jacksonville, Pensacola and Mobile Railroad Company, and from expending any of such proceeds in their hands.

2d. The defendant Milton S. Littlefield, president, as aforesaid, and his successors, and the said Francis H. Flagg and Converse L. Chase, their agents and attorneys, are enjoined from carrying out or attempting to carry out any part of the agreement made by them, through themselves or their attorneys, on the 30th day of March, 1871, or thereabouts, with L. P. Bayne, S. P. Bayne & Co., and S. W. Hopkins and Co., of New York, and N. W. Woodfin, of North Carolina, representing the Western Division of Western North Carolina Railroad Company, which provides for the payment to the parties above named, or any of them, of any portion of the unexpended proceeds of bonds of the State of Florida issued to the Jacksonville, Pensacola and Mobile Railroad Company, under the act of the legislature of Florida, approved June 24th, 1869, and the amendments thereto, and from the payment to any of said parties of any other moneys by said Jacksonville, Pensa-
1873 cola and Mobile Railroad Company from any other source, which said agreement may provide for the payment of.

3d. Milton S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, and Aaron Barnett, as president of the Florida Central Railroad Company, and the successors of each of them and the said corporations, are enjoined from leasing said railroads, or either of them, or any part thereof, to John Scriven or his associates, or to the Atlantic and Gulf Railroad Company, or to any other person or corporation.

4th. The defendants Aaron Barnett, Mariano D. Papy, and Edward
Houston are enjoined from selling, assigning, transferring, pledging,
making advances upon, or charging, or otherwise disposing of or en-
cumbering any of the stock of the Jacksonville, Pensacola and Mobile
Railroad Company, or the Florida Central Railroad, or any of the Pen-
sacola and Georgia Railroad Company's bonds, or of the Tallahassee
Railroad Company's bonds, or any of the bonds of the State of Florida,
which they or either of them may hold or control as the property legally
or equitably of the defendant Milton S. Littlefield, or of the Jackson-
ville, Pensacola and Mobile Railroad Company, or the Florida Central
Railroad Company, or in which the said Littlefield or either of
1874 said corporations may have an interest. The defendant Aaron
Barnett is especially enjoined from selling, transferring, assign-
ing, hypothecating, charging, making advances upon, or otherwise dis-
posing of or encumbering any of the stock in the Jacksonville, Pensa-
cola and Mobile Company, or in the Florida Central Railroad Company,
which he holds or held in trust by indenture to him by Milton S. Little-
field, executed on or about the 19th day of May, 1871, to secure the
Gulf Steamship Company in certain undertakings then had by and be-
tween said Littlefield and others and said Gulf Steamship Company,
and the said Papy, Houston, and Barnett are enjoined from voting any
of said stock in any meeting of the stockholders of said companies or of
either of them.

5th. The defendant Milton S. Littlefield is enjoined from selling, trans-
ferring, assigning, pledging, or otherwise disposing of or encumbering
any of the stock in the Jacksonville, Pensacola and Mobile Railroad
Company or in the Florida Central Railroad Company owned or claimed
by him, or in which he has or claims to have an interest, legal or equitable,
or any other property owned or claimed by him, or in which he has or
claims a legal or equitable interest. He is further enjoined from voting
in any stockholders' meeting any stock in either of said compa-
1875 nies which was purchased or paid for in part or in whole, directly
or indirectly, with any money or assets of said railroad corpora-
tions or either of them.

6th. The Jacksonville, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company and the said Milton S. Littlefield and Aaron Barnett are enjoined until the further order of this court from using or in anywise disturbing the bonds of the State of Florida, if unsold, or their proceeds if sold, which were issued in exchange for bonds of the Florida Central Railroad Company.

7th. The trustees of the internal improvement fund of the State of Florida are enjoined from proceeding in their suit or upon their alleged cause of action against the Jacksonville, Pensacola and Mobile Railroad Company till they have exhausted their remedy against the defendants, George W. Swepson and Milton S. Littlefield, and they are enjoined from proceeding at all in said suit or upon their alleged cause of action against the Florida Central Railroad Company.

And on the complaint on this action let the defendants or their at-
torneys show cause before this court or the judge thereof why the fore-
going order or some order to be made of like purport and effect
1876 should not be continued in full force and until the final judgment
and decree in this suit, and until the foregoing order is modified
let the same be in full force and effect.

May 11th, 1872.

T. J. WHEATON,
Judge, C't C't 4 Jud. C't of Florida.

STATE OF FLORIDA,
County of Duval :

• I, Chas. L. Mather, clerk of the circuit court in and for said county, do hereby certify that the foregoing is a true copy of the original injunction on file in my office.

Witness my hand and the seal of said court this 15th day of May, A. D. 1872.

[CIRCUIT COURT DUVAL COUNTY.] CHA'S L. MATHER,
Clerk.

(Indorsed :) C, E. M. L. Filed April 30th, 1879. A. D. Basnett, examiner.

1877 JACKSONVILLE, *Jan'y* 21, 1871.

Col. E. HOUSTON :

D. SIR : I received a few days since what I suppose to be a copy of the paper you took on surrendering a million of the bonds of the Central Road. I am at a loss for language to express my surprise that you should have parted with the bonds at all, under any circumstances, without first consulting the board of directors of that company. Still more am I surprised that you should undertake to act on your own responsibility, and create trusts and liens upon the bonds different from those under which you received them, and changing the priority of liens created by other parties, over whose interests you had no control or authority to represent. It is useless now to speak of the effect of parting with the bonds, or the loss we may sustain. They are gone—gone without the consent of the parties having specific liens on them—gone without the sanction or consent of the company, whose property they are, and gone, too, without one particle of security for the return of the bonds if not sold, or proceeds if sold, and delivered 120 to a man who
comes in the interest of S. W. Hopkins & Co., a house that procured
1878 the other bonds under false pretences, a house unworthy of credit,
which has broken every engagement or contract they have ever
made in reference to the bonds. I would not trust them to collect a draft of five dollars. Our bonds are delivered to a man who has confided in that house, who has come for a consideration in their interest.

I see by the paper you sent me that you arrange the priorities of liens 1 yourself according to the old agreement, 2 M. D. Papy, 3 R. H. Gamble. Here I desire to ask when did you get authority giving M. D. Papy a lien prior to mine, and those I represent, and by what authority did you create the lien of R. H. Gamble and others? And yet you know that there was to come to me as president of the company $340,000, and have let the bonds go without any provision for this amount or any part of it. I can only deny and protest against your action in this matter, both on behalf of my individual interest, those I represent, and as president of the company.

I fear the consequences of your action, and can only say that if
1879 my health had permitted should have felt it my duty both to my-
self and the company to have followed them and arrested the
party with bonds as having obtained them without authority, by false pretenses and fraud.

I can but suggest that you owe it to yourself, to all others intrusted, to the company and State, to see that those bonds are returned at once and everything restored to its position as it was when, at your request, the company ordered an issue of a 1st-mortgage bonds. If that should prove impossible, you should certainly secure a prompt return of all the proceeds in accordance with the original agreement made and signed by you and M. S. Littlefield. Suppose, now, you were to get your money and you surrendered the stock now held by you to him, where would the rest of us stand? You have stipulated to do this on your getting your money without refference to whether we get the balance or not; but I forbear. Nothing has ever occurred with which I have had any connection so mortifying & painful, so inexplicable.

Respectfully,

J. P. SANDERSON.

(Indorsed:) Exhibit D, E. M. L. Filed May 1, 1879. A. D. Basnett, examiner.

1880 In the U.S. circuit court, 5th circuit, northern dist. of Florida. In chancery.

To the honorable the judges of said court:

Francis P. Porcher, of Charleston, a citizen of the State of South Carolina, by E. M. L'Engle, his attorney, in behalf of himself and of all others, except the defendants hereto, being stockholders of the Florida Central Railroad Company hereinafter mentioned, who shall, in due time, come in and seek relief by, and contribute to, the expenses of this action, brings this his bill against the Florida Central Railroad Company, a corporation created by, and existing under, the laws of the State of Florida, having its principal place of business in the district aforesaid, a citizen of the State of Florida, and the Jacksonville, Pensacola and Mobile Railroad Company, a corporation existing under, and created by, the laws of the State of Florida, having its principal place of business in the district aforesaid, a citizen of the State of Florida, and against Milton S. Littlefield, Mariano D. Papy, Edward Houstoun, Converse L. Chase, Francis H. Flagg, J. H. Gardiner, Harrison Reed, governor of the State of Florida; Samuel T. Day, lieutenant-gov-
1881 ernor of the State of Florida, who claims to be the acting governor thereof; Horatio Bisbee, jr., who claims to be the attorney-general of the State of Florida; Robert H. Gamble, the comptroller of said State; Simon B. Conover, the treasurer of said State; and John S. Adams, the commissioner of lands and immigration of the said State, who, as such officers, are also trustees of the internal improvement fund of the State of Florida, all of which defendants are citizens of the State of Florida and residents of the northern district thereof, and thereupon your orator complains and says—

That under and by virtue of the provisions of an act of the legislature of the State of Florida, entitled "An act to incorporate the Florida, Atlantic and Gulf Central Railroad Company, and for other purposes," approved January 24, 1851, and of the provisions of an act of the legislature of the State of Florida, entitled "An act to amend an act to incorporate the Florida Atlantic and Gulf Central Railroad Company," approved Jan'y 7th, 1853, the Florida Atlantic and Gulf Central Railroad Company was incorporated, and by that name the stockholders and members of said company, their successors and assigns, were authorized to construct and operate a railroad from some tributary of the Atlantic Ocean within the limits of the State of Florida, having a sufficient outlet to the ocean to admit of the passage of sea steamers, thence run-
1882 ning through the State in the most eligible direction to some point, bay, arm or tributary of the Gulf of Mexico west of the Appalachicola River, in West Florida, having a sufficient outlet for sea steamers.

That in accordance with the rights conferred by these acts said company constructed a railroad from the town of Jacksonville, in Florida, to the town of Lake City, in said State, and operated the same for a number of years, and surrendered their right to build any portion of the line west of Lake City. That in accordance with the authority granted by an act of the legislature of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in the State," approved Jan'y 6th, 1855, the said Florida, Atlantic and Gulf Central Railroad Company, for the purpose of constructing the railroad authorized by its charter, issued a large amount of bonds.

That under the provisions of said act, and the contract therein, and in the said bonds expressed by the company, these bonds constituted a first lien or mortgage on the said road-bed, iron, equipments, workshops, depots and franchises of the company.

That by said act and contract it was provided that on failure of the company to pay the sinking fund of one per cent. the trustees named in the act should take possession of and sell the said road 1883 and all the property of said company. That said company failed to comply with the requirements of the statute aforesaid, and the trustees took possession of the road and sold it in conformity with the statute and contract aforesaid, at public auction, on the 4th of March, 1868. That at said sale William E. Jackson and his associates became the purchasers of said road and other property of said company. That the said purchasers, by an act of the legislature of the State of Florida, approved July 29th, 1868, were vested with the powers and franchises granted to the Florida, Atlantic and Gulf Central Railroad Company by the act aforesaid, entitled "An act to amend an act to incorporate the Florida, Atlantic & Gulf Central Railroad Company," approved July 7th, 1853, and they and their successors and assigns were authorized and empowered to exerci*y*e the said powers and franchises in so far, and in so far only, as they app*ur*tained to the railroad constructed as 'foresaid by the Florida, Atlantic and Gulf Central Railroad Company from Jacksonville to Lake City, in Florida, and were made a body corporate and politic under the name of the "Florida Central Railroad Company." That the said road, if a public work at all, is, and has long been, a completed public work. That the Florida Central Railroad Company 1883½ under its charter, which charter is a contract between the individual stockholders upon the one side, and the State and corporation on the other side, is invested with no functions, rights or powers except such as pertain to a completed road, and that, in point of fact, the sole purpose for which the corporation exists, and for which the charter was granted, is the operation, control, management, and maintenance of a completed line of railroad, extending from Jacksonville to Lake City aforesaid. That the complainant is a stockholder in said Florida Central Railroad, and a member of said corporation, owning stock therein to the amount of $2,000, and of the value of $2,000.

Your orator further says that on the 20th of March, 1869, the Pensacola & Georgia Railroad Company was a corporation organized and existing under the laws of the State of Florida, with a line of railroad completed from Lake City, Florida, to Quincy, Florida. That on the day aforesaid the Tallahassee Railroad Company was a corporation existing under the laws of the State of Florida, with a line of railroad completed frem Tallahassee, Florida, to St. Mark's, Florida. That both of said railroad companies accepted and issued bonds under the provisions of an act of the legislature of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal im-

1884 provements in this State," approved Jan'y 6th, 1855, and became
subject to all the provisions of said act.

That on the 20th of March, 1869, the trustees of the internal improvement fund of the State of Florida, under the authority vested in them by the 3rd section of the said act of the legislature of the State of Florida, upon and because of a failure on the part of the said railroad companies to provide and pay the sinking fund, as required in said act, on the bonds issued by the said companies, duly sold a' public sale the aforesaid railroads, and all the property of each of said companies, of every kind, for the sum of $1,415,000; and at that sum one Franklin Dibble and his associates became the purchasers of the said railroads, and all the property of each of said companies. That the purchasers aforesaid paid to the said trustees $960,000 on account of the purchase money of said roads in 1st mortgage bonds of said companies (issued under the said act of January 6, 1855), at the par value thereof, and the said purchasers received credit therefor, but the remainder of said purchase money has not been paid, as your orator is informed and believes.

That one George W. Swepson, in consideration of a large and
1885 controlling interest in the stock of said roads, transferred and
conveyed to him by the said Franklin Dibble and the other persons associated with him in the said purchases, and by the consent of the said trustees of the internal improvement fund of Florida, acting by their duly appointed agents, and for other considerations received and promised to him, undertook to pay the remainder of said purchase money, and to do other things for the benefit of the purchasers and of the corporation which they, in conjunction with other persons acting with them, intended to be created into, by act of the legislature of Florida; and the said trustees, acting by their duly appointed agents, accepted said Swepson as their debtor in the place of the said purchasers.

That on the 24th of June, 1869, the legislature of Florida passed an act entitled "An act for the relief of Franklin Dibble, E. M. Cheeney, and their associates, purchasers of the railroad from Tallahassee to St. Mark's, and of the railroad from Quincy to Lake City, and incorporating the Tallahassee Railroad Company," by which the said purchasers and their associates were created a body corporate under the name of the Tallahassee Railroad Company and were vested with like
powers, franchises, & privileges as were granted to the Pensacola
1886 and Georgia Railroad Company and to the Tallahassee Railroad
Company by the acts incorporating said companies.

That on the 24th of June, 1869, by an act of the legislature of Florida approved on that day, entitled "An act to perfect the public works of the State," and by an act amendatory thereof approved June 28th, 1870, a corporation called the "Jacksonville, Pensacola and Mobile Railroad Company" was created, empowered to build and operate a railroad from Quincy to Pensacola in said State, and to consolidate its road or line of intended road with those of the before mentioned Tallahassee Railroad Company and of the Florida Central Railroad Company, and to exercise other powers and privileges.

That the Tallahassee Railroad Company already mentioned, and the said Jacksonville, Pensacola and Mobile Railroad Company, as the complainant is informed and believes, did, in the manner provided for by said last mentioned act, consolidate their said roads under the name of the latter company and redistributed the stock.

Your orator further says on information and belief that afterwards the said George W. Swepson, in consideration that the defendant Mil-

ton S. Littlefield would pay to the trustees of the internal improve-
ment fund of Florida the remainder of said purchase money of the
1887 said railroads, which remainder or any part thereof the said Swep-
son had not paid as he undertook to do, and for other consider-
ations undertaken by said Littlefield to be performed, he the said Swep-
son transferred and conveyed to the said Littlefield all of his, the said
Swepson property and interest in the said Tallahassee Railroad Com-
pany and in the said Jacksonville, Pensacola and Mobile Railroad
Company and in the Florida Central Railroad Company, in which last
mentioned company, as in the Jacksonville, Pensacola and Mobile Rail-
road Company, he, the said Swepson, had a majority of the stock in-
terest. And the property so transferred and conveyed was of value
much greater than the said unpaid purchase-money due to the trustees.

That, as complainant is informed and believes, said Littlefield received said transfer of interest with and upon the distinct promise made by him that he would out of his own resources pay such unpaid purchase-money. And when he received the said transfer and conveyance and always before that time he knew that the said Swepson had not paid said remainder of the purchase-money of the said railroads or any part thereof.

That the said Milton S. Littlefield was elected president of the
1888 Jacksonville, Pensacola, and Mobile Railroad Company at the
time of its organization and has continued to be the president
ever since, and that afterwards he was elected president of the Florida
Central Railroad Company and continued to be president thereof until
the 9th April, 1872, when, or about that time, one A'ron Barnett, of
Savannah, a citizen of the State of Georgia (and because he is a citizen
of the State of Georgia he is not made a party defendant hereto), was,
as complainant is informed, elected president of said railroad company.

That the Jacksonville, Pensacola and Mobile Railroad Company was granted by the acts incorporating it the right to build a railroad from Quincy, Florida, westward to the Alabama State line, and to aid it in doing so the governor of the State of Florida was by said acts directed to deliver to the president of said company coupon bonds of the State to an amount equal to $16,000 per mile for the whole length of railroad owned by the said company in exchange for 1st mortgage bonds of said company, and the said acts provided that the State should have a statutory lien on said road as security against loss.

That said acts also provide that the governor, for the purpose
1889 of further aiding said Jacksonville, Pensacola and Mobile Rail-
road Company to speedily construct its road, shall deliver to the
president of said company other coupon bonds of the State of Florida to
the amount of $16,000 per miles upon receiving from the president of
said company 1st mortgage bonds of like amount on every portion of
the line of railroad between Quincy and Jacksonville not exceeding one
hundred miles of any part of railroad between those points, which pro-
vision is contained in the 4th section of the said act approved Jan. 20th,
1870.

That as president of the Jacksonville, Pensacola and Mobile Railroad Company the said Littlefield received from the governor of Florida $4,000,000 of said bonds of said State, of which one million were issued in exchange for a like amount of bonds of the Florida Central Railroad Company, delivered to said governor by said Milton S. Littlefield, which one million of said bonds were issued under section 4 of the act of 1870, above referred to.

That it is claimed by said Littlefield, and by the governor of the State

of Florida, that the said million of dollars of bonds of the Florida Central Railroad Company, delivered to said governor, and in exchange for which the million of State bonds were delivered to said Little-
1890 field, constitute a lien upon the line of road, and the property owned by the said Florida Central Railroad Company, or are valid, legal, and subsisting obligations of said company to the State of Florida, which claim or pretense the complainant says is not true, because, as stated, the said bonds are a fraud on the corporation, and because their delivery for the purpose stated *if* the act of the corporation was and is ultra vires. And for the further reason that the million of bonds of the State of Florida, for which they were exchanged, and which they are held as security against loss from, are themselves fraudulent and void, as obligations of the State.

The complainant says further, on information and belief, that the said million dollars of bonds of the said Florida Central Railroad Company were deposited with the State of Florida, or the governor thereof, about the 4th Jan'y, 1871, without the consent or knowledge of the stockholders or directors generally of said company, or of the president thereof, and against the wishes of most of them, and of the president of the company, and that it was done with the knowledge and consent, and secretly, and by the contrivance of the defendant, Edward Houston,
1891 who was a director in said company, and of the said Milton S. Littlefield, who was also a director at the time of said company, and in fraud of said company, and of the stockholders and creditors thereof, and in violation of its charter and of the powers and privileges thereof, which never contemplated that said company should engage in the building of any other than its own line of road, or incur any obligations, or pledge its credit for any other than the purposes mentioned in the charter. And the complainant says that the State of Florida, acting through its officers, was a party to the fraud, and cannot allege ignorance of the law or of the facts, and of this violation of the law governing said corporation.

The complainant further says, on information and belief, that the said million dollars or thereabouts of State bonds, issued in exchange for bonds to same amount of the Florida Central Railroad Company, are deposited with, or are under the control, subject to the president of the Jacksonville, Pensacola and Mobile Railroad Company, of one John Collinson, of London, in the kingdom of England, and have not yet been sold, or if sold have not been delivered to purchasers.

1892 That in or about the 2nd October, 1871, the said Milton S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad company, executed a lease of said company's road for the term of two years, to the defendents, Converse L. Chase and Francis H. Flagg, for the purposes specified in said lease, among which were that they (the lessees) should receive the income and profits of said road, and apply the same to the payment of certain specified indebtedness thereof, and to the extension of said road westward.

That under said lease one I. H. Gardiner, one of these defendents, was appointed superintendent of said road, and that, under color of said lease, the said C. L. Chase, F. H. Flagg, and I. H. Gardiner assumed, with the consent of said Littlefield, its president, the exclusive management and control of the Florida Central Railroad, and received its income and applied it, as the plaintiff is informed and believes, to the payment of the debts of the Jacksonville, Pensacola and Mobile Railroad Company, and to the extension of said road westward, and to other purposes of said last-mentioned corporation.

That said lease provides that the proceeds, when realized, of
1893 the one million dollars of bonds before mentioned, issued by the
State of Florida, and received by said Littlefield, as president aforesaid, in exchange for a like amount of bonds of the Florida Central Railroad Company, deposited with the governor of said State, should be applied to the extension of said Jacksonville, Pensacola and Mobile Railroad westward, and not to legitimate purposes of the Florida Central Railroad Company.

The complainant further says, on information and belief, that the said C. L. Chase, F. H. Flagg, and I. H. Gardiner have not accounted to the Florida Central Railroad Company for the income and property of said road and company, and that the said M. S. Littlefield has made no report of his receipts and disbursements, or of his administration of said road and the affairs of said company while he was its president; and that during that time, and ever since, the income of said road has been diverted from the uses of said company, and applied partly to the use of the other company, of which said Littlefield was and is president, as
stated, and, in part, it has been misappropriated by said Littlefield
1894 to his own personal uses; and that, although the income of the
said road has greatly exceeded its legitimate expenses, no dividend has been declared, nor any report made to stockholders of the application of such income.

The complainant further says, on information and belief, that on or about the 30th November, 1871, the said Milton S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company (being at the same time president of the Florida Central Railroad Company), and the said C. L. Chase and F. H. Flagg, as trustees under the said lease, having the possession and management at the same time of the Florida Central Railroad, did, by their respective attorneys duly authorized thereto, and in fraud of the rights of stockholders of the Florida Central Railroad Company, enter into a written agreement with one L. P. Bayne and L. B. Bayne and Co., and one S. W. Hopkins & Co., of New York, and with one N. W. Woodfin, of North Carolina, representing the western division of the Western North Carolina Railroad Company, whereby it was provided among other things that out of the proceeds accrued and to accrue of $1,200,000 of bonds of the State of Florida, issued to the said Jacksonville, Pensacola and Mobile Railroad Company by said State under and for the purpose specified in the act
of the legislature of said State, already mentioned, which bonds
1895 were then in the hands or under the control of said John Collinson,
and of which the million of bonds issued upon the security of a like amount of bonds of the Florida Central Railroad Company as already stated were and are a portion, there should be paid to the said L. S. Bayrnes, for himself and L. P. Bayne & Co., $200.000, and to the said western division of the Western North Carolina Railroad Company, $300,000.

That none of the money above mentioned, provided by said contract to be paid, was for the payment of debts of the Florida Central Railroad Company, or inured, or was intended to inure in any manner, to the benefit of that corporation; but that on the contrary all the said sums of money were for the payment of debts of said Milton S. Littlefield as this complainant is informed and believes; and in entering into said contract the said Milton S. Littlefield and the said C. L. Chase and F. H. Flagg (the last named being also the secretary and treasurer of the Florida Central Railroad Company) committed a fraud upon the rights of stockholders in the Florida Central Railroad Company. The com-

plainant says further, on information and belief, that the per-
1896 formance of the terms of said contract has thus far been pre-
vented by the intervention of other parties having interests in said funds, but that the same may, unless prevented by this court, be still carried out.

The complainant further says, on information and belief, that said Littlefield and said Aron Barnett and John Scriven, a citizen of the State of Georgia, and other persons unknown to the plaintiff, have been for the last month and still are negotiating together to effect a lease of the Florida Central Railroad to said John Scriven, or to the Atlantic and Gulf Railroad Company, a corporation created by and existing under the laws of the State of Georgia, among the terms whereof, as complainant is informed and believes, it is designed that all the assets of said company, (the Florida Central Railroad Company), and the unexpended proceeds of bonds of the State of Florida issued to the Jacksonville, Pensacola and Mobile Railroad Company, as herein stated, and such of said bonds as may still be unsold shall be delivered to said lessee for the purpose of paying to the trustees of the internal improvement fund of the State of Florida the remainder of the purchase money still unpaid
of the Pensacola and Georgia and the Tallahassee Railroads, and
1897 for which not the Florida Central Railroad Company is responsi-
ble, but the individual purchasers, and especially the said Milton S. Littlefield, who took his stock with the charge that he should pay the said debt.

On information and belief, complainant says that another proposition which said persons are considering is that the said Scriven or the said Atlantic and Gulf Railroad Company shall lease for a long term of years the Florida Central Railroad, all of the funds and assets of the company now on hand, and the State bonds and proceeds thereof aforesaid being left with the said Milton S. Littlefield, to be applied by him to the payment of the unpaid purchase money of Pensacola and Georgia Railroad and the Tallahassee Railroad, due to the trustees of the internal improvement fund of Florida, and to other debts for which the Florida Central Railroad Company is in no wise liable.

On information and belief, complainant further says that said Littlefield or said Barnett, or both of them, are negotiating with said C. L. Chase, and others unknown, to make another lease of said road to him
and those acting with him, on terms similar to those already
1898 stated. And the complainant says that unless the belief hereby
prayed or a portion of it is granted, one of the said propositions or some other equally injurious to the stockholders of said road may be adopted and carried into effect.

The complainant further says, on information and belief, that the defendants, M. D. Papy or Edward Houstoun, or both of them, also claim to hold or in some way have control over a portion of the stock in the Jacksonville, Pensacola and Mobile Railroad Company, or in the Florida Central Railroad Company, or in both of them, which said Littlefield claims to own, and that said Papy or Houstoun, or both, claim the right to vote and do vote the said stock, or some of it. That as complainant is informed said Papy or Houstoun, or both of them, claim to hold or control said stock, or a portion of it, by virtue of and for the performance of some trust unknown to complainant, but which he is informed by said Littlefield has no existence; and the complainant is further informed by said Littlefield that all such pretence of said Papy and Houstoun are without foundation.

The complainant further says he is informed that said M. D. Papy or

Edward Houstoun, or both of them, under some trust unknown
1899 to complainant, holds or controls a number of the first-mortgage
bonds of the Pensacola and Georgia Railroad Company, or of the Tallahassee Railroad Company, or of both of them, which are claimed to be the property of said Littlefield, or held for his benefit, or in which he has some interest, legal or equitable.

And the complainant further says, on information derived from said Littlefield, that he, the said Littlefield, has in his possession or control, or claims to be the owner of a large number of said first-mortgage bonds.

And the complainant further says, on information and belief, that a large portion of the railroad stock and bonds held by said Papy, Houstoun and Littlefield, as herein stated, was purchased and paid for, or contracted to be paid for, by said Littlefield with money belonging to the Florida Central Railroad Company, directly or indirectly; and that all stock of the Florida Central Railroad Company so purchased and paid for, or contracted to be paid for, has become extinct, or should be divided among the stockholders pro rata; and such stock, as well as stock in any other corporation; and all bonds and other property so
paid for, or contracted to be paid for, belong to said corporation.

1900 And the complainant says further that if the said bonds and
stock belong justly to the said Littlefield, they and all other property owned by him should be subject to payment of demands of the said Florida Central Railroad Company, and of the stockholders whose money and assets he has squandered and misapplied and converted to his own use.

And the complainant says further, on information and belief, that the said Littlefield, Papy and Houstoun vote the stock so held by them, but really owned by the company, and thereby control the management of the company; that they make nominal transfers of small amounts of stocks to such persons owning none or an insufficiency thereof as they want elected directors, in order to give them an apparent qualification, and by their votes cause such persons to be elected directors, when in fact they are not qualified to act as such.

The complainant further says that said M. S. Littlefield has judgments against him in the State of Florida to a very large amount, namely, to nearly if not quite $100,000, unsatisfied, and that except the
said stock in said R. R. companies and said bonds, he has not in
1901 this State, or, so far as complainant is informed, elsewhere any
visible property except what is exempt by law from levy and sale; and even of that nearly all of it is mortgaged for its full value. And on information and belief, the complainant therefore says that said Littlefield is utterly insolvent.

The complainant further says that the trustees of the internal improvement fund of Florida have commenced suit against the Jacksonville, Pensacola and Mobile Railroad Company and the Florida Central Railroad Company and other defendants to recover the sum of $472,000 unpaid purchase money due as herein stated, and interest thereon from the day of the sale of said road, and have prayed for and obtained the appointment of a receiver of the said roads and of the property of said companies, and have prayed for and obtained an order that said receiver take the absolute and exclusive control of not only the Jacksonville, Pensacola and Mobile Railroad, but also of the Florida Central Railroad, and the receiver, who is Jonathan C. Greeley, has so taken possession and control of said roads. And the said trustees seek to have the net earnings not only of the Jacksonville, Pensacola and Mo-

bile Railroad, but also of the Florida Central Railroad, go into
1902 the hands of said Greeley and be applied, under the order of the
court, to the payment of the said purchase money still unpaid,
and have obtained an order to that effect. The complainant further says that said M. S. Littlefield and said Aron Barnett, in violation of their duty as president of the Florida Central Railroad Company, and in disregard of the interest of said company and of the stockholders therein, have permitted and still permit said receiver to take and hold possession of said railroad, and have, as complainant is informed, made no attempts to recover or to defend said suit. All which actings and doings and pretences of the defendants are contrary to equity and tend to the injury of your orator in the premises.

To the end therefore that the complainant may have the relief, which can be obtained only in a court of equity, and that the defendants may answer the premises, but not under oath or affirmation, the benefit whereof is expressly waived by the complainant. And that the delivery of the one million dollars of bonds of the Florida Central Railroad
Company to the governor of the State of Florida in exchange for
1903 one million dollars of the State bonds may be declared to be a
fraud perpetrated upon said company and the stockholders
therein, and that said bonds of the company may be declared to have no binding legal validity as obligations of said company, and that their redelivery to said company may be decreed.

And that the defendant, Milton S. Littlefield, may be decreed to render a full and true statement in detail of his receipts and expenditures as president of the Florida Central Railroad Company, and of those of his agents from the income and assets of the said company, and a statements of the considerations upon which each expenditure was made.

And that he may be required to surrender all stock in the Jacksonville, Pensacola and Mobile Railroad Company and in the Florida Central Railroad Company, and all railroad bonds and other property purchased or paid for, in whole or in part, directly or indirectly, with proceeds of the State bonds of Florida issued in exchange for bonds of the Florida Central Railroad Company, or upon the faith of such bonds, or with receipts or assets of said company. And that such purchases may be decreed to inure to the benefit of said company, and that such stocks, bonds, and other property may be decreed to be delivered for safekeep-
ing, until the final orders of the court, to a receiver to be ap-
1904 pointed for the purposes of this suit.

And that the defendants, M. D. Papy and Edward Houstoun, may be required to turn over to such receiver all stocks, bonds, and other property purchased, wholly or in part, directly or indirectly, with income or assets of the Florida Central Railroad Company or with proceeds of or upon the faith and credit of bonds of the State of Florida issued in exchange for bonds of the Florida Central Railroad, as herein stated, or which, not being purchased in that manner, may belong to the defendant, Milton S. Littlefield, or in which he may be interested.

And that in the meanwhile the said Littlefield, Houston, and Papy may be enjoined from disposing of, pledging, or in anywise changing the status of said bonds, stock, or other property; and that the said Littlefield may be decreed to surrender to said receiver for safekeeping until the final order of the court all other stocks, bonds, and property which he, the said Littlefield, may have or be interested in, and that in the mean while he may be enjoined from selling, pledging, or otherwise disposing of or changing the status thereof.

And that the defendant’, C. L. Chase, F. H. Flagg, and J. H.

1905 Gardiner, may be required to render a full and true account of the receipts from and expenditures on account of the Florida Central Railroad Company received and disbursed by them or either of them, and a statement of the sources of such receipts and of the considerations and purposes of such expenditures, and to pay to said receiver all money received on account of or from the income or assets of said company and not expended legitimately and legally for the sale and exclusive use, benefit, and advantage of said company.

And that the said Milton S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, and his successors, and C. L. Chase and F. H. Flagg, as trustees, may be enjoined from receiving any of the proceeds of State bonds of Florida issued in exchange for bonds of the Florida Central Railroad Company, and from expending any of such proceeds that may be in or may come to their hands or under their control, and from using or disturbing said bonds.

And that the said Littlefield and the said Florida Central Railroad Company be enjoined from leasing the Florida Central Railroad, or any part of it, to John Screven and his associates, or to the Atlantic and Gulf Central Railroad Company, or to any other person or corporation, until the ownership of the stock herein charged to be the property of the Florida Central Railroad Company, but held and voted by
1906 said Littlefield, Papy, and Houstoun without authority, be determined by the court, and until duly-qualified directors and other officers of said company have been elected by the votes of holders of a majority of the legal bona-fide shares of stock, to be ascertained and determined by the court; and that, under all circumstances, the said defendants be enjoined from leasing said road on any terms violative of the rights of stockholders or creditors, and more especially that they be enjoined from making any contract of lease by which it may be agreed that any portion of the bonds or proceeds thereof of the State of Florida, issued to the president of the Jacksonville, Pensacola and Mobile Railroad Company in exchange for bonds of the Florida Central Railroad Company, shall be applied to paying any debts of said Littlefield, or any money due to the trustees of the internal improvement fund of Florida, or to the extention or repair of the Jacksonville, Pensacola and Mobile Railroad, or to any other than legitimate purposes of the said Florida Central Railroad Company. And that the trustees of the internal improvement fund of Florida (defendants herein named) and their successors may be enjoined from proceeding in the suit or upon their alleged cause of action against the Florida Central Railroad Company.

1907 And that the Florida Central Railroad and all the property of said company may be put in the custody of a receiver to be appointed for the purposes of this suit.

And that a receiver or receivers may *may* be appointed with the usual and necessary powers, and that they may be instructed and empowered as herein prayed.

And that your orator may have such other and further relief as the nature of his case may require.

May it please your honor to grant not only a writ of injunction issuing out of and under the seal of this court, to be directed to the said Florida Central Railroad Company and to the said Milton S. Littlefield, Converse L. Chase, Francis H. Flagg, Edward Houstoun, and Mariano D. Papy, and to the said Milton S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, and to his successors in office, and to the said Samuel T. Day, lieutenant-governor of the

State of Florida, who claims to be the acting governor thereof, Harrison Reed, governor of the State of Florida, Horatio Bisbee, jr., who claims to be the attorney-general of said State, Robert H. Gamble, the comptroller of said State, Simon B. Conover, the treasurer of said State, and John S. Adams, the commissioner of lands and immigration 1908 of said State, composing the trustees of the internal improvement fund of the State of Florida, and their successors in office, to restrain them, their agents, and servants, as herein prayed, but also a writ of subpœna to be directed to the said Florida Central Railroad Company, the said Jacksonville, Pensacola and Mobile Railroad Company, the said Milton S. Littlefield, Mariano D. Papy, Edward Houstoun, Converse L. Chase, Francis H. Flagg, and I. H. Gardiner, and to the said Harrison Reed, governor of Florida, Samuel T. Day, lieutenant-governor of Florida, who claims to be the acting governor thereof, Horatio Bisbee, jr., who claims to be the attorney-general of Florida, William Birney, who also claims to be the attorney-general of said State, Robert H. Gamble, the comptroller of said State, Simon B. Conover, the treasurer of said State, and John S. Adams, the commissioner of lands and immigration of said State, who, as such officers, compose the board of trustees of the internal improvement fund of the State of Florida, thereby commanding them and each of them at a certain time to appear before this court and answer the premises, and to stand to and perform such further orders and decrees therein as to your honors shall seem meet.

And your orator will ever pray, &c.

E. M. L'ENGLE,
Complainants' Solicitor.

1909 Edward M. L'Engle, being sworn, says that he has read the foregoing bill, and is familiar with the matters therein alleged, and that the statements therein which are positively averred are true, and those which are averred upon information and belief he believes to be true.

C. M. L'ENGLE.

Sworn to and subscribed before me the 1st day of May, 1872.

J. E. TOWNSEND, *Cl'k.*

Let an injunction issue in accordance with the prayer of this bill.
February 24th, 1873.

PHILIP FRASER, *Judge.*

(Endorsement:) Filed May 1st, 1872. J. E. Townsend, cl'k.

1910 The President of the United States of America, to the Florida Central Railroad Company, the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, Mariano D. Papy, Edward Houstoun, Converse L. Chase, Francis H. Flagg, I. H. Gardner, Harrison Reed, governor of Florida; Samuel T. Day, lt. gov., claiming to be the acting governor of Florida; Horatio Bisbee, jr., who claims to be the attorney-general of Florida; Robert H. Gamble, the comptroller of Florida; Simon B. Conover, the treasurer of Florida, and John S. Adams, the commissioner of lands and immigration of Florida, who, as such officers, are the trustees of the internal improvement fund of Florida, citizens and residents of the State of Florida, greeting:

You are hereby commanded and strictly enjoined that, laying aside

all business, and notwithstanding any excuse, that you be and appear before the judge of the circuit court of the United States, 5th circuit and northern district of Florida, on the first Monday in June, 1872, being the third day thereof, next, wherever the court shall be, to answer to a bill of complaint exhibited against you in the said court by Francis P. Porcher, a citizen and resident of the State of South Carolina, and to do further and receive what said court shall have considered in that behalf, and this you are not to omit under a penalty upon you of
1911 one thousand dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in said district and circuit, and the seal of said court this first day of May, A. D. one thousand and eight hundred and seventy-two.

J. E. TOWNSEND, *Clerk.*

The defendants are to enter their appearance in the above entitled suit on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.

1912 (Endorsements:)

Served a copy of the within subpœna upon Milton S. Littlefield, individually, and a copy upon Milton S. Littlefield, as president of the J., P. & M. R. R. Co., at Jacksonville, in the northern district of Fla., this the 1st day of May, A. D. 1872.

S. CONANT,
U. S. Marshal.

Served copies of the within subpœna on Mariano D. Papy, managing director Fla. C. R. R. Co., and Edward Houstoun, at Tallahassee, in the northern dist. of Fla., this the 4th of May, 1872, and on F. H. Flagg, at Tallahassee, in the northern district of Florida, this the 6th day of May, 1872.

SHERMAN CONANT,
U. S. Marshal,
P'r S. L. TIBBITTS,
Dep't U. S. M.

Service, 5, 10.00; 166 miles @ 6c. 9.96—19.96.

1913 In the United States circuit court, 5th circuit, northern district of Florida.

Service accepted in behalf of the trustees of internal imp. fund of Florida.

May 2d, 1872.

H. BISBEE, JR.,
Att'y Gen'l.

Subpœna in chancery issued 1st May, 1872. Returnable 3rd June, 1872.

Returned and filed May 9th, 1872.

J. E. TOWNSEND, *Cl'k.*

1914 In the U. S. circuit court, 5th circuit, northern dist. of Florida.
In chancery.

FRANCIS P. PORCHER,
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY; The Jacksonville, Pensacola and Mobile Railroad Company; Milton S. Littlefield, Mariano D. Papy, Edward Houstoun, Converse L. Chase, Francis H. Flagg, I. H. Gardiner, Harrison Reed, governor; Samuel T. Day, lt. gov. (claiming to be acting gov.); Horatio Bisbee, claiming to be att'y gen'l; Robert H. Gamble, comptroller; Simon B. Conover, treasurer, and John S. Adams, commissioner of lands and immigration of the State of Florida, trustees of the int. imp. fund of Florida.

To the Florida Central Railroad Company, Milton S. Littlefield, Mariano D. Papy, Edward Houstoun, Converse L. Chase, Francis H. Flagg, Harrison Reed, Samuel T. Day, Horatio Bisbee, Robert H. Gamble, Simon B. Conover, and John S. Adams, defendants above named:

Take notice that this honorable court will be moved for and on behalf of the plaintiff on Thursday, the ninth day of May, 1872, at Jack-
1915 sonville, Florida, that you and each of you may be severally and respectively restrained and enjoined until the further orders of the court in the manner prayed by complainant in his bill filed in this cause.

Jacksonville, Florida, May 1st, 1872.

E. M. L'ENGLE,
Solicitor for Complainant.

(Endorsements:)

Served a copy of the written notice upon M. S. Littlefield, prest. of the J., P. & M. R. R. Co., at Jacksonville, within the northern dist. of Fla., this the first day of May, A. D. 1872.

S. CONANT,
U. S. Marshal.

Served copies of the within notice on Mariano D. Papy & M. D. Papy, managing director Fla. Central Railroad Co., and Edward Houstoun, at Tallahassee, in the northern dist. of Florida, this the 4th day of
1916 May, 1872, and on F. H. Flagg, at Tallahassee, Fla., in the northern dist. of Fla., this the 6th day of May, 1872.

SHERMAN CONANT,
U. S. Marshal,
Pr. S. L. TIBBITTS, *Dep'ty.*

Service, 4, 8.00; 166 miles @ 6 c., 9.96—$17.96.

1917 (Indorsed:) U. S. circuit court. Francis P. Porcher v. The Florida Central Railroad Company, The J., P. & M. R. R. Co., M. S. Littlefield, E. Houstoun, The Trustees of the Int. Imp. Fund of Fla., et al. Notice of application for injunction. Filed May 9th, 1872. J. E. Townsend, clk.

1918 In the United States circuit court, fifth circuit, northern district Florida. In chancery.

FRANCIS P. PORCHER, COMPLAINANT,
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY, The Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, Edward Houstoun. Mariano D. Papy, Converse L. Chase, Francis H. Flagg, I. H. Gardiner, and Harrison Reed, governor of the State of Florida; Samuel T. Day, lt. gov'r, claiming to be the acting gov'r of Florida; Horatio Bisbee, jr., claiming to be the att'y gen'l of Florida; Robert H. Gamble, the comptroller of Florida; Simon B. Conover, the treasurer of Florida, and John S. Adams, the commissioner of lands and immigration of Florida, who, as such officers, are the trustees of the internal improvement fund of Florida, defendants.

And now comes the complainant, by E. M. L'Engle, his solicitor, and
it appearing that the subpœna in said cause has been duly served upon
the defendants The Jacksonville, Pensacola and Mobile Railroad Com-
pany, Milton S. Littlefield, Edward Houstoun, Mariano D. Papy, &
Francis H. Flagg, and that the trustees of the internal improve-
1919 ment fund of Florida duly accepted service of said subpœna by
H. Bisbee, attorney-general of said State, and att'y of said trustees, and it further appearing that the time allowed by the rules and practice of the said court has long since elapsed within which said defendants might plead answer or demur to said bill, and that no plea, answer, or demurrer has been filed by said defendants, or either of them, so served with subpœna or so accepting service, and that said defendants are in default, it is therefore ordered and decreed that the material allegations of said bill be taken and held as confessed by said defendants so in default.

Nov. 12th, 1872.

E. M. L'ENGLE,
Complainant's Solicitor.

1920 (Indorsed:) United States cir. ct., 5th cir., N. D. Florida. In chancery. F. P. Porcher v. J., P. & M. R. R. Co., M. S. Littlefield et al., decree pro confesso. Filed Nov. 12th, 1872. J. E. Townsend, clk. E. M. L'Engle, sol. for compl't.

1921 In the United States circuit court, fifth circuit, northern district of Florida. In chancery.

To the honorable the judge of said court:

Francis P. Porcher, of Charleston, a citizen of the State of South Carolina, by E. M. L'Engle, his attorney, in behalf of himself and of all others, except the defendants hereto, being stockholders of the Florida Central Railroad Company, who shall, in due time, come in and seek relief by and contribute to the expenses of this action, brings this his amended bill of complaint against the Florida Central Railroad Company, a corporation created by and existing under the laws of the State

of Florida, having its principal place of business in the district aforesaid, a citizen of the State of Florida, and the Jacksonville, Pensacola and Mobile Railroad Company, a corporation existing under and created by the laws of the State of Florida, having its principal place of business in the district aforesaid, a citizen of the State of Florida, and against Milton S. Littlefield, Mariano D. Papy, Edward Houstoun, Converse L. Chase, Francis H. Flagg, J. H. Gardiner, the governor of the State of Florida, the attorney-general of the State Florida, the
comptroller of said State, the treasurer of said State, & the
1922 commissioner of lands and immigration of said State, who, as
such officers, are the trustees of the internal improvement fund of Florida, all of which defendants are citizens of the State of Florida, and residents of the northern district thereof, and thereupon your orator complains and says:

That on the day of , 1872, your orator filed in said court his original bill of complaint against the said defendants, to which bill this is an amendment and to which your orator begs leave to refer, in which bill your orator sets forth, among other things, the incorporation of the Florida, Atlantic and Gulf Central Railroad Company, and of the Pensacola and Georgia Railroad Company, and of the Tallahassee Railroad Company, and the issue of bonds under the internal improvement act of Florida by said corporations, and the failure of said corporations to meet the requirements of said act and their seizure and sale by the trustees of the said fund, and the subsequent creation of the purchasers of the Florida, Atlantic and Gulf Central Railroad and other persons, into a corporation under the name of the Florida Central Railroad Com-
pany, and the subsequent creation of the purchasers of the Pen-
1923 sacola and Georgia Railroad and the Tallahassee Railroad and
other persons, into a corporation, under the name of the Tallahassee Railroad Company; and the creation of a corporation known as the Jacksonville, Pensacola and Mobile Railroad Company and the consolidation of that company with the Tallahassee Railroad Company last mentioned; and the passage by the legislature of the State of Florida of an act providing, among things, for the issuing to the president of the said Jacksonville, Pensacola and Mobile Railroad Company of coupon bonds of the said State, for the uses and purposes and under the terms and conditions stated in the said act; and the reception by the said president of one million of said bonds in exchange for a like amount of bonds of the said Florida Central Railroad Company, and that said bonds of the said Florida Central Railroad Company were deposited with the governor of the State of Florida and exchanged for the said bonds of the State, in fraud of the said corporation, and of the stockholders and creditors thereof, by the contrivance of the defendants Milton S. Littlefield and Edward Houstoun; and that the said Milton S.
Littlefield had misapplied the income and assets of the Florida
1924 Central Railroad Company and had perverted them to his own
use and had purchased stocks and bonds therewith which he claimed as his own, some of which the defendants Papy and Houstoun held in trust, the terms and nature of which the plaintiff was not particularly informed of, but which they claim was for the benefit of one or both of them.

Your orator now further shows by way of amendment (no answer, plea, or demurrer to the said original bill having been filed) that besides the misapplication of funds of the said Florida Central Railroad Company by the said Littlefield, stated in said original bill, the said Littlefield has, as your orator is informed and believes, perverted others of said funds from their legitimate use; that is to say, he paid out of said funds, as your orator is informed and believes, to the defendant Edward Houstoun more than one hundred and fifty thousand dollars (the exact sum being unknown to your orator) in payment for said Houstoun's stock-interest in said Florida Central Railroad Company, and for said Houstoun's bonds of the Pensacola and Georgia Railroad Company, and Tallahassee Railroad Company (said bonds amounting, at par value, to about one hundred thousand dollars), and for other considerations, uses, and purposes which did not accrue to the benefit of said Florida Central Railroad Company.

1925 And your orator further says, on information and belief, that said Houstoun, when he received said money, knew that it was funds of the said Florida Central Railroad Company obtained by means of its bonds fraudulently issued as aforesaid, and that said funds were unlawfully diverted by the payments so made to him.

Your orator further shows, by way of amendment and on information and belief, that the million of dollars of bonds of the Florida Central Railroad Company, in the said original bill mentioned, were originally executed for the purpose of being exchanged with the State of Florida for the State's bonds, but that afterwards the authority to issue them was rescinded and the said bonds recalled, and that they were placed in the hands of said Edward Houstoun, one of the defendants, for the purpose of being returned to said company and cancelled, and the said Houstoun accepted and held them with such trust. But that the said Houstoun violated his trust and obligation, and surrendered said bonds to the president of the Jacksonville, Pensacola and Mobile Railroad Company, or to one of his agents (or to some other person in his interest), for the purpose of having said bonds exchanged with the State of Florida for the State's bonds, which exchange was effected.

1926 And your orator further says, by way of amendment, that the said Houstoun surrendered said bonds without the consent of the said company and in violation of the known wishes of said corporation, and that he did it fraudulently and to subserve his own pecuniary advantage; and that he received thereby from said M. S. Littlefield, president of the Jacksonville, Pensacola and Mobile Railroad Company, a large sum of money—to wit, more than one hundred thousand dollars.

And your orator, submitting this amendment to his bill, prays as he has heretofore done therein, and prays also and further, that the said Edward Houstoun may be decreed to pay to the said Florida Central Railroad Company all moneys received by him as above stated, which were funds of the said corporation or to which it is equitably entitled, with interest on the same. And your orator prays also, that the said Edward Houstoun may be decreed to pay to the said Florida Central Railroad Company one million dollars *of* such other sum of money as may reimburse or indemnify the said corporation for or against the said million of dollars of bonds wrongfully put forth as aforesaid by the said Houstoun. And that your orator may have such other and further relief as may be equitable.

And your orator will ever pray, &c.

E. M. L'ENGLE,
Complainant's Solicitor.

1927 Edward M. L'Engle, being sworn, says that he has read the foregoing amended bill of complaint and is familiar with the matters therein alleged, and that the statements therein which are positively averred are true, and those which are averred upon information and belief, he believes to be true.

E. M. L'ENGLE.

Sworn to and subscribed before me, the 27th day of January, 1873.

I. E. TOWNSEND, *Cl'k.*

(Indorsed:) U. S. circuit court, N. district of Florida. Francis P. Porcher et al. vs. The Fla. Central R. R. Co. et al. Amended bill of complaint. Filed Jan'y 31st, 1873. I. E. Townsend, cl'k.

1928 The President of the United States of America to Converse L. Chase, citizen and resident of the State of Florida, greeting:

You are hereby commanded and strictly enjoined that, laying aside all business and notwithstanding any excuse, that you be and appear before the judge of the circuit court of the United States, 5th circuit and northern district of Florida, on the first Monday in April, being the seventh day thereof, next, wherever the court shall be, to answer to a bill of complaint exhibited against you and other defendants in the said court, by Francis P. Porcher, a citizen and resident of the State of South Carolina, and to do further and receive what said court shall have considered in that behalf; and this you are not to omit under a penalty upon you of one thousand dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville,
1929 in said district and circuit, and the seal of said court, this 14th day of February, A. D. one thousand eight hundred and seventy-two.

[SEAL.] I. E. TOWNSEND, *Cl'k.*

The defendant, C. L. Chase, is to enter his appearance in the above-entitled suit on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.

(Endorsements:)

Came to hand Feb'y 14th, 1873.

Served a true copy of the within s'p'a upon Converse L. Chase, at Jacksonville, within the northern dist. of Florida, this the 14th day of Feb'y, A. D. 1873.

S. CONANT,
U. S. Marshal.

1930 Filed March 1st, 1873.

I. E. TOWNSEND, *Cl'k.*

Subpœna in chancery. Issued February 14th, 1873. Returnable April 7th, 1873.

Returned and filed Feb'y 14th, 1873.

I. E. TOWNSEND.

Service, $2.00

1931 The separate answer of Mariano D. Papy to the bill of complaint filed in the U. S. circuit court for the northern district of Florida, by Francis P. Porcher, of Charleston, a citizen of the State of South Carolina, agains' Edward Houstoun, The Jacksonville, Pensacola and Mobile Railroad Company, said Mariano D. Papy and other defendants.

This defendant, saving and reserving unto himself all and all manner of benefit of exception to the manifold errors and irregularities in said bill contained, and insisting upon the several special matters in this answer contained, and tha the may have the same benefit thereof as if he had pleaded the same, or had demurred to said bill, and insisting that there is no equity in said bill against this defendant, and that he is not bound to answer the same, nevertheless for answer unto so much of said bill as he is advised it is in any wise material for him to answer unto, answering, says that he does not hold, and does not claim to hold, any stock in the Jacksonville, Pensacola and Mobile Railroad Co., or to have any control over any portion of the same; that he does not hold, and does not claim to hold or control, any stock in the Central Railroad Company except ten shares, which he understands 1932 the minute-book of said company states as being in his name, but which he does not claim to own, but which it is true he has voted at the request of M. S. Littlefield, but the stock which defendant supposes to be referred to in said bill of complaint he does not hold or claim to hold.

In regard to this stock and the bonds of the Pensacola and Georgia and Tallahassee Railroad Company mentioned in said bill of complaint, defendant says that on the 12th day of April, 1871, an arrangement was made between Edward Houstoun and S. W. Hopkins, representing the firm of S. W. Hopkins & Co., to the effect that the certificates of stock held by said Houstoun, and standing in the names of Edward Houstoun, Edward Houstoun, guardian for Eliza V. Houstoun; Edward Houstoun, guardian for Claudia Houstoun, James S. Houstoun, amounting to about four thousand three hundred and seventy shares, be deposited with defendant, who was to hold the same, and not to be delivered by him to any person unless directed to do so by M. S. Littlefield and S. W. Hopkins jointly, or unless directed to be delivered to M. S. Littlefield by said S. W. Hopkins, or to be delivered to S. W. Hopkins by M. S. Littlefield.

It was also agreed that the one hundred and three thousand dollars of the first-mortgage bonds of the Pensacola and Georgia Railroad Company, and of the Tallahassee Railroad Company, which 1933 said Houstoun had theretofore held as security for a draft in his favor given by M. S. Littlefield, president, &c., on S. W. Hopkins & Co. dated May 13th, 1870, be also deposited with this respondent to be delivered only on the same terms and directions as declared with respect to the delivery of the said stock certificates aforesaid.

It was agreed in addition that the delivery of said certificates and said bonds was not to be made unless in addition to the requirements aforesaid, the suit instituted in New York against said Edward Houstoun and others, by the Western Division of the Western North Carolina Railroad Company, claiming the stock represented by certificate No. 80, for three thousand one hundred and ten shares, and the suits brought against said Edward Houstoun by T. L. Clingman in Pennsylvania and New Jersey, and by Rogers and Bayne and L. P. Bayne, in New York, shall have been dismissed.

Said Houstoun by said agreement delivered to said S. W. Hopkins three certificates of stock of said Florida Central Railroad Company, one in name of Edward Houstoun for twenty shares, one in name of James M. Baker for ten shares, one in name of George R. Foster for ten shares; said certificates were delivered to said Hopkins in order that they might be transferred to enable persons to become directors in said Florida Central Railroad Company, but the same were to be held 1934 by whomsoever said Hopkins directed as part of the securities growing out of the advance made by said Hopkins & Co., to take up the draft in favor of said Houstoun, given by said Littlefield, and the new certificates in lieu thereof were likewise to be delivered to this respondent, and were to be subject to the joint direction of said Hopkins & Littlefield, or of either of them in favor of the other as prescribed in regard to the other certificates and bonds deposited with respondent as aforesaid. And this respondent annexes hereto a copy of said agreement made by said Houstoun and said Hopkins as aforesaid, *hereto* marked Exhibit A, which he prays may be taken and considered as a part here*to*, subject to any corrections of any mistakes that may occur in copying the same.

Further answering, defendant says that afterwards, by a paper dated Tallahassee, April 13th, 1871, addressed to Edward Houstoun, Savannah, Geo., and signed by said M. S. Littlefield, said Houstoun was thereby authorized to deliver to S. W. Hopkins & Co. the stock in the Florida Central Railroad Company, the bonds of the late Pensacola and Georgia Railroad, and Tallahassee Railroad bonds and drafts and
notes and contracts held by him as collateral for the payment of
1935 a draft drawn by him on S. W. Hopkins & Co., due July 15th,
1870, $\$163,020\frac{70}{100}$ upon the payment to him of that amount
with interest. That this order by M. S. Littlefield on firm of said S. W. Hopkins & Co. was intended as was supposed to be, in compliance with that part of the conditions upon which said stock and bonds were deposited, which was to indicate to whom the delivery was to be made when the other conditions, which were the important ones so far as said Houston was concerned, were fulfilled.

Further answering, defendant says that afterwards said letter or order was presented to said Houstoun and to this respondent, with a request that some sort of acknowledgment should be made, and that on the 20th day of May, 1871, the date when the same was presented by said S. W. Hopkins & Co., or in their behalf, said Houstoun signed a paper, as well as respondent recollects, written across or on the back or foot of said order to the following effect: "The within named documents and securities having been deposited with M. D. Papy, subject to certain conditions, he is hereby directed to surrender the same when the conditions here alluded to are complied with, but there are no notes or con-
tracts deposited or held by me as collateral." And on the same
1936 day this respondent signed to the following effect: "I hereby
acknowledge the possession of the within named documents
which are to be returned upon the compliance with the conditions mentioned or referred to by E. Houstoun above, and the surrender of this order and of the acknowledgement given by me," excepting there were no notes or contracts deposited; and respondent annexes copies thereof, marked Exhibit B, which he prays may be considered as part of this answer. That both the order aforesaid with the endorsements aforesaid, and the acknowledgement previously given by respondent were to be returned before said bonds and stock certificates and other papers deposited were to be delivered up, as well as the fulfillment of the conditions of said deposit.

Respondent, further answering, says he understood the deposite aforesaid was made for the special benefit of said Houstoun, and for his protection against the suits mentioned as having been instituted against him in New York, New Jersey, and Pennsylvania. Further answering respondent says that so far as he is informed and believes, none of said suits have been dismissed but are still pending, and therefore the

1937 important condition of the delivery of said stock certificates and bonds, &c., has not yet been fulfilled.

Further answering, respondent says that he has been informed and believes that since said order on said Houstoun said Littlefield gave an order on said S. W. Hopkins & Co. in favor of A. Barnett for the stock aforesaid which was to be surrendered to said Hopkins & Co. upon the discontinuance of certain suits then pending against said Houstoun and when they were paid for certain advances, which was on the 24th day of May, 1871. "accepted" by said S. W. Hopkins & Co. And respondent annexes hereto a copy of said order (the original of which he has never seen) as handed to him, marked Exhibit C, and prayed to be taken as part hereof.

Further answering, defendant says that he has lately been informed that Rogers, of New York, claims in some form to be entitled to have delivered to him the said bonds and stock certificates upon some sort of transfer or assignment of the same to him, but to what extent and for what purpose defendant cannot answer.

Further answering, this defendant says that he has not now
1938 nor has he had since July, 1872, possession or control of said
bonds or stock certificates, except as hereinafter mentioned; that in July last, being in the city of Savannah (where said bonds and stock certificates to the amount of four thousand three hundred and seventy shares had from the first been deposited for safe keeping), on his way to Upper Georgia, and with the possibility of his going North, suit was instituted against him by said Edward Houstoun to prevent the said bonds and stock certificates from being removed from said city of Savannah, as he alleges, and a writ of ne exeat was obtained against defendant, who was required either to replevy the same by giving bond, or to surrender them according to the order of the court; that defendant did not feel authorized or required to give so large a bond as would have been necessary to replevy the same, and he does not know that he could have obtained the necessary sureties. He therefore refused to replevy, and the court or the judge thereof thereupon ordered that the said bonds and certificates of stock be delivered by the sheriff to the cashier of the Central Railroad and Banking Company, to be by him deposited
in the vault of the said bank and there to be safely kept subject
1939 to the future order of the court, and that thereupon the respond-
ent be discharged; that said bonds and stock certificates were accordingly so deposited by the sheriff, as respondent is informed and believes; that since the date of said order, which respondent could not disobey, he has had no control or possession of said bonds and stock certificates which had been so as aforesaid in the city of Savannah, and was entirely disconnected therewith, and was and is in no wise responsible for the same.

And respondent annexes hereto a copy of said order of the judge of the superior court of Chatham County, marked Exhibit D, which he prays may be taken and considered as a part hereof, and he duly notified said S. W. Hopkins & Co. of what had been done by said order.

Further answering, defendant says the stock aforesaid does not stand and never has stood in his name, and he does and did not claim the right to vote it. He could only vote it as proxy for said Houstoun, if authorized by him to do so. Respondent does not recollect that he ever voted said stock even as proxy or by authority of said Houstoun, but that
said Houstoun voted it himself at one stockholders' meeting, and
1940 Patrick Houstoun by proxy voted it at a preceding stockhold-
ers' meeting.

Further answering, says that the forty shares of stock, or the certificates thereof, or those afterwards given in lieu of the originals which were in names, respectively, of Edward Houstoun for twenty shares, and of James M. Baker for ten shares, and of George R. Foster for ten shares, were not embraced in said order of the judge of the superior court of Chatham County, Georgia.

This respondent denies that he has ever made nominal transfers of any amount of the stock aforesaid for any purpose, nor does this defendant believe any transfer of any portion of said stock has been made by anybody since said agreement between said Houstoun and S. W. Hopkins & Co., except the transfer of the forty shares which by the agreement itself was provided for the purpose of qualifying persons to be directors, as therein declared.

And this defendant says that he never has claimed any right in the bonds and stock aforesaid, or to exercise ownership over the same. He simply acted whilst they were in his hands as holder thereof under the said agreement between said Houstoun and S. W. Hopkins & Co.;
but since he became disconnected therewith by the said order of
1941 the judge of the superior court in Georgia, he has not felt that
he had anything to do with them, and that there was no responsibility resting on him.

Respondent, further answering, says that he felt it to be proper to put in an answer to said suit in Georgia instituted by said Edward Houstoun, in which this respondent stated that various suits had been instituted in Florida in which said bonds and stock certificates were involved, and in which prayers for injunctions and receivers were contained, and in some of which injunctions had been awarded and issued, in order that the court there might be apprised that proceedings were or had been instituted in this State affecting said bonds and stock certificates.

And this respondent, further answering, says that there is another suit in this court, in which Miller is complainant against Edward Houstoun and others, and in which defendant has put in answer concerning said bonds and stock certificates; that there is also in the State courts one or more suits, in which they are likewise involved. This defendant refers to these suits with the view that no opposing decrees
or orders may be made concerning such of the stock certificates
1942 or stock as are still in his hands, he having, as already stated, no
control of the bonds and stocks in Savannah. The only stock certificates in his hands are the forty shares before mentioned, and as he supposes, the ten shares which the minutes represent as standing in his name, but for which he has no certificate.

Further answering, defendant says that on account of the deposits aforesaid he has been put to great trouble and labor in putting in answers to various suits, and to some expense in actual cash; that he is entitled to be protected, and asks that no decree be made concerning the same without providing compensation to him.

And he submits himself to the protection of this honorable court, alledging that he has done nothing intentionally to affect injuriously the rights of any person in his course concerning said bonds and stock, and that having no control or possession of the bonds and stock certificates in Savannah, no decree against or affecting this respondent ought to be made concerning said bonds and certificates or otherwise.

And having fully answered, defendant prays to be hence dis-
1943 missed, with his reasonable costs in this behalf sustained.

M. D. PAPY,
In pro. per.

Oath to answer being waived by the bill of complaint, no affidavit is attached.

1944 **EXHIBIT A.**

Whereas, by an arrangement between Edward Houstoun and S. W. Hopkins, representing the firm of S. W. Hopkins & Co., it is agreed between them that the certificates of stock in the Florida Central Railroad Company, held by said Houston and standing in the names of the following named persons and for the following amounts, and numbered as follows, be and are deposited with M. D. Papy, who is to hold the same, and not to be delivered by him to any person unless directed to do so by M. S. Littlefield and S. W. Hopkins jointly, or unless directed to be delivered to M. S. Littlefield by said S. W. Hopkins, or to be delivered to S. W. Hopkins by M. S. Littlefield, viz:

	No. 40,	in the name of Edward Houstoun, for	100	shares.
	No. 41,	" " "	100	"
	No. 42,	" " "	100	"
	No. 43,	" " "	100	"
	No. 44,	" " "	100	"
	No. 45,	" " "	100	"
	No. 47,	" " "	100	"
	No. 48,	" " "	100	"
	No. 49,	" " "	100	"
	No. 50,	" " "	100	"
	No. 51,	" " "	70	"
1945	No. 57,	in the name of Edward Houstoun, guardian for Eliza V. Houstoun,	70	"
	No. 58,	in name of Edward Houstoun, guardian for Claudia Houstoun,	70	"
	No. 59,	in name of James S. Houstoun, for	20	"
	No. 79,	" Edward Houstoun,	30	"
	No. 80,	" " "	3,110	"
			4,370	"

It is also agreed that the one hundred and three thousand dollars of the first mortgage bonds of the Pensacola and Georgia Railroad Company and of the Tallahassee Railroad, which said Houstoun has heretofore held as security for draft in his favor, given by M. S. Littlefield, president, &c., on S. W. Hopkins & Co., dated May 15th, 1870, be also deposited with M. D. Papy, to be delivered only on the same terms and directions as declared with respect to the delivery of the said stock certificates aforesaid.

It is agreed, in addition, that the delivery of said certificates and said bonds is not to be made to said Littlefield unless, in addition to the requirements aforesaid, the suit instituted in New York against said Edward Houstoun and others by the Western Division of the Western North Carolina Railroad Company, claiming the stock represented by said certificates No. 80, for three thousand one hundred and ten shares, and the suits brought against said Houstoun by T. L. Clingman in Pennsylvania and New Jersey, and by Rogers and Bayne and L. P. Bayne in New York, shall have been dismissed

It is further agreed that the four drafts of George W. Swepson on M. S. Littlefield, accepted by Littlefield, and amounting in the aggregate to the sum of one hundred and nine thousand one hundred and forty dollars, exclusive of interest thereon, be likewise deposited with M. D.

Papy, and are not to be delivered to said Littlefield unless and until directed to do so by said S. W. Hopkins.

Said Edward Houstoun has delivered to said S. W. Hopkins three certificates of stock of said Florida Central Railroad Company—one, No. 77, in name of James M. Baker, for ten shares, transferred in blank by said Baker; one, No. 78, in name of George R. Foster, for ten shares, transferred in blank by said Foster; and one, No. 82, in name of Edward Houstoun, for twenty shares, transferred in blank, making together forty shares. The said certificates are delivered to said Hopkins, in order that they may be transferred to enable persons to become directors in said Florida Central Railroad Company, but the same are to be held by whomsoever said Hopkins directs as part of the securities growing out of the advance made by said Hopkins & Co., to take up the draft in favor of said Houstoun, given by M. S. Littlefield, and the new certificates in lieu thereof are likewise to be delivered to M. D. Papy, and are to be subject to the joint direction of said Hopkins and Littlefield, or either of them, in favor of the other, as prescribed in regard to the other certificates and bonds deposited with M. D. Papy, as aforesaid.

Witness our hands this 12th day of April, 1871.

EDWARD HOUSTOUN.
S. W. HOPKINS & CO.

1946 EXHIBIT B.

TALLAHASSEE, FLA., *April 13th*, 1871.

EDWARD HOUSTOUN, Esq.,
Savannah, Ga.:

MY DEAR SIR: You are hereby authorized to deliver to S. W. Hopkins & Co. the stock in the Florida Central Railroad Company, the bonds of the late Pensacola and Georgia and Tallahassee Railroad bonds, and drafts, notes, and contracts held by you as collateral for the payment of a draft drawn by me on S. W. Hopkins & Co., due July 15th, 1870, $163,020 $\frac{20}{100}$, upon the payment to you of this amount, with interest.

Truly yours,
(Si'g'd) M. S. LITTLEFIELD.

The within-named documents and securities having been deposited with M. D. Papy, subject to certain conditions, he is directed to surrender the same when the conditions here alluded to are complied with; but there are no notes or contracts deposited or held by me as collaterals.

May the 20th, 1871.
(Si'g'd) E. HOUSTOUN.

1947 I hereby acknowledge the possession of the within-named documents, which are to be returned upon the compliance with the conditions mentioned or referred to by E. Houstoun above and the surrender of this order and of the acknowledgment of the deposit of said documents given by me, excepting there were no notes or contracts deposited.

May 20th, 1871.
(Signed) M. D. PAPY.

1948 EXHIBIT C.

JACKSONVILLE, FLORIDA, *May 19th*, 1871.

Mess. S. W. HOPKINS & Co.,
No. 71 *Broadway, New York:*

GENTLEMEN: You will deliver to Aaron Barnett, trustee created by a certain instrument of writing dated at Jacksonville, May 19th, 1871 (4410), forty-four hundred and ten shares of the capital stock of the Florida Central Railroad Company, formerly held by Edward Houstoun, which are now in the hands of M. D. Papy, trustee, to be surrendered by him to you upon the discontinuance of certain suits now pending against said Houstoun and when you shall be fully paid for certain advances made by you as per your receipt given me dated April 15th, 1871.

Very resp'f'ly,
(S'g'd) M. S. LITTLEFIELD.

MAY 24*th*, 1871.

Accepted.
(S'g'd) S. W. HOPKINS & CO.

1949 In the superior court of Chatham County.

EDWARD HOUSTOUN, COMP'T,
and
MARIANO D. PAPY, DEF'T.

The defendant in the above-stated case having been arrested under the writ of ne exeat granted therein, and having been brought by the sheriff before me, with the said property, to prevent the removal of which from the jurisdiction of this court said writ was prayed, that is to say, first-mortgage bonds of the Pensacola and Georgia Railroad Company and of the Tallahassee Railroad Company to the amount, on the face of them, of one hundred and three thousand dollars, and certificates of the capital stock of the Florida Central Railroad Company to the amount of four thousand three hundred and seventy shares, and having refused to replevy the said property, as provided for by § 3162 of the code, it is ordered and adj*oine*d that the said property be delivered by the sheriff to T. Mayham Cunningham, esq., cashier of the Central Railroad and Banking Company of Georgia, to be by him deposited in the vault of the said bank, and there to be safely kept, subject to the further order of the court, and that thereupon the said Papy be discharged from arrest.

July 17th, 1872.

WM. SCHLEY,
Judge Sup'r Court, E'st. Circ't, Ga.

1950 CHATHAM'S SHERIFF'S OFFICE,
Savannah, July 17th, 1872.

By virtue of the above order of court, I have received from Mr. M. D. Papy a box *a box* containing the property within mentioned, and, in compliance with instructions, deposited the same with the cashier of the Cent. Railroad and Banking Company, and discharged the defendant from custody.

The return of—

CHARLES J. WHITE,
Dep. Sheriff, C. C., Ga.

Certified by clerk as a true copy.

(Indorsed:) Francis P. Porcher vs. The Florida Central Railroad Company et al. Answer of M. D. Papy. Filed May 17th, 1873. I. E. Townsend, cl'k.

REC. 667—57

1951 In the circuit court of the United States, fifth circuit, northern district of Florida. In chancery.

FRANCIS P. PORCHER
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY, The Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, Converse L. Chase, and others.

To Converse L. Chase, one of the above mentioned defendants:

Take notice that this honorable court will be moved for and on behalf of the plaintiff, on Monday, the twenty-fourth day of February, 1873, at Jacksonville, Florida, that you may be enjoined and restrained until the further orders of the court, in the manner prayed by complainant in his bill, filed in this cause.

Jacksonville, Fla., Feb'y 14th, 1873.

E. M. L'ENGLE,
Solicitor for Complainant.

1952 (Endorsements:)

Come to hand this 14th Feb'y, A. D. 1873.

Served a true copy of the within notice upon C. L. Chase, at Jacksonville, within the northern dis. of Fla., this the 14th Feb'y, A. D. 1873.

S. CONANT,
U. S. Marshal.

U. S. cir. c't, N. D. F. F. P. Porcher vs. Fla. Central R. R. Co., C. L. Chase, et al. Notice to C. L. Chase of application for injunction. Filed March 1st, 1873. J. E. Townsend. Service $2.00.

1953 The sixth circuit court of the United States for the northern district of Florida. In equity.

FRANCIS P. PORCHER ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD ET AL.

Bills original and amended.

The plea of Edward Houstoun, one of the defendants to the bill of complaint in the above stated cause.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' said bill mentioned to be true in such manner and form as are therein and thereby set forth and alleged, doth plead thereunto, and for plea saith that this honorable court hath no jurisdiction of the said bills of the said complainants against him, for that this defendant, before and at the time of the exhibiting of the said bills of complainant, original and amended, against him, was not and still is not a citizen and resident of the State of Florida; but that before and at the time of the exhibiting of the said bill of complaint against him, he was and still is a resident and citizen of the State of Georgia; all of which this defendant avers to be true and pleads the same to the whole of the said bills, and humbly demands

the judgement of this honorable court whether he ought to be
1954 compelled to make any answer to the said bills of complaint, and prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

JACKSON, LAWTON & BASSENGER,
Solicitors for Edward Houstoun.

UNITED STATES OF AMERICA,
Southern District of Georgia, at Savannah:

Personally appeared Edward Houstoun, who, being duly sworn, deposes and says that the foregoing plea is true in point of fact, and that the same is not interposed for delay.

E. HOUSTON.

Sworn to and subscribed before me this 27th day of March, A. D. 1873.

JAS. McPHERSON
Clerk U. S. Circuit Court So. Dist. of Georgia.

We, the solicitors of the defendant (Edward Houstoun), in the above entitled cause, do hereby certify that in our judgement & opinion the above plea is well founded in point of law.

JACKSON, LAWTON & BASENGER.
HENRY R. JACKSON.

1955 (Indorsed:) In the circuit court of the United States for the northern district of Florida. Francis P. Porcher et al., complainants, vs. The Florida Central Railroad Company et al, defendants. Plea of Edward Houstoun. Filed April 3d, 1873. J. E. Townsend, cl'k. Jackson, Lawton & Basenger, defendants' solicitors.

1956 In the United States circuit court, fifth circuit, northern district of Florida.

The President of the United States of America to Milton S. Littlefield, Mariano D. Papy, Edward Houstoun, Converse L. Chase, the Florida Central Railroad Company, and the trustees of the internal improvement fund of the State of Florida:

Upon the application of Francis P. Porcher, who has filed his bill of complaint in this court against you and others, praying, among other things, that you be enjoined and restrained from doing certain acts herein complained of, the court doth strictly command and enjoin you and each of you, your agents, servants, and attorneys, in the manner following, that is to say, you, the said Edward Houstoun, Mariano D. Papy, and Milton S. Littlefield, are enjoined and restrained from disposing of, pledging, or in anywise changing the status of any stock in the Jacksonville, Pensacola and Mobile Railroad Company or in the Florida Central Railroad Company, or any railroad bonds or other property purchased or paid for in whole or in part directly or indirectly with proceeds of State bonds of Florida, issued in exchange for bonds of the Florida Central Railroad Company, or upon the faith of such
1957 bonds or with receipts or assets of said company, or which, not being purchased in that manner, may belong to the said Milton S. Littlefield, or in which he may be interested.

And you, the said Milton S. Littlefield, are enjoined and restrained from selling, pledging, or otherwise disposing of or changing the status of any other stocks, bonds, or other property which you have or may be interested in.

You, the said Milton S. Littlefield, as president of the Jacksonville, Pensacola and Mobile Railroad Company, and your successors, and you, the said Converse L. Chase, are enjoined from receiving any of the proceeds of State bonds of Florida, issued in exchange for bonds of the Florida Central Railroad Company, and from expending any of such proceeds that may be in your hands or that may come to your hands or under your control, and from using or disturbing said bonds.

You, the said Milton S. Littlefield, and you, the said Florida Central Railroad Company, are enjoined and restrained from leasing the Florida Central Railroad or any part of it to John Sereven and his associates, or to the Atlantic and Gulf Central Railroad Company, or to any other person or corporation until the ownership of the stock charged, in the said bill of complaint, to be the property of the Florida Central
1958 Railroad Company, but held and voted by said Littlefield, Papy, or Houstoun, without authority, be determined by the court and until duly qualified directors and other officers of said company have been elected by the votes of holders of a majority of the legal bona fide shares of stock to be ascertained and determined by the court; and under all circumstances you are enjoined from leasing said railroad on any terms violative of the rights of stockholders or creditors.

You are especially enjoined from making any contract of lease by which it may be agreed that any portion of the bonds or proceeds thereof of the State of Florida issued to the president of the Jacksonville, Pensacola and Mobile Railroad Company in exchange for bonds of the Florida Central Railroad Company, shall be applied to paying any debts of said Littlefield, or any money due to the trustees of the internal improvement fund of Florida, or to the extension or repair of the Jacksonville, Pensacola and Mobile Railroad, or to any other than legitimate purposes of the said Florida Central Railroad Company.

You, the trustees of the internal improvement fund of Florida, and your successors, are enjoined from proceeding upon your alleged
1959 cause of action or in your suit against the Florida Central Railroad Company which you have instituted as stated in the said bill of complaint of the said Francis P. Porcher already mentioned.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in the said circuit and district, and the seal of said court, this twenty eighth day of February, A. D. one thousand eight hundred and seventy-three.

[SEAL.] J. E. TOWNSEND, *Cl'k.*

(Endorsed:)

Executed the within by delivering a true copy of the same to Milton S. Littlefield and Converse L. Chase within the northern district of Florida, this the 8th day of March, A. D. 1873.

S. CONANT,
U. S. Marshal.
By THOS. McMURRAY,
Deputy.

Served a true copy of the within writ of injunction upon M. L. Stearns, governor; D. Eagan, com. of lands, &c.; W. A. Cooke, att'y-gen'l; C. H. Foster, treasurer; W. A. Cowgill, comptroller, all being members of the board of trustees of the internal improvement fund of the State of Florida, at Tallahassee, within the northern dist. of Fla., this the 11th day of April, A. D. 1874.

S. CONANT,
U. S. Marshal.
Per S. L. TIBBITTS,
Deputy.

1960 Served a true copy of the within writ of injunction upon H. Bisbee, jr., att'y for the trustees of the internal improvement fund of the State of Florida, at Jacksonville, within the northern dist. of Fla., this the 14th April, A. D. 1874.

S. CONANT,
U. S. Marshal.

In U. S. circuit court, northern dist. of Florida. Francis P. Porcher vs. Fla. Central R. R. Co. et al. Original. Injunction. Filed March 3d, 1873. J. E. Townsend, cl'k.

1961 In the U. S. circuit court, 5th circuit, northern dist. of Fla. In chancery.

To the honorable the judges of said court:

Francis P. Porcher, of Charleston, a citizen of the State of South Carolina, by E. M. L'Engle, his attorney, in behalf of himself and of all others except the defendent hereto, being stockholders of the Florida Central Railroad Company hereinafter mentioned, who shall in due time come in and relief by and contribute to the expenses of this action, brings this his bill against the Florida Central Railroad Company, a corporation created by and existing under the laws of the State of Florida, having its principal place of business in the district aforesaid, a citizen of the State of Florida, and the Jacksonville, Pensacola and Mobile Railroad Company, a corporation existing under and created by the laws of the State of Florida, having its principal place of business in the district aforesaid, a citizen of the State of Florida, and against Milton S. Littlefield, Mariano D. Papy, Edward Houstoun, Converse L. Chase, Francis H. Flagg, I. H. Gardiner, Harrison Reed, governor of the State of Florida; Samuel T. Day, lieutenant-governor of the State of Florida, who claims to be the acting governor thereof; Horatio Bisbee [Bisbee erased], jr., who claims to be the attorney
1962 general of the State of Florida; Robert H. Gamble, the comptroller of said State; Simon B. Conover, the treasurer of said State, and John S. Adams, the commissioner of lands and immigration of said State, who as such officers are also trustees of the internal improvement fund of the State of Florida, all of which defendants are citizens of the State of Florida and residents of the northern district thereof and thereupon your orator complains and says:

* * * * * * *

The complainant further says that the trustees of the internal improvement fund of Florida have commenced suit against the Jacksonville, Pensacola and Mobile Railroad Company, and the Florida Central Railroad Company, and other defendants, to recover the sum of $472,000.00, unpaid purchase money due as herein stated, and interest thereon from the day of the sale of said road, and have prayed for and obtained the appointment of a receiver of the said roads, and of the property of said companies, and have prayed for and obtained an order that said receiver take the absolute and exclusive control of not only the Jacksonville, Pensacola and Mobile Railroad, but also of the Florida Central Railroad, and the receiver, who is Jonathan C. Greeley, 1963 has so taken possession and control of said roads. And the said trustees seek to have the net earning not only of the Jacksonville, Pensacola and Mobile Railroad, but also of the Florida Central Railroad, go into the hands of said Greeley and be applied under the order of the court to the payment of the said purchase money still unpaid, and have obtained an order to that effect.

I, Josiah E. Townsend, clerk of the United States court for the northern district of Florida, do hereby certify that the foregoing is a true and correct extract from the original bill of complaint which was filed in this court in the said cause on the first day of May, A. D. 1872.

[SEAL.] J. E. TOWNSEND, *Cl'k.*

(Endorsements:)

Served a true copy of the within "transcript of record" upon M. L. Stearns, governor; W. A. Coke, att'y gen'l; D. Eagan, com'r of lands, &c.; C. H. Foster, treasurer; W. A. Cowgill, comptroller, all being 1964 members of the board of trustees of the internal improvement fund of the State of Florida, at Tallahassee, within the northern dist. of Florida, this the 11th day of April, A. D. 1874.

S. CONANT,
U. S. Marshal,
Per S. L. TIBBITTS,
Dep'ty.

Served a true copy of the within transcript of record upon H. Bisbee, jr., att'y for trustees of the internal improvement fund of the State of Florida, at Jacksonville, within the northern district of Fla., this the 14th April, A. D. 1874.

S. CONANT,
U. S. Marshal.

In U. S. circ't court, northern dist. of Fla. Francis P. Porcher vs. Florida Central R. R. Co. et al. (Original.) Transcript from record. Filed May 9th, 1874. J. E. Townsend, cl'k.

1965 In the circuit court of the United States, northern district of Florida.

FRANCIS P. PORCHER
vs.
FLORIDA CENTRAL R. R. CO. ET AL.

The plaintiff's att'y objects to the interrogatories propounded by defendant Edward Houstoun to the witnesses Forley, Maddock, Claghorn, Hunter, and Houstoun, and objects to a commission being issued to take their testimony, because a decree pro confesso has regularly been entered in the cause against said defendant, which still stands against him, and because there is no issue between the said def't and the plaintiff, and because the said interrogatories are otherwise exceptionable and illegal.

Oct. 6, 1873.

E. M. L'ENGLE,
Compl't's Solicitor.

1966–1976 (Indorsed:) Objection to issuing commission. Filed Oct. 7th, 1873. J. E. Townsend, cl'k. E. M. L'Engle, compl't's solicitor.

1977 FRANCIS P. PORCHER
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

This cause having been called, by consent of solicitors for complainant and defendant, it is ordered that the case be continued for the term without prejudice to the rights of either party; that is to say, that it shall stand upon the docket at the next term in the form and with the surroundings of the present term unchanged.

Dec. 2nd, 1873.

W. B. WOODS, *Judge.*

1978 (Indorsed:) Francis Porcher vs. The Florida Central Road Company et al. Order of Judge Woods. Filed and entered Dec. 2nd, 1873. J. E. Townsend, cl'k.

1979 In the United States circuit court, northern district of Florida, rule day of February, 1873. In chancery.

FRANCIS P. PORCHER
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY, the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, and others.

Now comes E. M. L'Engle, soliciter for the complainant, and it appearing that on the 4th day of May, 1872, the defendant the Florida Central Railroad Company was duly served with subpœna in this cause, and no plea, answer, or demurrer therein having been filed, and the time for filing same having long since elapsed, and a decree pro confesso against said Florida Central Railroad Company having been prayed for and granted in open court on the 19th Dec., 1872, of which, however, no record has been made, it is therefore ordered and decreed that the material allegations of said bill be taken and held as confessed by the said defendant, the Florida Central Railroad Company, so in default.

Monday, February 3, 1873.

E. M. L'ENGLE,
Complainant's Soliciter.

Recorded in "chancery rule & order book," page 22.

1979½ *Extract from minute book of the U. S. circuit court 5th circuit, northern dist. of Fla.*

FRANCIS PORCHER
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY. } In chancery.

On motion of Edward M. L'Engle, complainant's solicitor, it is ordered that Charles H. Summers be and he is hereby appointed specially in this cause an examiner to take testimony therein.

Dated April 4, '73.

1980 In the circuit court of the United States, fifth circuit, northern district of Florida.

FRANCIS P. PORCHER
vs.
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, The Florida Central Railroad Company, Milton S. Littlefield, Edward Houstoun, et al., and Converse L. Chase.

Now, on this day, comes the complainant by E. M. L'Engle, his solicitor. and moves for a decree pro confesso against the defendant Converse L. Chase, and it appearing that due and legal service of a subpœna in this cause was made upon the said Converse L. Chase, at Jacksonville, in said district, on the 14th day of February, 1873, and that no plea, answer, or demurrer has been filed to the bill of complaint by said defendant, and that the time within which such plea, answer, or demurrer could have been filed has long since elapsed, it is ordered that a decree pro confesso be entered, and that as against the said Converse L. Chase the allegations of the bill of complaint be taken as confessed by him.

Monday, June 2nd, 1873.

E. M. L'ENGLE,
Complainant's Solicitor.

Recorded in chancery rule and order book, page .

1981 I certify that the foregoing one hundred and eight pages constitute and are a true copy of the pleadings, orders, & proceedings and are a correct transcript of the record in the case of Francis P. Porcher, complainant, and the Florida Central Railroad Company, the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, Edward Houstoun, Mariano D. Papy, Converse L. Chase, Francis H. Flagg, J. A. Gardiner, and the trustees of the internal improvement fund of the State of Florida, defendants, in the circuit court of the United States for the fifth circuit, northern district of Florida.

Witness my hand and the seal of said court, at Jacksonville, in said circuit and district, this the 9th day of May, A. D. 1874.

[L. S.] J. E. TOWNSEND, *Cl'k.*

(Endorsed:) U. S. circuit court of northern dist. of Fla. Schutte et al. vs. the W. Division W. N. C. R. R. Co. et al. Exhibit E, E. M. L. Filed May 1st, 1879. A. D. Basnett, examiner.

1982 *Testimony of Robert J. Washington.*

In the circuit court of the United States, 5th circuit, northern district of Florida.

J. FRED SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

Opened by order of the court this 14th day of May, 1879.

PHILIP WALTER, *Clerk.*

1983 United States circuit court, northern district of Florida.

The President of the United States of America to Westel Willoughby, esq., of Alexandria, Va., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you full power and authority diligently to examine upon his corporal oath, or affirmation, before you to be taken, and upon the interrogatories and cross interrogatories hereunto annexed. Robert J. Washington as a witness on the part of the complainants, in a certain cause now pending and undetermined in the circuit court of the United States of America for the fifth circuit and northern district of Florida, wherein J. Fred Schutte and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants.

And we do further empower you to examine on the same behalf, and in like manner, any other person or persons who may be produced as witnesses before you; and we do hereby require you,
before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, and directed to the clerk of the circuit court of the United States for the fifth circuit and northern district of Florida, at the city of Jacksonville, as soon as may be convenient after the execution of this commission; and that you return the same when executed, as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in said circuit and district, this 4th day of March, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred & third.

{ SEAL OF U. S. CIRCUIT }
{ C'T, N. DIST. FLA. }

PHILIP WALTER,
Clerk of the Circuit Court of the
United States for the Fifth Circuit
and Northern District of Florida.

1984 In United States circuit court. northern district of Florida. In equity.

J. FRED SCHUTTE. JAN PRINS, ET AL.,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

Please take notice that I have filed in the office of the clerk of this court interrogatories, copy herewith served, for Robert J. Washington, a witness for complainants, and that in ten day' from this date I will apply for a commissioner to examine said Washington on said interrogatories and such cross-interrogatories as may be filed by you.

Dated Jack Smith, Fla., January 14, 1879.

W. G. M. DAVIS,
Solicitor for Complainants.

1985 In the United States circuit court, northern district of Florida, fifth judicial circuit. In equity.

J. FRED SCHUTTE, JAN PRINS, ADRIANUS PRINS, Henrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J. Brumenkruff, J. H. Green, Willemmier Van Tyer Van Tyer, C. Both, L. L. Wertheim, Wysman de Voght, T. P. Roelopz, Jan Tichelaar, jr., Jacobus Wertheim, P. Van Reysen, Mey de Benedethy Beer-Gerarel A. Heinekin, T. Colom, Charles Goswienchel, Boow Hartsink, Van Tyen, N. J. Feanket, Joannes Wilhelm Donk, Vandre Stoop and Berg, who are aliens and subjects of the King of the Netherlands, bring this their bill of complaint in their own behalf, and in behalf of such other persons having like claims, who may come in and be made parties plaintiff herein, and contribute to the expenses thereof,

against

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, a corporation created by and existing under the laws of said State, and a citizen thereof, the Jacksonville, Pensacola & Mobile Railroad Company, the Florida Central Railroad Company, corporations created by and existing under the laws of the State of Florida, and citizens thereof; Edward Lewis, Patrick Houstoun, Robert H. Gamble, Charles E. Dyke, sr., Edward M. L'Engle, Robert Walker, Clayton A. Cowgill, George W. Betton, directors in
1986 said last mentioned corporation, and who are citizens of the State of Florida; James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, who are citizens of the State of Florida, and Joseph B. Stewart, who is a citizen of the State of New York, claiming to be directors in said Florida Central Railroad Company; George F. Drew, governor of the State of Florida, Walter Gwynn, treasurer of the State of Florida, Hugh A. Corley, commissioner of lands and immigration of the State of Florida; George P. Raney, attorney-general; Walter Gwynn, treasurer; Columbus Drew; comptroller; George F. Drew, governor; which officers are trustees of the internal improvement fund, and herein sued as such; Milton S. Littlefield, in his own right; Robert J. Washington, who is a citizen of the State of Virginia.

Interrogatories to be propounded to Robert J. Washington, a witness to be examined in behalf of the complainants in the above entitled cause, who resides in Westmoreland County, in the State of Virginia.

Interrogatory first. What is your name, residence, and occupation?

Interrogatory second. Do you know or are you acquainted with the defendants Edward M. L'Engle and Joseph B. Stewart?

Interrogatory third. Do you or not claim any right, title, or interest in or to any shares of stock in the Florida Central Railroad Company? If you answer you do make such claim, state what shares you do claim, say how you acquired them, whether by purchase or otherwise, and if by purchase, say from whom and when such purchase was made, what you paid, and how you made such payment, whether with funds
1987 of your own or otherwise, and if otherwise, how otherwise?

Interrogatory fourth. Whether or not you authorized Edward M. L'Engle to purchase for your own account any shares of stock in the Florida Central Railroad Company; and if you say you did, say when you gave such authority, whether in writing or not, and if by writing, say what writing, give a copy of it, and say when and where it was executed?

Interrogatory fifth. Whether or not you caused a suit in equity to be brought in the circuit court of the United States for the northern district of Florida, in your name, for the purpose of obtaining a decree by said court to establish a title in yourself to stock in the Florida Central Railroad Company? If you say you did cause such a suit, say when you did so, and say when, and how and when, you first became informed that a suit was pending in said court such as above mentioned. Say whether you have or have not any real, personal, pecuniary interest in said suit. If you say you have, state fully how you acquired such interest.

Interrogatory sixth. When did you first become acquainted with the existence of the Florida Central Railroad Company, with the condition and value of its shares and stock?

Interrogatory seventh. Have you or not become a party to any written deed, agreement in writing or other instrument whereby any shares of stock in the Florida Central Railroad Company have been conveyed to you by the Western Division of the Western North Carolina Railroad Company, or by Joseph B. Stewart, as its attorney? If yea, please file a copy of said paper writing, if the original is in your possession, and if not, say what you know of the existence of such paper and from whom you derived your information as to its execution, and what, if anything, you have done in connection with or in relation thereto.

1988 Interrogatory eighth. Whether or not you now hold, own or claim to own, or have at any time in the past two years held, owned or claimed to own in your own right, or otherwise, bonds purporting to have been issued by and to obligate the Florida Central Railroad Company to pay money to the bearer of such bonds? Does any one hold such bonds for you or by your consent? If you say you have ever owned or possessed any such bonds, or that any one has held or now holds any such for you, or by your authority, state fully how you obtained title to or possession of said lands, what you gave for them, on what account they were transferred to you, or to any one for you, and say what has become of such bonds, and if sold or pledged, say by and to whom and on what consideration such sale or pledge was made, and who received the consideration.

Final interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination in the matters in question in this cause? If *you*, set forth the same fully and at large in your answer.

(Signed) W. G. M. DAVIS,
Solicitors for Complainant.

(Endorsed on back:)

U. S. MARSHAL'S OFFICE,
NORTHERN DISTRICT OF FLORIDA,
Jacksonville, January 16, 1879.

I hereby certify that on the 14th day of January, A. D. 1879, I have served a true copy of the within notice and of the interrogatories thereto attached, at Jacksonville, Fla., upon E. M. L'Engle, esq., and upon Jas. M. Baker, esq., att'y for the F. C. R. R., and upon S. B. Stevens, esq., att'y of the J., P. & M. R. R. Co., at Quincy, Fla., on the 15th day of January, A. D. 1879, and upon Geo. P. Raney, att'y for the trus-
1989 tees of the internal improvement fund of Fla., at Tallahassee, Fla., upon the 16th day of January, A. D. 1879.

S. CONANT,
U. S. Marshal.

Service L'Engle, Baker, Stephens, and Raney, $16.00. 166 m. Tal., $9.96; 188 m. Quincy, $11.28, $21.24—$37.24.

Filed January 14, 1879.

P. WATTER, *Clerk.*

In the United States circuit court, northern district of Florida, fifth judicial circuit.

J. FRED. SCHUTTE AND OTHERS
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, the Florida Central Railroad Company, and others.

The Florida Central Railroad Company objects to the interrogatories filed by the complainants in the above entitled cause, to be propounded to Robert J. Washington, in behalf of the complainants, and state grounds of objections as follows:

It objects to the third interrogatory and to every portion thereof because it and every portion of it is irrelevant and immaterial, and enquires about matters altogether foreign to the issues in the suit.

It objects to the fourth interrogatory on the same ground.
1990 It objects to the fifth interrogatory on the same ground.
It objects to the sixth interrogatory on the same ground.
It objects to the seventh interrogatory on the same ground.
It objects to the eighth interrogatory on the same ground.

Cross interrogatories to be propounded by the Florida Central Railroad Company to Robert J. Washington, a witness produced on the part of the complainants in the above entitled cause.

First cross-interrogatory. State whether you do not claim as trustee a right in shares of stock in the Florida Central Railroad Company? State whether you did not authorize bids on said shares of stock to be made in your name, at a judicial sale, and whether it was not understood when said shares were bid off in your name that the amount of the bid was to be credited upon the decree or execution by order of the attorney for the plaintiffs in said decree or execution.

Second cross-interrogatory. State whether you did not authorize E. M. L'Engle, as an attorney at law of Jacksonville, Florida, to bring suit in your name concerning the property so bid off to you, and whether he was not authority to institute the suit mentioned in the fifth interrogatory.

State whether or not it was necessary, or was required, that you should be informed of the pendency of such suit?

State whether you did not give the said E. M. L'Engle the largest discretion in said matter.

State whether, when you authorized bids on said stock to be made in your name, you did not at the same time authorize suits to be brought in your name concerning it.

(Signed) **JAMES M. BAKER,**
Sol. for Fla. Cen. R. R. Co.

1991 (Endorsed:) Filed January 25, 1879. P. Walter, clerk.

Deposition of Robert J. Washington, of Westmoreland County, Virginia.

In the circuit court of the United States for the northern district of Florida. In equity.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS, et al.,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

COMMONWEALTH OF VIRGINIA,
County of Alexandria, ss:

Robert J. Washington, a witness in behalf of the complainant in the above entitled suit, and residing at Westmoreland County, in the State of Virginia, more than one hundred miles from the place of trial of this cause, having been duly cautioned and sworn to tell the whole truth, and being carefully examined, deposes and says as follows, to wit:

WESTEL WILLOUGHBY,
Commissioner.

In answer to first direct interrogatory, the witness testified: My name is Robt. J. Washington; my residence is Westmoreland County, Virginia; my occupation is that of a lawyer and farmer.

In answer to the second direct interrogatory, witnessed testified: I know E. M. L'Engle, but do not know Joseph B. Stewart.

In answer to third interrogatory, he testified: Individually,
1992 I claim no right, title, or interest in or to any shares of stock in the Florida Railroad Company. My only claim to any shares of said stock is a trustee under a certain deed between E. M. L'Engle and myself as trustee, executed, I think, in the summer of 1875, the original deed or copy of which is in the possession of E. M. L'Engle. I had at one time information as to what these shares were, but do not now remember or know. They were acquired, I was informed, by purchase at a public sale of said stock in Jacksonville, Florida, at which certain shares were knocked off to me. I do not know this of my own knowl-

edge, but believe it to be true from information I have had. By whom said sale was made and when. I do not remember. The amount paid for said shares I do not know. The matter was attended to by Mr. E. M. L'Engle, who as attorney represented me as trustee; and it was understood between Mr. E. M. L'Engle and myself that the amount of bid was to be credited upon the execution under which said sale was made. I used no funds of my own in that purchase, and have had no other connection with it except under the aforesaid deed.

In answer to the fourth direct interrogatory, the witness testified: When the deed referred to in answer to the third interrogatory was executed, it was understood by me, and agreed to by Mr. E. M. L'Engle, that I was to have no trouble in the matter; that he was to represent me (the trustee) in all matters connected with the deed; and in this respect I gave him unlimited authority. I never expected to hear of the thing again. He told me at the time that there would be a sale of some shares of the Florida Central Railroad, which he proposed to bid for in my name, and that if they were bought in, no money would have to be paid by me as trustee or individually, and that the amount of the bid would be credited on the execution under which the sale occurred. There was no writing between us upon this subject, and never has been any except the deed above referred to.

In answer to the fifth interrogatory, the witness testified: The
1993 only authority given by me for the institution of any suit in con-
nection with this matter was given by me to Mr. L'Engle at the time of the execution of the deed referred to. At that time he said to me that there would probably be one or more suits in connection with the matter, and that I might probably soon see my name as a party to suit in this matter in the Supreme Court. I then told him 'a' he could go ahead and bring any suit he thought necessary, or do anything in the matter that in his judgement was proper. In other words, I gave him full and unlimited authority to represent me as trustee in the deed aforesaid. My recollection is that I never heard of the suit referred to in this interrogatory until I was informed of it by Gen. Davis, I think in August, 1877. I have before stated that I have no pecuniary interest, or interest of any kind, in this suit, or in any other suit in connection with the matter, except under the terms of the deed referred to.

In answer to the sixth interrogatory, the witness testified: It is impossible for me to say when I first became acquainted with the existence of the Florida Central R. R. Co.; I do not remember. I know nothing now and have never known anything about the condition and value of its shares or stock. I have heard Mr. L'Engle and Gen. Davis talk upon this subject, but I have had no knowledge or information about it except through them.

In answer to the seventh interrogatory, the witness testified: I am sure that I understood fully this interrogatory, but in answer thereto state that I am a party to no deed or agreement in writing that I remember or know of in connection with this whole matter, except the deed referred to in my former answers.

In answer to the eighth interrogatory, the witness says: I do not own, hold, or claim to own, and have not at any time within the past two years held, owned, or claimed to own in my own right any such bonds as are referred to in the eighth interrogatory. If any such bonds are
held or owned by me as trustee in the deed aforesaid or have within
1994 the past two years been held or owned by me as such trustee, I
have no knowledge of it.

In answer to the final direct interrogatory, the witness says: I know nothing more about the subject-matter of these interrogatories than I have stated in my answers thereto.

In answer to the first cross-interrogatory, the witness says: I do claim, as trustee, a right in shares of stock in the Florida Central Railroad Company, as stated by me in answer the third direct interrogatory. I again state, as stated in answer to the third direct interrogatory, that I did give Mr. E. M. L'Engle authority to bid on shares of stock in said road, which he informed me would be sold in Jacksonville, and at the same time it was understood that the amount of the bid was to be credited on the decree or execution under which the sale would take place, by the order of the attorneys for the plaintiff in that execution or decree. This was done at the time of the execution of the deed referred to in my former answer to direct interrogatories, and is fully set out in my answer to the fourth direct interrogatory.

In answer to the second direct interrogatory, the witness testified: I do not remember ever giving Mr. E. M. L'Engle authority to institute, as my attorney, any particular suit; but I considered at the time of the execution of the aforesaid deed I gave him full authority to represent me as to all interests I might have under that deed, and to bring as many suits in my name as his judgment might dictate. I did not deem it necessary at all that I should be informed of the pendency of the suit referred to in the fifth direct interrogatory, or any other suit in connection with this matter, which might be brought; and, in fact, I had no desire to be informed. I had every confidence in Mr. L'Engle, and felt fully assured that he would do whatever was right, necessary, and proper in the premises, and nothing more, and gave myself no thought
1995 or concern about it; and further deponent saith not.

(Signed) R. J. WASHINGTON.

(Signed) WESTEL WILLOUGHBY, *Commissioner*.

STATE OF VIRGINIA,
County of Alexandria, *ss:*

I hereby certify that on the 24th day of April, A. D. 1879, before me, Westel Willoughby, appointed, as shown by the commission hereunto annexed, issued by the United States circuit court for the northern district of Florida, dated March 4th, A. D. 1879, to take the deposition of Robert J. Washington, personally appeared the said Robert J. Washington, at Alexandria, Virginia, and being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by the deposition hereto annexed.

And I further certify that the said deposition was then and there reduced to writing by me, and in my presence, and was, after it had been reduced to writing, subscribed by the witness, as appears by his signature at the close of said deposition.

And I further certify that the reason why the said deposition was taken was that the said witness resided more than one hundred miles from the place of hearing, and that the cause was one pending in equity, in which depositions are competent evidence.

And I further certify that I am not of counsel or attorney to either of the parties, nor interested in the result of the cause.

And I further certify that the fee for taking such depositions, $, has been paid to me by the complainant in this cause, and that the sum is just and reasonable.

1996 In testimony whereof I have hereunto set my hand and seal, at the city of Alexandria, Virginia, this 24th day of April, A. D. 1879.

[SEAL.] (Signed) WESTEL WILLOUGHBY,
Commissioner.

1997 *Testimony of L. H. Pierce, of Kingston, Jamaica.*

Circuit court of the United States, northern district of Florida.

J. FRED. SCHUTTE, JAN PRINS, ET AL.,
vs.
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad, George F. Drew, governor of the State of Florida, and others.

1998 United States circuit court, northern district of Florida.

The President of the United States of America to George E. Hoskinson, esq., United States consul at Kingston, Jamaica, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you full power and authority diligently to examine upon his corporal oath, or affirmation, before you to be taken, and upon the interrogatories and cross-interrogatories hereunto annexed, L. H. Pierce, as a witness on the part of the complainants in a certain cause now pending and undetermined in the circuit court of the United States of America for the fifth circuit and northern district of Florida, wherein J. Fred. Schutte, Jan Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants. And we do further empower you to examine on the same behalf, and in like manner, any other person or persons who may be produced as witnesses before you; and we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal and directed to the clerk of the circuit court of the United States for the fifth circuit and northern district of Florida, at the city of Jacksonville, as soon as may be convenient after the execution of this commission, and that you return the same when executed, as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in
1999 said circuit and district, this twenty-sixth day of February, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and third.

[SEAL.] PHILIP WALTER,
Clerk of the Circuit Court of the United States for the Fifth Circuit and Northern District of Florida.

U. S. CONSULATE AT KINGSTON, JA.,
March 31*st*, 1879.

The execution of this commission appears in certain schedules hereunto annexed.

GEO. E. HOSKINSON,
Commissioner.

In the United States circuit court, northern district of Florida, fifth judicial circuit. In equity.

J. **FRED. SCHUTTE, JAN PRINS, ADRIANUS**
Prins, and others,
against
THE WESTERN DIVISION OF THE WESTERN
North Carolina Railroad Company, and others.

To the solicitors of defendants:

Please take notice that we have this day filed in the office of the clerk of said court interrogatories, to be exhibited and propounded to L. H. Pierce, whose name is in said interrogatories stated, residing in Kingston, Jamaica, a copy of which are hereunto annexed,
2000 to be examined by commission, to be issued in the above stated cause, to take the depositions of said witness. After the expiration of ten days from the date of this service, we will apply to the said circuit court, if in session, and if not in session, to the clerk thereof, for the issuance of such commission to examine said witness at Kingston, Jamaica.

Jacksonville, Fla., February 6, 1879.

C. D. WILLARD,
Solicitor for Complainants.

Circuit court of the United States, northern district of Florida. In equity.

J. Fred Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booren, Dr. Nicholas Jacob den Tex, H. J. Brunne Kruff, J. H. Grene, Willenmie Van Tyer, Van Taene, C. Botle, L. L. Wertheim, Wysman de Voght, T. P. Poclopy, Jan Techelad, jr., Jacobus Wertheim, P. Van Peysen, Mey de Beneditte Beer, Girard A. Heinecken, T. Colom, Chas. Gosewiseckle, Boou Harveink Vantine, N. J. Franket, Johannas Willem Donk, Vander Stoop, and Berg, who are aliens and subjects of the King of the Netherlands, bring this, their bill of complaint, in their own behalf, and in behalf of such other persons having like claims, who may come in and be made parties plaintiffs herein, and contribute to the expenses thereof, against the Western Division of the Western North Carolina Railroad Company, a corporation created by and existing under the laws of the State of North Carolina, and a citizen thereof, The Jacksonville, Pensacola & Mobile Railroad Company, The Florida Central Railroad Company, corporations created by and existing under the laws of the State of Florida, and citizens thereof, Edward Lewis, Patrick Houstoun, Robert H. Gamble, Charles E. Dyke, sr., Edward L. L'Engle, Robert Walker, Clayton A. Cowgill, George W. Betton, directors in said last mentioned corporation, and who are citizens of the State of Florida; James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, who are
2001 citizens of the State of Florida, and Joseph B. Stewart, who is a citizen of the State of New York, claiming to be directors in said Florida Central Railroad Company; Francis Vose, who is a citizen of the State of New York; M. K. Jessup & Co., who are citizens of the same State; Chandler H. Smith, S. A. Smith, sr., Smith Simkins, B. C. Lewis, D. Griffith Ambler, W. J. Hines, trustee, Mrs. A. F. Finlayson,

James G. Gibbes, who are citizens of the State of Florida; Edward C. Anderson, James Hunter, E. Wartgfeller, John M. Guerard, John C. Falligant, Lewis F. Nicoll, Geo. Robertson, John A. Hunnicutt, who are citizens of the State of Georgia; The People's Bank, a corporation created by and existing under the laws of the State of South Carolina, and a citizen of said State; William McBarney, Winthrop B. Williams, who are citizens of the State of South Carolina; George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer of the State of Florida; Hugh A. Corley, commissioner of lands and immigration of the State of Florida; George P. Raney, attorney-general; Walter Gwynn, treasurer; Columbus Drew, comptroller; George F. Drew, governor, which officers are trustees of the internal improvement fund, and herein sued as such; Milton S. Littlefield, in his own right; Robert J. Washington, who is a citizen of the State of Virginia.

Interrogatories to be propounded to S. H. Pierce, a witness to be examined in behalf of the complainants in the above entitled cause, who resides in Kingston, in the island of Jamaica, one of the west India Islands.

Interrogatory first. What is your name, occupation, and business?

Interrogatory second. Where did you reside in the years 1870 and 1871?

Interrogatory third. By whom, if by any person, were you employed in the latter part of the year 1870 and in the year 1871? What was the nature of your employment, if any?

2002 Interrogatory fourth. If you answer the preceding interrogatory by saying that you were during the period herein specified employed by the firm of S. W. Hopkins & Company, state what business said firm was engaged in at said time, and at what place they conducted said business.

Interrogatory fifth. Have you any knowledge or information of or concerning any sale by S. W. Hopkins & Company to any person or persons of any bonds similar to the copy of a bond hereto annexed, marked A? If you say you have such knowledge, state how you acquired the same, and say whether you saw and inspected such bonds, and describe them as near as you able to from memory.

Interrogatory sixth. Do you or not know under what authority and in what capacity said S. W. Hopkins & Company acted in London or elsewhere in dealing with bonds such as you have been interrogated in respect of in the preceding interrogatory.

Do you or not know whether the said S. W. Hopkins & Co. had and held any written authority to deal with such bonds? If you answer in the affirmative, say whether you ever read such authority.

Interrogatory seventh. Examine the printed document hereto annexed, marked T. B. C., 2, and say whether you have any recollection of having seen and read any similar document, and say when and where you saw it, and say whether the paper now exhibited to you is or not a copy of the document before seen and not testified to by you, if any you do testify to having seen.

Interrogatory eighth. If the answer to the proceeding interrogatories to any sales by S. W. Hopkins & Company of any bonds, as agents of the Jacksonville, Pensacola & Mobile Railroad Company, to any person or persons, state fully all that you know as to such sales; when, where, to whom, at what price, and of what number of bonds such sales were made.

2003 Interrogatory ninth. If, in answer to the proceeding interrogatories you state that S. W. Hopkins and Company made sale of bonds to John Collinson, and state that such bonds were similar to the copy of the bond before referred to, marked A, say whether or not you know what was done by said S. W. Hopkins & Company, prior to such sale, to induce buyers of bonds to purchase such bonds. Relate fully all that was done by said S. W. Hopkins & Company for the purpose before stated, so far as you may be able to do so.

Final interrogatory. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in cause, or either of them, or that may be material to the subject of this your examination on the matters in question in this cause ? If yea, set forth the same fully and at large in your answer.

Jacksonville, Fla., February 6th, 1879.

C. D. WILLARD,
Solicitor for Complainants.

A.

UNITED STATES OF AMERICA.

$1,000.] State of Florida. [$1,000.

It is hereby certified that the State of Florida justly owes to or bearer, one thousand dollars, redeemable in gold coin of the United States, at the Florida State agency in the city of New York on the first day of January, 1900, with the interest thereon at the rate of eight per centum per annum, payable half yearly at the said Florida State agency, in gold, on the first days of July and January in each year, from the date of this bond, and until the principal be paid, on surrendering the proper coupon hereto annexed.

Tallahassee, January 1st, 1870.

HARRISON REED,
Governor.
S. B. CONOVER,
Treasurer.

2004 Issued in accordance with an act of the legislature of Florida.
[SEAL.]

Approved Jan. 28, 1870.

(Endorsement on back :)

A.—State of Florida, thirty years eight per cent. bonds, $1,000, payable January 1st, 1900, interest payable first of July and January in gold at Florida State Agency, in the city of New York. This bond is one of a series issued in aid of the Jacksonville, Pensacola & Mobile Railroad Company, to the extent of sixteen thousand dollars per mile upon completed road; the State of Florida holding the first mortgage bonds of said railroad company for a like amount as further security to the holders thereof.

HARRISON REED,
Governor of Florida.

T. B. C. 2.

Know all men by these presents that the Jacksonville, Pensacola & Mobile Railroad, a corporation organized under the laws of the State

of Florida, one of the United States of America, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Messrs. S. W. Hopkins & Co., of the city of New York, and London, England, its financial agents, and true and lawful attorneys for said company, and in its name, place and stead to sell, dispose of, transfer, and deliver to the purchasers thereof all or any part of the bonds of the State of Florida to which said company is now or may hereafter become entitled under the laws of said State, and to purchase for said company all such materials, iron, and other supplies, for the purpose of building and equiping of the railroad of said company, as said company shall from time to time direct, giving and guarantee' unto the said S. W. Hopkins & Company, the financial agents and attorneys of said company, full power and authority to do and perform
2005 any and everything whatsoever requisite and necessary to be
done and performed as such financial agents, as fully to all intents and purposes as the said company, by its board of directors, could or might do, with power of substitution and revocation, hereby ratifying and confirming all that the said S. W. Hopkins & Co., or their substitute, shall lawfully do or cause to be done, as such financial agents of said company, by said company by virtue hereof.

In witness whereof, the said Jacksonville, Pensacola & Mobile Railroad Company has caused these presents to be signed by its president, and the corporate seal of said company to be affixed thereto, on the fourth day of May, in the year one thousand eight hundred and seventy.

(Signed) MILTON S. LITTLEFIELD,
President Jacksonville, Pensacola &
Mobile Railroad Company.

In the presence of—
(Signed) ROLLIN STEWARD.
(Signed) J. N. GREEN.

In the eleventh line, first page, between the words "York" and "its," the words "and London, England" was added before signing; also, on the seventeenth line, second page, the word "Florida" was erased, and the word "Mobile" was written before signing of this instrument.

(Signed) M. S. LITTLEFIELD,
President Jacksonville, Pensacola &
Mobile Railroad Company.

{ SEAL OF JACKSONVILLE,
PENSACOLA & MOBILE
RAILROAD COMPANY. }

In presence of—
(Signed) R. STEWARD.
(Signed) J. N. GREEN.

2006 (Endorsed on back:) Circuit court of the United States, northern district of Florida. J. Fred. Schutte, Jan Prins, et al., vs. the Western Division of the Western North Carolina Railroad Company et al. In equity. Interrogatories to be propounded to L. H. Pierce, a witness for the complainants. Filed this 6th day of February, 1879. P. Walter, clerk. W. G. M. Davis, C. D. Willard, solicitors for complainants.

Circuit court of the United States, northern district of Florida. In equity.

J. FRED. SCHUTTE, JAN PRINS ET AL.
vs.
THE NORTHERN DIVISION OF THE WESTERN
North Carolina Railroad Company et al.

The Florida Central Railroad Company objects to the interrogatories filed by the complainants in the above cause, to be propounded to L. H. Pierce, of Kingston, Jamaica, in behalf of the complainants, and states grounds of objections as follows:

It objects to the 5th direct interrogatory, because it is irrelevant, immaterial, and does not seek the best evidence which the case admits of, and is otherwise illegal.

It objects to the 6th direct interrogatory on the same grounds.

It objects to the 7th direct interrogatory on the same grounds.

It objects to the 8th direct interrogatory on the same grounds.

It objects to the 9th direct interrogatory on the same grounds

JAMES M. BAKER,
Attorney for Florida Central Railroad Company.

2007 (Endorsed on back:) In the United States circuit court for the northern district of Florida. J. Fred. Shutte et al. vs. The Florida Central Railroad Company et al. Objections by the Florida Central Railroad Company to direct interrogatories to L H. Pierce. Filed February 14th, 1879. P. Walter, clerk.

In the circuit court of the United States, northern district of Florida

J. FRED. SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN
North Carolina Railroad Company et al.

Cross-interrogatories on the part of the defendants to the direct interrogatories propounded to the complainant's witness, L. H. Pierce.

The defendants except to the fourth, fifth, sixth, seventh, eighth and ninth interrogatories propounded by the complainant to L. H. Pierce, because the same are leading, illegal, and incompetent, and does not waive or abandon such exceptions by the cross-examination of the witness, but on the contrary expressly and hereby reserves the same.

Cross-interrogatory 1st. When did you make the acquaintance of S. W. Hopkins & Company, if you ever did know them? State the exact origin, character, and extent of your acquaintance. What knowledge have you of their private business transactions, and how did you acquire that knowledge? Did they permit you to see and read their private agreements and transactions in business matters, and especially in the purchase and sale of bonds? Had you any interest pe-
2008 cuniarily in the business transactions of said Hopkins & Company? And if yea, state what they were. When did you leave their employment, and why did you do so? Please answer these several questions fully and in detail.

Cross-interrogatory 2d. When did you first see a paper purporting to be a bond of the State of Florida, and how do you know, or can you state positively, that the paper marked A, made part of the fifth direct question, is a correct copy of any paper or bond you ever saw?

Cross-interrogatory 3d. Do you not know that the papers purporting to be bonds of the State of Florida, mentioned as referred to in the several interrogatories propounded to you on the part of the complainants, were not sold by said Hopkins & Company in the regular manner in which genuine bonds are sold in the market, but on the contrary do you not know that said bonds were taken to account by said Hopkins & Company on speculation, at the nominal price of about one-half of their face value, or say about $500 or less for $1,000 bond? And do you not know that the bonds as taken to account were nominally sold to John Collinson at a stated advance of about $190 on each bond, or say at a nominal price of about $690 per bond? And do you not know that besides said Hopkins & Company and said John Collinson that one Boissevain, one Mildrew, one Zadocks, one Stoop, one Manga, and others, residing and speculating in bonds, in Amsterdam, and Rotterdam, in Holland, were jointly and personally interested in said speculation in said bonds?

Be so good as to state fully, distinctly and in detail all that you know, or that came to your knowledge, about the alleged bonds mentioned in complainant's direct interrogatories.

Cross-interrogatory 4th. Do you not know that the reason said bonds were so taken to account by said Hopkins & Company, Collinson, Boissevain, Mildrew, and others, was that the same was pronounced by various means, reports and public declarations, both verbal and written, and published in newspapers and public journals in the United
2019 States, England and Holland, that the said alleged Florida State
bonds were fraudulent and illegal, and were issued in violation of laws and that the statute or act of the legislature of Florida, passed January 28th, 1870, under which the said bonds were issued, was a violation of the constitution of the State of Florida, and that said statute and the said bonds issued under the provisions thereof were null and void? Please state fully and distinctly all that you know, or that came to your knowledge, in regard to the validity of said bonds.

Cross-interrogatory 5th. Do you not know that in consequence of such charges of fraud, illegality and unconstitutionality in the issue of said bonds that said Hopkins & Company, Boissevain and others, or some of them, sought and obtained the opinion of J. P. Benjamin, Queen's counsel in London, as to the validity of said bonds, and that he gave it as his opinion that the same were unconstitutional and void? And do you not know that in consequence thereof said Hopkins & Company, Collinson, Boissevain and others, or some of them, before said bonds were disposed of, sent one Collins from London to Florida to procure some official or judicial opinion in favor of the validity of said bonds? And do you not know that such expressions were obtained from some of the supreme court judges of the State of Florida, and was treated as assurances of the validity of said bonds? And do you not know that such opinions were used in England and Holland to induce persons to purchase said bonds? Be so good as to state fully and in detail all that occurred in this behalf.

Cross-interrogatory 6th. Do you not know in consequence of such charge of fraud, illegality and unconstitutionality that the said Hopkins & Company, Collinson, Boissevain and others agreed to and did deduct, from the amount of the gross sales of said bonds, the amount of about $400,000 to be reserved and used as a fund to float said bonds on the markets in England and Holland while the same were being so speculated in and placed in the market? State fully what occurred, within your knowledge and information, as to the means by and the manner in which said bonds were floated in the market.

2010 Cross-interrogatory seventh. Do you not know that the first agreement for the delivery of said bonds between Hopkins & Company and Collinson was *was* dated November 14, 1870? And do you not know that in consequence of the charges and allegations of fraud and illegality in the issue of Florida State bonds a modified agreement was prepared and executed between said Hopkins & Company and Collinson, and other parties speculating therein, on the 28th day of December, 1870, a copy of which said agreement is hereto annexed, marked C? And do you not know that the fraudulent and illegal character of said bonds was a matter of general notoriety at and about the time of the executing of said agreement? Please state all your knowledge or information in reference to the statements and publications about the fraudulent character of said bonds either in England or Holland; and if you have a copy of said publications in either the Dutch or English language please make the same part of your answer.

Cross-interrogatory 8th. Do you not know that said Florida State bonds were offered to the public by said Collinson and others upon the terms stated in a printed prospectus, and is or not the printed paper hereto annexed, marked B, a correct copy of such prospectus? And do you not know that said bonds failed in the English market because of said charges of fraud and illegality, and that said prospectus was subsequently translated into the Dutch language, and the said bonds placed in the market in Holland by the united efforts of said Hopkins & Company, Collinson, Boissevain, Mildeus, Zadocks, Stoope, and others? State fully all that occurred or transpired in the handling of said bonds in this respect.

Cross-interrogatory 9th. With whom have you conversed or corresponded, if any one, on the subject matter of this suit or your testimony in the same? And have you been advised by any one of the object of this suit? and, if so, state by whom, and if in writing produce the same or a copy thereof as part of your answer; and state whether you
2011 know Frank R. Sherwin, William H. Gleason, or W. G. M. Davis;
and if yea, state where and under what circumstances you made their acquaintance or the acquaintance of either of them, and state in what capacity they or either of them were at the time acting. State in full all the knowledge and information you have on the subject inquired about.

Cross-interrogatory 10th. Do you not know that said Hopkins & Company were the fiscal and financial agents for the State of Florida at and during the time you were engaged in the service of said firm, if you say that you were in their employment?

JOS. B. STEWART,
Solicitor for Defendants.

B.

DEFINITIVE PROSPECTUS.

A.—Annexed referred to in affidavit of J. Wertheim, LL. D., dated the 28th day of May, 1877.

1870.

Florida State loan, issue of 4,000,000 dollars, authorized by act of the
legislature, dated 28th of January, 1870, in bonds to bearer of 1,000
dollars each, bearing interest at the rate of eight per cent. per
2012 annum, principal and interest payable in gold, free from all
United States taxes.

Payments will be made at the Florida State agency, in the city of New York, of the principal at par on January 1st, 1900, and the interest on January 1st and July 1st in each year.

The bonds, with accrued interest since 1st July (being £6 18s. 2d.), are offered at the price of £183 per $1,000, making the interest equal to nearly 9½ per cent. per annum.

Payment on application £10 per 1,000-dollar bond, and the remainder on allotment. Should no allotment be made, the application money will be returned in full.

Messrs. are authorized to receive subscriptions for the Florida State bonds to the amount of $4,000,000.

The State of Florida pledges its credit for the above, guaranteeing payment in gold of both principal and interest.

The governor of Florida (Harrison Reed) makes the following statements:

That the real property therein, taken at its present minimum value, is $50,000,000, on which a tax of ½ of one per cent. is annually levied, being $250,000.

That an addition of $30,000 to $50,000 is receivable from specific taxes on polls, specific licenses, etc.

That there are four hundred miles of railroad and a thousand miles of
telegraph line in operation; oyster beds and fisheries along a thousand
miles of the coast, equal to the best in the world. Foreign corporations
doing business in the State, insurance companies, steamship com-
2013 panies, etc., all of which pay no taxes, and from which large
tributes can, if necessary, be levied.

As further security for her debt, the State of Florida possesses already 11,000,000 acres of public lands, and will receive when the government surveys are completed, over 5,000,000 acres additional.

The money to be now raised is solely to be devoted to railroad purposes, and will be paid on completion of every twenty miles, at the rate of $16,000 per mile; the State being secured by first mortgage liens conditional upon the payment by the company of principal and interest.

The Jacksonville, Pensacola and Mobile Railway, to aid in constructing which the money will be applied, is a line 450 miles in length, of which 250 miles are completed, fully equipped, and given over to traffic. The full paid capital stock is $6,550,000, and the present earnings on the finished portion of the road show a net return of over $380,000 per annum.

This railway company has mortgaged to the State its entire property, including all real estate, road-bed, iron, equipments, and all franchises, as additional security for the prompt payment of principal and interest of these bonds.

The total debt of the State of Florida is $1,011,756, held by the United States Government, and within the State itself.

All the original documents connected with this loan have been submitted to Messrs. Ashurst, Morris & Co., solicitors, of 6, Old Jewry, London, who have stated that they are fully satisfied that they are in perfect order, and that the bonds are properly issued.

Subscription lists will be simultaneously opened in London, Frankfort, Amsterdam, and Rotterdam, and prospectuses and forms of application can be obtained in London, of Messrs.

Copy of the bond.

UNITED STATES OF AMERICA.

No. .] STATE OF FLORIDA. [No. .

It is hereby certified that the State of Florida justly owes to
, or bearer, one thousand dollars, redeemable in gold coin of the
United States, at the Florida State agency, in the city of New York, on
the first day of January, 1900, with interest thereon at the rate of eight
per centum per annum, payable half yearly at the said Florida State
agency, in gold, on the first days of July and January in each year
2014 from the date of this bond and until the principal be paid, on
surrendering the proper coupons hereto annexed.

HARRISON REED, *Governor.*

Tallahassee, January 1st, 1870.
[FLORIDA GREAT SEAL.] S. B. CONNER, *Treasurer.*

Issued in accordance with act of the legislature of Florida, approved January 28th, 1870.

Form of coupon.

The State of Florida will pay to bearer forty dollars in gold at the State agency in the city of New York, for interest due on bond for $1,000.

No. . S. B. CONNER, *Treasurer.*

Indorsement.

STATE OF FLORIDA.

No. .] Thirty-year eight per cent. bond. [$1,000.

Payable January 1st, 1900. Interest payable 1st July and January in gold, at Florida State agency, in the city of New York.

This bond is one of a series issued in aid of the Jacksonville, Pensacola & Mobile Railroad Company to the extent of $16,000 per mile upon completed road, the State of Florida holding the first mortgage bonds of said railroad company for a like amount as further security to the holder thereof.

HARRISON REED,
Governor of Florida.

2015 C.

Memorandum of agreement made the twenty-eight day of December, one thousand eight hundred and seventy, between Messrs. S. W. Hopkins & Company, of 58 Old Broad Street, London, of the one part, and John Collinson, of 9 Victoria Chambers. London, of the other part.

Since the agreement between the same parties dated the fourteenth day of November, 1870, was signed, a question has been raised by Mr. Collinson whether the issue of the bonds which is the subject of such agreement is not invalid as being unconstitutional. Messrs. S. W. Hopkins & Company, although not admitting that there can be any doubt as to the validity of such bonds, have nevertheless agreed with Mr. Collinson as follows:

It is therefore agreed between the parties that Mr. Collinson, in lieu of paying the Messrs. Hopkins & Company against delivery on application of each of such bonds the sum of one hundred and thirty-eight pounds one shilling and ten pence, shall pay to them one hundred and twenty-four pounds five shillings and ten pence, and that the difference, vidilicit, thirteen pounds sixteen shillings shall, at the risk of Messrs. Hopkins & Company, be paid to the joint account of Frank Howard Collins and John Collinson, with Messrs. Drake, Klineworth & Cohen, bankers, of ten Church street, London. Messrs. Hopkins & Company engage forthwith to take steps for obtaining and to produce to Mr. Collinson, duly certified by the proper officers of the State, the decision of the supreme court of the State of Florida upon the question so as aforesaid raised by Mr. Collinson.

In the event of such decision of the supreme court being in favor of the validity of the bonds, the amount in the hands of Messrs. Drake, Klineworth & Cohen shall, upon the production to Mr. Collinson, his executors or administrators, of the official copy of such decision, duly certified as aforesaid, belong and be paid to Messrs. Hopkins & Company.

In the event of the decision being adverse to the validity of the bonds, such amount as aforesaid shall belong and be paid to the said John Collinson, his executors or administrators, as representing the bondholders.

In either case, such interest as Messrs. Drake & Company may allow shall be paid to Messrs. Hopkins & Company.

2106 In other respects the agreement of the fourteenth day of November, 1870, shall remain in full force, and nothing herein contained shall prejudice the claims of Mr. Collinson or any bondholder against the State of Florida or the Jacksonville, Pensacola and Mobile Railroad Company, as witness the hands of the parties hereto the day and year first above written.

(Signed) S. W. HOPKINS & CO.
JOHN COLLINSON.

Witness to the signature of S. W. Hopkins & Co., and John Collinson.

(Signed) ADAM S. BLANDY.

UNITED STATES OF AMERICA,
Northern District of Florida:

I, Philip Walter, clerk of the United States circuit court, in and for the northern district of Florida, do hereby certify that the foregoing is a true copy of the original cross-interrogatories and exhibits on file and of record in my office.

Witness my hand and the seal of said circuit court at Jacksonville in said district, this the twenty-seventh day of February, A. D. 1879.

[SEAL.] PHILIP WALTER, *Clerk.*

(Endorsed on back:) United States circuit court, northern district of Florida. J. Fred. Schutte et al. vs. the Western Division of the Western North Carolina Railroad Company et al. Interrogatories, cross-interrogatories, and commission to take deposition of L. H. Pierce before U. S. consul at Kingston, Jamaica.

2017 *Instructions.*

I. All the commissioners named in the commission should have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

II. The commission must be executed by Geo. E. Hoskinson, the commissioner named therein.

III. The acting commissioner will examine the witnesses separately, after publicly administering to them the following oath or affirmation: "You do swear that the answers which shall be given by you to the interrogatories proposed to you shall be the truth, the whole truth, and nothing but the truth: so help you God." The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon and kissing the Gospels. But if the witness shall desire it, he shall be permitted to swear in the following form: "You do swear in the presence of the ever-living God," and while so swearing he may or may not hold up his hand, in his discretion. Or, if the witness 2018 shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation in the following form: "You do solemnly, sincerely, and truly declare and affirm," omitting the words, "So help you God."

IV. The general style or title of the depositions must be drawn up in the following manner: Deposition of witnesses, produced, sworn (or affirmed), and examined the day of in the year one thousand eight hundred and at under and by virtue of a commission issued out of the circuit court of the United States for the northern district of Florida, in a certain cause therein depending and at issue, wherein J. Fred. Schutte, Jan Prins, and others, complainants, against The Jacksonville, Pensacola and Mobile Railroad Company and others, defendants, as follows:

A. B., of (insert his place of residence and occupation), aged years, and upwards, being duly and publicly sworn (or affirmed), pursuant to the directions hereto annexed, and examined on the part 2019 of the doth depose and say as follows:

First. To the first interrogatory he saith, &c. (Insert the witness's answer.)

Second. To the second interrogatory he saith, &c., and so on throughout.

If he cannot answer, let him say that he knoweth not.

V. If there be any cross-interrogatories, the witness will go on thus:

First. To the first cross-interrogatory he saith, &c., and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed & sworn to this day of 18 , before , commissioner.

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be endorsed by the acting commissioners in this manner:

"At the execution of a commission for the examination of witnesses, wherein this paper writing was produced and
2020 shown to (insert the witness's name) and by him deposed unto at the time of his examination, before commissioners."

VIII. The acting commissioner will sign his name to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the commissioners will administer to him the following oath, and certify thereto:

"You do solemnly swear that you will truly and faithfully interpret the oath and interrogatories to be administered to , a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of the said thereto, out of the into the English language."

Let the depositions be subscribed by the interpreter as well as by witness, and certified by the acting commissioners as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of 18 , before , commissioner.

2021 X. The commissioner will make return on back of the commission by endorsement, thus:

"The execution of this commission appears in certain schedules hereunto annexed" , commissioner.

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories, the cross-interrogatories, depositions, and exhibits must be folded into a packet and bound with tape. The acting commissioner is to set his seal at the several meetings or crossings of the tape, endorse their names on the outside, and direct it thus: "U. S. circuit court, northern district of Florida. J. Fred. Schutte, Jan Prins, and others, complainants, vs. The Jacksonville, Pensacola & Mobile Railroad Company and others, defendants. To the circuit court of the United States for the northern district of Florida, at Jacksonville, Florida; care of Philip Walter, clerk."

XII. When the commission is thus executed, made up and directed, it must be returned in the manner specified in the direction of the commission, if there be any.

2022 XIII. If there be no direction on the commission specifying the manner in which it is to be returned, then it must either be delivered to the court by one of the acting commissioners personally, or else be forwarded by some person coming to this place, who will be required, on his arrival, to make oath before one of the judges or the clerk of the court "that he received the same from the hands of A. B., one of commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest post-office, he making the following endorsement thereon: "Deposited in the post- this day of , 18 , by me , commissioner.

In case of returning the commission by a vessel, it is to be deposited by one of the acting commissioners in the letter-bag of such vessel, he making upon the commission the following endorsement: "Deposited in the letter-bag of the now lying at and bound for the port of New York, this day of , 18 , by me commissoner." 2023

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

If the commission be returned by an agent, let him be instructed to call, on his arrival at this place, upon , who will direct him as to its delivery.

UNITED STATES CONSULATE AT KINGSTON, JAMAICA,
March 22d, 1879.

2024 Deposition of witness produced and sworn and examined the twenty-second day of March, in the year one thousand eight hundred and seventy-nine, at Kingston, Jamaica, under and by virtue of a commission issued out of the circuit court of the United States for the northern district of Florida, in a certain cause therein depending and at issue, wherein J. Fred. Schutte, Jan Prins and others are complainants, against The Jacksonville, Pensacola & Mobile Railroad Company and other' defendants, as follows:

LOUIS HORACE PIERCE, of Kingston, Ja., by occupation, clerk, aged thirty-eight years and upwards—GEORGE E. HOSKINSON, *Commissioner*—being duly and properly sworn, pursuant to the directions hereto annexed, and examined on the part of the complainants, doth depose and say as follows:

First. To the first interrogatory he saith: My name is Louis Horace Pierce; my age, thirty-eight years; my occupation, clerk.

Second. To the second interrogatory he saith: London, England.

Third. To the third interrogatory he saith: S. W. Hopkins & Company; I was chief clerk in their employment.

Fourth. To the fourth interrogatory he saith: First they were dealers in railway iron, and carried on business at No. 58 Old Broad street, London.

Fifth. To the fifth interrogatory he saith: I have a knowledge of the sale of such bonds, by handling those bonds, counting them, entering them in books, cutting coupons therefrom. Of course I saw and inspected such bonds, and remember them as of a light green color, and that they bore a great seal.

GEORGE E. HOSKINSON,
Commissioner.

Sixth. To the sixth interrogatory he saith: They acted as agents in behalf of the railway company by whom they were issued. I believe they had, but I never saw it or read it.

Seventh. To the seventh interrogatory he saith: I have no recollection of having seen or read that document.

2025 Eighth. To the eight' interrogatory he saith: They sold to John Collinson, of London, twenty-eight hundred of said bonds at the price of one hundred and thirty-eight pounds one shilling and ten pence sterling for each bond, to the best of my recollection during the years 1871 and 1872 in the city of London.

Ninth. To the ninth interrogatory he saith: The said S. W. Hopkins

& Co. endeavored to negotiate their Florida bonds in Paris in 1870, but were frustrated in their attempts by the declaration of war between France and Germany. I can't say what they did to induce purchasers to buy the bonds and am therefore unable to relate what was done by said S. W. Hopkins in that way.

GEORGE HOSKINSON,
Commissioner.

Final interrogatory. To the final interrogatory he saith: A portion of these Florida bonds were held in London by T. B. Coddington, a native of the United States, who ultimately relinquished these bonds to the said Hopkins & Company, receiving payment therefor; how much I cannot say; from S. W. Hopkins & Company in New York; it was not the London firm but the New York firm who paid Coddington the said amount on receiving said portion of the bonds from Coddington. S. W. Hopkins & Company, of London, opened negotiations with John Collinson for the purchase by him of all the said bonds in their possession. John Collinson was introduced to the said Hopkins & Company, of London, by Alexander Mendel, of Brussels; and it was agreed between the said Alexander Mendal and the said S. W. Hopkins & Company that they would pay him a commission, pro rata per bond, for every bond purchased by the said John Collinson. I am unable to say at what rate per bond, but I recollect that a considerable sum was paid the said Mendel, as commissions, on the twenty-eight hundred bonds, and to my best recollection they sold to no other parties.

This is all I know of the transaction.

LOUIS HORACE PIERCE.

2026 Examination taken, reduced to writing, and by the witness subscribed and sworn to this 22d day of March, 1879.

[SEAL.] GEO. E. HOSKINSON,
Commissioner and Consul of the United States at
Kingston, Ja., as witness my official seal.

First. To the first cross-interrogatory he saith: I made the acquaintance of S. W. Hopkins & Company in the year 1870. I was introduced to them by Geo. Richardson, a brother-in-law of Frank Collins, a partner in the firm of S. W. Hopkins. I have no knowledge of their private business transactions, except that they were dealers in railway iron. I acquired that knowledge by business repute. They did not permit me to see and read their private agreements and transactions in business matters. Know nothing about it, having just entered their office as clerk. I had no pecuniary interest whatever in the business transactions of said Hopkins & Company. I left their employment in the year 1874, because they had suspended payment; stopped business and my services were no longer required.

Cross-interrogatory second. To the second cross-interrogatory he saith: The first time I saw a paper purporting to be a bond of the State of Florida, was upon the occasion of T. B. Coddington calling on Hopkins & Company, in London, with a portion of the said Florida bonds. I believe the paper marked A to be a copy of the bonds from the purport of its reading, and a correct copy.

Cross-interrogatory third. To the third cross interrogatory he saith: I know that the bonds were sold privately to John Collinson, of London, and that the said bonds were originally taken by said Hopkins & Company, on speculation, at about half of their face value; they were

really sold to John Collinson at an advance of one hundred and thirty-eight pounds one shilling ten pence (£138 1 10) per bond; besides Collinson & Hopkins & Company, to the best of my knowledge and belief, the said Boosevain Mildeus, Zadocks, Stoope, and Manga and others, were jointly and personally in said speculation in said bonds.
2027 Hopkins & Company sold to Collinson, Collinson sold to the Amsterdam parties already named, who in their turn issued the said bonds on the Amsterdam market. To the best of my belief the already named Amsterdam parties and John Collinson and Alexander Mendel were in constant communication, as was Alexander Mendel, with S. W. Hopkins & Company.

Cross-interrogatory fourth. To the fourth cross-interrogatory he saith: I did not know of any of these facts at the time. Nothing came to my knowledge in regard to the invalidity or illegality of the said bonds.

Cross interrogatory fifth. To the fifth cross-interrogatory he saith: In regard to the first part of this question, I say, I had heard of a consultation with J. P. Benjamin, but did not learn the result of his opinion, nor the object of the consultation. I remember one C. H. Collins returning to the United States, with the intent of visiting Florida, but for what purpose I cannot say. I cannot recall that opinions were ever given by the courts of Florida in regard to the validity of the bonds, except by telegrams to that effect received by Hopkins & Co. in London from parties in Florida. I do not know what means were used to induce the sale of the bonds in England, but I believe a pamphlet was published in Dutch conducing to the sale of the bonds in Holland. This is all I know about it.

Cross-interrogatory sixth. To the sixth interrogatory he saith: I believe that a sum of money was set aside as therein mentioned. How much I cannot recall. As a fund to float the issue of said bonds. Paragraphs and articles appeared in the leading newspapers in Holland of a flattering character and speaking highly of the resources of the State of Florida. Nothing of the sort appeared in any of the English newspapers, that I can recollect.

2028 Cross-interrogatory seventh. To the seventh cross-interrogatory he saith: To the best of my belief the first agreement was on that date, which was subsequently followed by a modified agreement, dated, I think, in December following, but there was no question raised at that time in London as to the validity or otherwise of the bonds, though I recollect that the question of the validity of the bonds was raised and warmly discussed in Holland, judging from translations of newspaper articles taken from Holland newspapers which I saw some time after. I have no documents whatever, of any character, relating to any of these matters.

Cross-interrogatory eighth. To the eighth cross-interrogatory he saith: I think Collinson did offer the bonds to parties in Holland according to the terms of the prospectus marked B, which I think is a correct copy of said prospectus. I do not recollect any attempt to issue the bonds in the London market was ever made by Hopkins & Company, although Collison may have done so.

Cross-interrogatory ninth. To the ninth cross-interrogatory he saith: I have only recently corresponded on this subject with W. G. M. Davis, of Florida. I first made his acquaintance in London in the year 1872, when he called at the office of Hopkins & Company. I am not acquainted with any of the other names, nor have corresponded with any one else on the subject. Mr. Davis was acting, I believe, as legal adviser of the Jacksonville, Pensacola & Mobile Railroad Company. The correspondence began on his part at the close of the year 1877. I submit a copy of my entire correspondence with Mr. Davis in reference to this subject as a part of this answer. (Schedules A, B, C, D, & E.)

Cross-interrogatory tenth. To the tenth cross-interrogatory he saith: They represented themselves as being the fiscal agents of the State of Florida.

LOUIS HORACE PIERCE.

2029 Examination taken, reduced to writing, and by the witness subscribed and sworn to this 24th day of March, 1879, before

[SEAL.] GEORGE E. HOSKINSON,
Commissioner and Consul of the United States of America at Kingston, Ja., as witness my official seal.

LONDON, *October 14th*, 1876.

DEAR SIR: The Jacksonville, Pensacola & Mobile Railroad Company has utterly failed. The road will soon be sold and pass into hands of new company. I am engaged in trying to wind up its affairs. The creditors will get but little. The State bonds have been declared illegal, as unconstitutionally issued and not obligatory on the State. This by the State supreme court. This is final and conclusive. But at same time the court holds that the company is liable to the purchaser of the bonds to repay what they paid.

There was an old lien on the road, and it is to be sold to meet both the claims. It will not pay twenty per cent. of them. Hopkins, Collins & Company, which have gone under financially and morally, here and in America, cannot well be found, and are doing no business that their former acquaintances know of. They have entirely released by the J. P. & M. Railroad Company, as you can learn, and if they were not, they have nothing to pay if they were held liable. I have tried to find them, but without success. They employed Mr. Chase, who settled with them as trustee, to put them in possession of the evidence to show who got the £38 pounds which Hopkins & Company did not credit the company with the account they filed in the court in New York. The division was made here, as Collins and Carpenter both told me, but they did not tell me who should do it.

If I may find that H. & Co. did not in fact get from Collinson the £138 110 per bond, or that the £38 1s. 10d. was divided, who acted with Hopkins & Company in selling, introducing, etc., the bonds, I will be able to secure a large sum of money from any such persons who live in England or Holland, if they are able to pay. The fact, any one
2030 can be made liable for the entire sum, £119,000 and interest. I
know that you are able to give me the true history of the transaction. It is your duty to do so. I will give any assurity that no steps shall be taken to make S. W. Hopkins & Company liable, not to use what you state as evidence against them. You are of course obliged to answer if you are called as a witness. In case a suit is begun here a commission to take your deposition would be sent out. You are not bound to secresy where your former employers' interests are not attacked. Will you write me at New York, care of William H. Brodie, 97 Pearl street, and say what you can and will do to aid me?

Yours truly,

W. G. M. DAVIS.

KINGSTON, JAMAICA, 23*d November*, 1876.

Gen'l W. G. M. DAVIS,
Care William H. Brodie, esq., 97 *Pearl street, New York, U. S.:*

DEAR SIR: Your letter dated London, 14th October, 1876, duly reached me here on the 5th inst., and I have carefully noted its contents.

I am quite willing and ready to aid you in your endeavors to wind up the affairs of the Jacksonville, Pensacola & Mobile Railroad, and will furnish you with all the information I possess, provided you remunerate me to the following extent: On receipt of a sight draft to my order drawn by Brown Brothers of New York, on Brown, Shepley & Company, of London, for £50, say fifty pounds sterling, I will at once write you all I know regarding the Jacksonville, Pensacola & Mobile Railroad, and the late negotiations and sale of Florida bonds.

Possibly my demand may appear unnecessary and unjust, but as I attribute to a great extent the suspension of S. W. Hopkins & Company to the negotiating of and dealing with said Florida bonds, and their suspension resulting in my not only losing a good position of trust, but money also, I do not hesitate to make this demand; and permit me to mention that by you complying thereto you will be spared considerable trouble and expense of a commission to take any evidence here.

2031 Of course under all circumstances I am to be held harmless for imparting what I know in the matter. By giving you the information as legal advisor to the railroad, it is to further the ends of justice, and not to indulge any supposed feelings of animosity that I might entertain towards S. W. H. & Co., or any one else. If you agree to my request, I would suggest you sending me a series of questions to be answered and I will supplement my answers with all or any information I may consider likely to be of value to you. I think I can furnish you with a sketch of the Florida bond negotiations from the time Littlefield appeared in London (the very time I entered the service of S. W. H. & Co.) down to that period when I saw the bonds quoted at 17 on the Amsterdam Bourse.

The history of this negotiation is painfully interesting even to outsiders. I fear it has been the cause of much weeping and gnashing of teeth throughout the land. That disease known by the faculty of medicine as "kleptomania" is often rivaled by another complaint too frequently an epidemic in commercial and financial circles, a vulgar complaint against which honesty has but little chance of coming to the front. I know of no better inscription for the portal of a stock exchange nor motto for a financier than the words of the eighth commandment.

I am, dear sir, yours faithfully,

L. H. PIERCE.

P. S.—Kindly prepay postage of any future correspondence. I assume my evidence will require to be certified here before United States consul.

WASHINGTON CITY, D. C., *December* 15*th*, 1876.

DEAR SIR: I received your letter on my return from Europe, and am obliged by your attention. I think your demand very reasonable if the information you can give will lead to the recovery of the £38 1 10 which was paid (as Collinson swore) and not we all pay.

I do not think the evidence of Collins would be sufficient; he would not be credited unless he is supported by other evidence, hence I have not sought to procure his affidavit. He told Chase that he would

2032 furnish the evidence that the money was spent in subsidizing the press, paying a syndicate, &c., and that Collinson aided in doing it. He has not yet done so. Now you see what I think is wanted as evidence. If you admit been received by S. W. H. & Co.; if the fact be that the money was not really paid to S. W. H. & Co., as I am told by Collins & Carpenter; if there was any agreement to treat the money as paid and to make a division among the syndicate and others, and if sufficient proof of this can be made by witnesses of character, by documents, &c., I can recover the money in England or Holland, if the parties who illegally received the money will furnish the facts to put me in the way to get it. I will send the fifty pounds, if you will call on the counsel and show him this letter and he writes me that he thinks you are able to give what I want. I will send him the money to pay you when you supply the facts needed. I would prefer that a solicitor should look into the matter also. I will pay his fee. Address me here, care C. D. Willard, 812 F st., Washington, D. C.

Yours truly,

W. G. M. DAVIS.

KINGSTON, JAMAICA, *25th January*, 1877.

Gen'l G. W. M. DAVIS,
Care of C. D. Willard, esq., 812 *F st.*, *Washington, D. C.:*

DEAR SIR: Your letter dated 15th December last duly received. I cannot quite understand the modus operandi you suggest with reference the U. S. consul here. I called on the consul and informed him of your desire that he should write you if he considered me capable of supplying the information you require, but he told me he was not acquainted with you, and that it was not a consular matter at all; in fact he could only certify my signature to any document or statement. If, as you state, you would like a solicitor to look into the matter, I have no objection; on the contrary, would desire a solicitor to draw up my statement of facts in legal form, but on the condition only that you first comply with my request by sending me £50. I cannot part with my information until I get that payment. If you have any doubt as to 2033 my keeping my word, or that my statement may not after all be of use to you, then the matter had better remain undisturbed. I beg to give you the names of respectable firms of solicitors here: Messrs. Harvey & Bourke, Burke & Lee, Ingleton & Garcia, and I shall be happy to learn you have instructed any of the above to take the matter in hand in your behalf. But please note I act only on the conditions stated in my last letter, and by complying thereto I will keep my word, and give you all the information in my power unreservedly.

I am, dear sir, yours faithfully,

L. H. PEIRCE.

P. S.—I think it right to mention that the information I can furnish will, I consider, be of great value to you. I suppose you are hardly inclined to run down and visit the sunny South. Kingston accommodations for travelers is very poor, but it might be worth your while to talk matters over with me in detail. The Atlas line of steamers run conveniently from and to N. Y. Passage £10, time 6 days.

L. H. P.

WASHINGTON, D. C., *Feb. 26th*, 1877.

C. D. WILLARD,
Attorney and Counsellor-at-law, No. 812 *F Street, N. W.:*

DEAR SIR: I have delayed my reply to your last letter owing to the

uncertain state of the affairs of the railroad. The governor has advertised the road for sale on the 4th June next for nonpayment of interest on State bonds. The road is in possession of the governor, and the company have not any assets. I am employed by the Dutch bondholders to see to their interests. I may go to Europe in a few days to see about the business. I had no intention of insinuating any doubt of your good faith, and no reason to base any such doubt in what I meant by asking that you should state to some one exactly what you could prove. Has the value of your evidence to the person I represent, might be judged of, whether it would establish such conduct on the part of any financial party in England or in Holland, or would statement of such facts relating to the sale of the bonds to your brother-in-law, Mr.
2034 H. Acherson, with authority to him to deliver it to Mr. A. Scott Lauson, solicitor, 32 Essex st., Strand, on his paying fifty pounds, so if I get the consent of my friends to pay there may be no delay. If you would also make your statement to a solicitor to be employed by you, C. L. to pay the fee, and get him to state what he thinks the evidence will amount to, and he says it will establish that there was a fraudulent dealing by Collinson and his associate, with any part of the money agreed to be paid by Collinson for the bonds, it will aid me in getting authority to pay and to get you further advantages.

Collinson was in this country, and left suddenly, fearing arrest in a civil suit arising out of his dealing with General Mahone's road—the Atlantic, Ohio & Mississippi—which bonds he sold, General Mahone has published, lead to a recovery of the £38. I know you think your evidence would be sufficient for such purpose, and you may be correct, but it is a matter of which a lawyer must be a better judge. It would be necessary to have some additional evidence, oral or written. This, I have no doubt, you can assist in procuring. The amount of money you ask is trifling in comparison with the end which I seek; and if I had authority to use the money from those who would be benefited by your evidence, I would not hesitate to employ you to go to England and give your aid, &c., and to pay your expenses; and for your benefit, &c., I will present the matter in this way to the parties, and urge them to agree to pay you. I feel a great anxiety not only to recover the money, but also to unearth the fraud that has been perpetrated.

Suppose you send an account of Collinson's conduct, and trust it to the bondholders, a large part of whom live in Holland. The Dutchmen are greatly incensed against Collinson. With kind regards,

Yours truly,

W. G. M. DAVIS.

General W. G. M. Davis,
Care C. D. Willard, Esq., 812 *F street, Washington, U. S.*:

DEAR SIR: Accept my thanks for your last letter, dated 26th February, 1877. As by this time you may be in London, I send press
2035 copy of this to the care of A. Scott Lauson, esq., for delivery to you. To save this mail and thereby two weeks' delay, I think it expedient to act at once. Accordingly I send my brother-in-law, Mr. W. Hutchinson, thereby my statement, to be handed to you or Mr. Lauson, against payment of the £50 as agreed. As I am particularly anxious not to assume a false position in this matter, I think it right to mention the purport of that statement, which will show as follows: 1st. The parties to whom S. W. H. & Co. paid certain moneys so as to obtain possession of the bonds. 2d. The name and whereabouts of a person who must be thoroughly acquainted in detail with all Collinson's dealing with the bonds; and I have no doubt that person could be legally

compelled to divulge all he knows in the matter, not only as regards Collinson, but others also.

3d. The price Collinson paid S. W. H. & Co. for the bonds.

You will be able to judge from this if the information in my statement will further your views. If you want to fix Collinson with fraudulent dealing, I must confess my inability to state what he did with his gains in the transaction, or to what sum those gains amounted, but I think the person named in clause No. 2 of my statement is capable of giving detailed information on compulsion. I am quite prepared to supplement my statement with any further information in my power. I may as well mention now that in the event of your clients requiring my presence in Europe, it would be necessary not only to pay my traveling expenses, but salary of £20 per month, as I could not ask or expect my employers to pay me during absence. In fact, unless it be a case of great necessity, I might have difficulty in obtaining the leave, unless I also arranged for a fellow clerk to do my work for me, which I have no doubt could be done, and I would then willingly hold myself at your disposal.

Awaiting your further instructions, I am, dear sir, faithfully yours,

L. H. PIERCE.

NEW YORK, *Nov. 19th*, 1878.

L. H. PIERCE, Esq.,
Kingston, Jamaica:

2036 DEAR SIR: When I last wrote to you I stated I expected to go to England in a short time. My intention was frustrated, as you will learn herein. So expecting, I suggested you to forward your statement to Mr. Hutchinson. Mr. Lauson informed me that you had done so. I owe you a statement of the reasons I did not take and pay for the paper. Soon after I received your letter, informing me that you had sent the statement to London, the affairs of the J., P. & M. Co. were put under the control of the governor of the State, by an order of the Supreme Court of the United States.

I mentioned to the governor what I had done, but he was not willing to furnish the funds to enable me to carry out what I promised, your aid being part of my plan. I did not feel willing to pay out any money of my own, and so wrote to Mr. Lauson. I did not for the same reason go to England. The bondholders of the Florida 8 per cent. bonds sold by Hoyle, Boissevain and Mildeus & Co., have since sent an agent to this country to collect their claims. The officers of the J., P. & M. Co. do not remit their claims, but it is insisted by other parties, a litigation now exists in which it is necessary for the bondholders to prove what was the representations made by the J., P. & M. Co. by its agents, S. W. Hopkins & Co., as to the line of R. R., &c., &c. I am now employed by the Dutch bondholders. Gen. Littlefield admits all I need to prove, but there is doubt as to the value of his evidence. S. W. Hopkins is here and is willing to testify. Collins is not far off, and will state what we want to prove on the same point, yet they are doubtful witnesses. I have the prospectus published by Hoyle & Boissevain, and I have the names of directors of the Amsterdam Bourse and of bankers and brokers who can testify what were the representations which were made to the purchasers of the bonds. Collinson was there a few days since. He went to England, but will return again. I can examine him here on his return, yet with all his evidence I would like to have your testimony, in order to let you see that of £138 1 10 for the principal and accrued interest of each bond, and that he took

and paid for $2,800,000 of such bonds, and for same amount of accrued interest. You say, in your number three of facts, that you can prove the same things that Collinson has admitted, and which Hopkins and
Collinson are now willing to swear to.
2037 The only matter about which we have no positive proof is the
division that was made of the £38 1 10. Hopkins and Collinson
will no doubt divulge the whole thing; but as they were parties to the fraud their evidence will not be deemed sufficient to affect any witness corroborated by law. With such evidence as I can get you can be of service. I will call your attention to your letter of 24th March, which I enclose with two others of yours.

You say you can prove first, the parties to whom S. W. Hopkins & Company paid money to obtain possession of the bonds. Unless you can state to whom they paid any part of the £38 1 10, such evidence will not serve my clients. S. W. Hopkins & Company only credited the Jacksonville, Pensacola & Mobile Railroad Company with £100—a price at which, as they allege, the bonds were sold. Collinson swore in his bill in chancery, filed in England, that he was paid as a disinterested witness. It is material to my clients to ascertain and establish the truth. The difference between the account sales of the bonds, rendered by S. W. Hopkins & Company and Collinson and statement equals $500,000 in 1871. If we can show the facts, we may compel the persons who got this money to pay it. If any one was interested in the fraud he will be liable for the whole. Collinson, though not bankrupt, is no longer known as a financial agent. He can command money, I am informed. If the fraud can be proven, the parties will be liable to a criminal prosecution in England and Holland. I believe some of the parties in Holland who put the bonds on the market were parties to the fraud. Hopkins, Carpenter & Collins are insolvent; we do not intend to pursue them; it would be useless. You say you cannot tell anything to the gain of Collinson but legitimate profits, which we do not care about, so we do not need your evidence on such points. Telling that a certain time you acted as attorney of S. W. Hopkins & Company (in 1871), and signed for the firm, and as you were their confidential clerk at the time the first contract was made by them with Collinson, and as you had full knowledge of all moneys received and paid on account by Collinson, as well as of the payments made by S. W. Hopkins & Company out of the money received from Collinson, it seems you ought to be able to prove how the £38 1 10 per bond was divided, who participated in the divis-
ion, etc., etc. I believe, as I said, Hopkins & Collins will prove
2038 this; but your evidence will be of more weight. They may fur-
nish papers to sustain what they swear to. I suppose checks,
etc., are to be had, which will help.

Now I propose this to you: If you will come to this country and testify, and if you can furnish the evidence we want as to the division of the £38.1.10 per bond, and show that Collinson or any one else engaged in the sale of the bonds (other than S. W. H. & Co.) made an agreement to divide and share the said amount, I will pay your expenses coming and returning, your hotel and traveling expenses, etc., whilst here on the business, and the sum of three hundred and fifty dollars gold. If you are absent on this busines more than one month from the time you leave Kingston I will pay you in addition at the rate of one hundred dollars per month gold, per month for such excess time over one month. If you decide that you can give the evidence which I need I will pay the money stated, relying on your honor and judgment as to the value of your evidence and your promise to remain until your evidence is taken by commission. I will deposit the money with Messrs. Pin, Forward & Co., 50 Broadway, New York, upon receiving a cable from you that you will come. The deposit will be made to your credit, to be paid on your arrival in New York, and Messrs. Pin, Forward & Co. also will notify you by cable at my expense. I will arrange with the cable company to send your message and collect the cost from me, so as to save you any expense. I would send you the money by this steamer did I know that you could give the required evidence. I pursue the course I indicate because I wish you to sail in the next steamer leaving after you get this letter. This is essential, as we have no time to lose. As you see, I leave all to your judgment and honor. You will not trust anything to me. The deposit will be paid you on your arrival and your passage money provided. I am soon going to Florida and will be there when you get this letter. You will therefore call me at that place, and on your arrival at this city you will find at the office of Pin, Forward & Co., 50 Wall street, a letter from me saying when I will have you examined as a witness. Trusting you are well, I am

Yours faithfully,

W. G. M. DAVIS.

KINGSTON, JAMACIA, *3d December*, 1875.

2039 General W. G. M. DAVIS,
Care William H. Brodie, esq., 96 *Pearl st., N. Y.:*

DEAR SIR: On Friday, 29th November last, I received your letter bearing date 19th of same month. As you omit any specified address, I shall send this to the care of W. H. Brodie, and press copy to Jacksonville, Florida. For reference I keep copy of all my correspondence. I regret not having heard from you for so long a time, as I concluded matters had fallen through, and it was with pleasure and surprise I received your long communication, though unable at so short a notice to act according to your wishes. Having carefully and seriously considered contents of your letter, I find myself placed in a difficult position. Most willing to aid you all in my power, at the same time I am equally apprehensive that my evidence may not be worth the expenses you propose to insure. The difficulty hinges upon this point: It is required of me to swear that there was a division of £38.1.10. I would be willing to swear that to the best of my knowledge, belief, and recollection money was paid by Hopkins & Co. to a certain person as commission for aiding Hopkins & Co. to sell the bonds. Would such evidence answer your purposes? Of course I would give the name and whereabouts of such person. I do remember the agreement with Collinson, and he did pay Hopkins & Co. £138.1.10 per bond for the bonds he took. It appears to me you should get hold of that person who received commission from Hopkins & Co. Whether the law would hold that commission paid him was or was not a division or participation in the £38.1.10 you know best. I should say it was. Assuming you followed up said person properly, he would endeavor to shelter himself by the statement that the commission was not a participation in the £38.1.10. Now I am almost certain said commission was prorated per bond, but how much per bond I cannot tax my memory to state. For the sake of argument, suppose Hopkins told him—I will give you a limit sum as commission to enable me to effect sales of bonds. Could you legally criminate that person by reason of that commission, for participation in the £38.1.10? It may appear strange to you, and possibly may look like a fool, to use a vulgar expression, at my not being able to furnish a more substantial and decided statement, but I must beg you to consider the following points:

2040 1st. I am on my oath.

2d. I would rather not make my statement, than to make a false one, thereby committing myself and acting unjustly towards you.

3d. Although I was head clerk to Hopkins & Company, they were suspiciously careful in keeping many things from me, and among them the agreement to share the £38.1.10. So you see I am compelled to use the words—to the best of my knowledge, belief, and recollection. If you merely want my opinion, I should say there was an agreement, and commissions paid a certain individual, and a rich man, too, worth following up.

To make matters more complex still, at the time the negotiations were going on between Hopkins & Company and John Collinson, Hopkins & Company were moving all the power on earth to negotiate on the continent a second issue of the bonds of the Peninsular Railway of Michigan, Indiana and Illinois. As I was cashier, accountant, correspondent, and bookkeeper, you can imagine the difficulty I had to encounter to keep a clear track between the two negotiations and the books and accounts in order. I assure you the office of Hopkins and Company at that time was a pandemonium of confusion and misery to me. I had not been long with Hopkins & Company, and was suddenly brought in contact with a number of persons, heads of correspondence, agreements, &c., connected with both negotiations going on at the same time, and now, after a lapse of nearly six years, I am called upon to give evidence from memory, on oath. I beg you to consider my position, my dear sir. Why not first obtain Hopkins' and Frank Collins' evidence, and let me comment on it. As the person who received commissions from Hopkins & Company is not only reputed very wealthy and very influential, both in London and on the continent, Hopkins and Frank Collins, with a view to his future services, may decline to mention his name, to save him from trouble, but I would not stand on any such scruples, as the man is nothing whatever to me. Never anticipating the *the* investigation you wish to make, I have willingly allowed my memory to become dormant as much as possible on the events connected with myself and Hopkins & Co. I toiled for them night and day, could have taken bribes for information, suffered materially in health, lost by their promises valuable
2041 opportunities to better and raise my position, and untimately
found myself compelled to commence life again elsewhere, with the loss of £120 arrears of salary. Mr. Hopkins is aware of this, but in reply to appeals made by me to him for such arrears I am told he used the expression "I might do my damndest to get it." This is of course between ourselves, but do you wonder at my endeavoring to obliterate from my memory the recollections of so unsatisfactory a period of my life? I regret you are under the impression that I am unwilling to trust you, which is not the case, but I am particulary desirous not to assume a false position in this matter. Now if you consider the evidence I can give is worth the expense you mention in your letter, in that case I would ask you to remit me £40 by Pin, Forward & Co., draft on McDonald, Hanbey & Co., their correspondents here. or by A. Brown Bros.' draft on London. I could not quit Kingston without leaving some funds for my wife to carry on house, and I must pay up a couple of months' rent in advance and purchase some wearing apparel, &c. Could I borrow money here I would not ask you for the remittance. Assuming my employers will allow me leave, I must ar-

range for one of my fellow clerks to keep up my work and forego my salary during my absence. As I work steadily nine hours a day you can understand there is work to be done and kept up. I give you my word not to appropriate the remittance except for the purpose intended, i. e., my passage to New York and as part of my remuneration, part of same with other expenses to be paid me by you as per terms of your letter of 19th of Nov., 1878.

Awaiting your reply, believe me, dear sir, yours faithfully,

L. H. PIERCE.

P. S.—By-the-bye, Hopkins & Co. possessed a pamphlet on Florida, its resources, and the J., P. & M. R. Road. The contents were so exaggerated, and of the contents "de rose" type as to bear the stamp of untruth on almost every page. Possibly that is the identical pamphlet, rendered still more charming by the copiousness of the Dutch language, that has been used as part and parcel of the snare. I think with you that many parties in Holland contributed to the fraud.

2042 A—P. S. To prevent disappointment and misunderstanding in the matter, I beg to remind you that the person I have alluded to may be dead. I am totally ignorant as to whether he is or not. I saw him last in 1872-'73, and appeared about 45 or 50 years of age. It is generally claimed that wealth, luxury, and a residence in the safe climate of Northern Europe tends to a ripe old age. I would be very thankful to feel that hard work and limited means were conducive to the same end in the West Indies.

JACKSONVILLE, FLA., *Feb'y* 28, 1877.

H. L. PRINCE, Esq., *Kingston, Jamaica:*

DEAR SIR: I have applied for and will obtain a commission giving power to the United States consul as Kingston, Jamaica, to take your deposition in the suit of the Dutch bondholders, pending in the United States court in Florida, of which you have heard previously. I had wished to have you present in this city to be examined verbally in respect to the matters as to which you will be interrogated by the commissioner. The expense of paying your traveling fare, hotel, and necessary charges, and reasonable allowance to you for your time, prevented me from carrying out the intentions above stated. I was not able to get the necessary money furnished me. I think that if you could have been here your testimony as to the sale of the bonds by Hopkins & Co., and the representations made by them, would have satisfied everybody, seeing that you are a disinterested party. Full opportunity to examine you verbally and to cross-examine you would have been much more satisfactory to all parties, as well as to the court. When you are interrogated you will perceive that the object of the suit is not to name the difference between the price which Collinson swore he paid for the bonds and that which Hopkins & Co. gave the J., P. & M. credit for. I mention this, because I had written to you making inquiries as to such difference in amount. At the time when I wrote I thought it probable that a suit might be brought in England, or on the Continent, and the amount of such difference equal to, I think. £119,000 sterling, recovered; but I was not encouraged to proceed in such matters. I hope that you will be willing to give your deposition
2043 before the consul, and that you may be able to remember all that took place at the time of the sale of the bonds by Hopkins & Co.

Yours truly,

W. G. M. DAVIS.

UNITED STATES CONSULATE,
Kingston, Ja., March 31, 1879.

I hereby declare the foregoing correspondence, embraced within and including the letters A and E, and confined herein by the seal of the U. S. consulate at Kingston, Ja., to be all and every of the letters referred to in my answer to the ninth cross-interrogatory.

LEWIS HORACE PIERCE.

2044 U. S. CONSULATE AT KINGSTON, JA.,
Mar. 31, 1879.

At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, and others, complainants, against the Jacksonville, Pensacola and Mobile Railroad Company and others, defendants, this paper-writing was produced and shown to Louis Horace Peirce and by him deposed unto at the time of his examination before

GEO. E. HASKINSON,
Commissioner.

2045 UNITED STATES OF AMERICA.

No. 100. *State of Florida.* $1,000.

First mortgage bond of the Pensacola and Georgia Railroad Co. Secured by first lien on the entire road. Interest guaranteed by special pledge of the internal improvement fund of the State of Florida.

(On the margin:) Recorded in the comptroller's office of the State of Florida.

C. H. AUSTIN,
State Treasurer.

T. W. BREVARD, *Comptroller.*

Know all men by these presents, that the Pensacola and Georgia Railroad Company acknowledges itself indebted to   or bearer in the sum of one thousand dollars, for value received, which sum the said Pensacola and Georgia Railroad Company promises and agrees to pay to   , or bearer, on the first day of January, A. D. eighteen hundred and eighty, in Charleston, South Carolina, with interest thereon at the rate of seven per centum per annum, payable semi-annually on the first days of January and July in each year, on the presentation and delivery of the proper coupons hereunto attached.

This bond is one of a series of like tenor, limited to ten thousand dollars per mile, for the purchase of rails, spikes, plates, chairs, and equipments, and two hundred and fifty thousand dollars for constructing bridges across the Choctawhatchee, Apalachicola, and Swannee Rivers, issued in accordance with the act of the legislature of the
2046 State of Florida, passed 6th January, eighteen hundred and fifty-five, creating the internal improvement fund of the State of Florida. By the terms of said act these bonds are a first lien or mortgage on the road-bed, iron, equipments, workshops, depots, and franchises of the company, and for the prompt payment of the interest on these bonds the said internal improvement fund is specially pledged by the State of Florida. And the said Pensacola and Georgia Railroad Company is obliged, by the terms of the act of the 6th of January,

1855, to pay every six months to the trustees of the internal improvement fund at least one-half of one per cent. on the entire amount of bonds issued as a sinking fund for the ultimate redemption of the bonds.

In witness whereof the said company have caused this bond to be attested in its behalf by its president and secretary and its common seal affixed at its office in Tallahassee, this first day of January, in the year 1860.

E. HOUSTOUN, *President*.

F. H. FLAGG, *Secretary*.

Issued in accordance with the provision of the act of the legislature of the State of Florida, passed 6th January, 1855, creating the internal improvement fund, which fund is specially pledged for the payment of the interest on these bonds.

2047 Tallahassee, March 28th, 1860.

M. S. PERRY, *Governor*,
T. W. BREVARD, *Comptroller*,
C. H. AUSTIN, *Treasurer*,
[L. S.] M. D. PAPY, *Attorney-General*,
HUGH A. CORLEY, *Register of Public Lands*,
Trustees of the Internal Improvement Fund.

The foregoing bond has attached to it thirty-nine coupons for thirty-five dollars each, payable respectively on the first days of January and July in each year until the first day of January, 1880, of which the following is the first:

The Pensacola and Georgia Railroad Company will pay the bearer in Charleston, South Carolina, on the first day of Jan'y, 1861, thirty-five dollars, for semi-annual interest on bond No. 100.

F. H. FLAGG, *Treasurer*.

$35.00.

Filed May 23d, 1879.

PHILIP WALTER, *Clerk*.

2048 Memorandum of an agreement and final settlement made this 10th day of November, A. D. 1870, at London, England, between General Milton S. Littlefield, of the State of Florida, in the United States of America, and the Jacksonville, Pensacola and Mobile Railroad Company, by Milton S. Littlefield, the president thereof, the parties of the first part, and the Western Division of the Western North Carolina Railroad Company, acting through and represented by Colonel Nicholas W. Woodfin, chairman of the commission appointed by the general assembly of the State of North Carolina, by an "act" ratified twenty-fourth day of March, A. D. 1870, to settle with George W. Swepson, and for other purposes, which act was approved by the stockholder' of the said Western Division of the Western North Carolina Railroad Company of the second part.

Whereas, on the sixteenth day of April, A. D. 1870, at the city of Washington, in the District of Columbia, in the United States of America, a contract in writing was made and entered into by and between The Florida Railroad Company, George W. Swepson, president, General Milton S. Littlefield; The Jacksonville, Pensacola and Mobile Railroad Company by Milton S. Littlefield, the president thereof,
2049 as parties of the first part, and the Western Division of the West-

ern North Carolina Railroad Company, represented by Nicholas W. Woodfin, M. G. Candler, W. W. Rollins, and W. P. Welsh, commissioners appointed by the legislature of the State of North Carolina, by an act ratified on the twenty-fourth day of March, A. D. 1870, which act was duly ratified, approved. adopted, and made a part of the charter of the said party of the second part, the said corporation, a copy of which contract is attached hereto, and made a part of this contract; and

Whereas the said Jacksonville, Pensacola and Mobile Railroad Company have received certain bonds of the State of Florida, under sundry acts of the legislature of the said State, which bonds by the term of the laws authorizing the issue of the same are made payable, both principal and interest, in the gold coin of the United States and bearing interest at the rate of eight (8) per cent. per annum; and

Whereas by reason of the present war in Europe all financial operations are more or less restricted, which has up to this time prevented the negociation for the sale of the said bonds; and

Whereas the said Western Division of the Western North Carolina
Railroad through and by its representative, Nicholas W. Wood-
2050 fin, chairman aforesaid, is pressing the immediate payment by the
said party of the first part of the sum of one million two hundred
and eighty-seven thousand four hundred and thirty-six dollars and three cents, with interest at the rate of eight (8) per cent. per annum since the first day of November, A. D. 1869; to pay or settle the said claim, now will cause a great sacrifice to the said party of the first part; and

Whereas the said Nicholas W. Woodfin, as chairman of the said commission for the Western Division of the Western North Carolina Railroad Company, for the purpose of removing embarrassment out of the way, which, in his judgment, prevented the sale of the said bonds, and to avoid litegation, did, on the seventeenth day of October, A. D. 1870, ocntract with Henry Clews & Co., bankers in the citties of New York and London, to purchase a certain claim held by them against George W. Swepson, amounting to about twenty thousand dollars lawful money of the United States of America, which contract was made with the knowledge and approval of the said party of the first part, for the reason it was understood by all parties to the said agreement that this would secure the full co-operation of the said Henry Clews & Co. to aid
in the sale and negociation of the said Florida bonds:

2051 Now, therefore, be it remembered, that for and in consideration
of the premises herein stated, and for various other good and sufficient considerations, and for the further purpose of aiding the said Western Division of the Western North Carolina Railroad Company to complete their road from the junction with the main line at Ashville to Paint Rock, at the State line between the States of North Carolina and Tennessee, and to complete their road without delay on the one hand, and to avoid a hasty sale and sacrifice of the said bonds on the other hand, it is agreed, by and between the parties of the first and second part, that in full compromise, payment, satisfaction, and accord of the obligation of the party of the first part to pay to the party of the second part the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, lawful money of the United States of America, with interest thereon at the rate of eight (8) per cent. from and after the first day of November, A. D. 1869, as per terms of the said contract made and executed at the city of Washington aforesaid, and that the said party of the first part may be fully

and finally discharged from every and all liability on account of the terms
and conditions of the said contract, hereunto appended, the said
2052 party of the first part agree to furnish iron to the said party of the
second part sufficient to lay a single track of railroad from the junction at Asheville, along the French Broad River, to Paint Rock, at the Tennessee State line, and into the State of Tennessee to the present terminus of the Cincinnati, Cumberland Gap, and Charleston Railroad, with turn outs and side-tracks, provided that the whole of the railroad shall not exceed, including turn-outs and side-tracks, fifty-three miles in length. The iron shall be of a good quality of English iron, weighing not less than fifty pounds per lineal yard, with the necessary chairs and spikes to lay the same, the iron to be shipped in the quantities and at the terms and places as follows, to wit:

To Norfork, Virginia, on or before the tenth day of December, A. D. 1870, three hundred tons; to the same place, on or before the tenth day of January, A. D. 1871, five hundred tons; to the same place, on or before the first day of April, A. D. 1871, one thousand tons, and the rest to be shipped to New York, in the State of New York, on or before the first day of September, A. D. 1871, but the said party of the first part may ship the iron as fast as he may wish, all duties and freights on the above-described iron to be paid by the party of the first
part.

2053 And it is further agreed by the party of the first part that he
will ship, in addition to the above*d*-mentioned quantity of iron, one thousand tons of the same weight and quality as the above described iron, with the necessary chairs and spikes to lay the same, to New York, duties and freight paid, on or before the first day of September, A. D. 1871, the shipping of which iron Mess. S. W. Hopkins & Co. are to guarantee.

In addition to the shipping of the iron, the said party of the first part does hereby sell and deliver unto the said party of the second part, by placing to the order of the party of the second part, with Messrs. S. W. Hopkins & Co., eight hundred bonds of the State of Florida, of the denomination of one thousand dollars each, numbers of said bonds to be designated by the said party of the first part, but upon the express stipulations and condtions that the said bonds are to be left with Messers. S. W. Hopkins & Co. for sale at such prices as the said party of the second part may direct.

And it is further agreed by the party of the first part that he will pay to the party of the second part two hundred pounds sterling, the receipt whereof is hereby acknowledged.

And it is further agreed by the party of the first part to assume
2054 and discharge the obligation of the party of the second part to
Henry Clews & Co. of about twenty thousand dollars lawful money of the United States of America.

Now, when the foregoing undertakings and agreements of the party of the first part are fully accomplished and performed, it is to be taken as a full compliance with and final discharge of the parties of the first part to this contract, as well as all parties of the first part to the said contract executed at the city of Washington aforesaid, a copy of which is hereto attached, and this shall operate as a receipt and final discharge thereof for all obligations growing out of the same.

MILTON S. LITTLEFIELD.
MILTON S. LITTLEFIELD,
Pres. Jack., Pen. & Mobile R. R. Co.
N. W. WOODFIN,
Chairman of the Board of Commissioners.

2055 Memorandum of agreement and settlement between the Florida Central Railroad, George W. Swepson, president, and the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, president, and Milton S. Littlefield, majority owner of the stock of said companies and also of the stock and of the Tallahassee Railroad Company, of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by N. W. Woodfin, W. G. Candler, W. Pink Welsh, and W. W. Rollins, commissioners appointed by an act of the legislature of North Carolina, approved by the stockholders of said corporation, of the second part, witnesseth:

That whereas, George W. Swepson, late president of the Western Division of the Western North Carolina Railroad Company, made certain investments of the funds of said company in securities of and interests in the said Florida Central Railroad, Jacksonville, Pensacola and Mobile Railroad, and the Tallahassee Railroad, of the said State of Florida, as per report made by the said George W. Swepson to the said commissioners, amounting in the aggregate to the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, to bear interest from the first day of November' 1869, at the rate of eight per cent. per annum; and

Whereas the said George W. Swepson heretofore conveyed to the said Milton S. Littlefield, subject to the payment of the above-recited claim, his interest in the above-recited railroads; and whereas the said Littlefield has received authority from the legislature of the State of Florida and the said several railroad companies to receive bonds, to be issued by and for account of the several railroad companies, which bonds are to be exchanged for the bonds of the State of Florida to be issued for the purpose of aiding the finances of the said several railroad companies, all of which bonds are now in a state of preparation; and

2056 Whereas the said Milton S. Littlefield has made a contract with S. W. Hopkins & Co., No. 71 Broadway, for the disposition of said bonds as the same may be issued, the proceeds of the issue of the bonds of the Florida Central Railroad Company of the said State of Florida, amounting to nine hundred and sixty thousand dollars, are to be applied to the payment of existing liabilities of the said several railroad companies, including the sum of one hundred and fifty thousand dollars, to be paid to the commissioners aforesaid for the purpose of paying existing liabilities of the said Western Division of the Western North Carolina Railroad Company.

It is understood and agreed by the parties of the first and second parts that the proceeds of the sale of the said bonds so to be issued by the said Florida railroad companies and the said State of Florida is to be equally divided, dollar for dollar, between the Western Division of the Western North Carolina Railroad Company and the said Florida railroads, and as the commissioners aforesaid receive by this first sale of bonds only the sum of one hundred and fifty thousand dollars, it is further understood and agreed that out of the proceeds of the sale of the issue of the bonds of the Jacksonville, Pensacola and Mobile Railroad there is first to be received by the commissioners aforesaid a sum sufficient to be equal to the amount received by and on account of the said Florida railroads, and then an equal amount is to be received by the said commissioners and the said Florida railroads, dollar for dollar, until the entire amount of one million two hundred and eighty-seven thousand and thirty-six dollars and three cents, with interest at eight per cent. as aforesaid, being the sum reported by the parties of the first part as due to the Western Division of the Western North Carolina Railroad is fully paid.

It is further understood and agreed by the parties of the first and second parts that all the interest owned or claimed by the said parties of the first part, both George W. Swepson and Milton S. Littlefield, or which they as individuals have a right to control in the said Florida railroads, are hereby pledged for the faithful fulfillment of this 2057 contract, without the right on part of any party to interfere with our management or control of the affairs of the roads.

GEO. W. SWEPSON,
Pres't Fla. Central R. R. Co.
M. S. LITTLEFIELD.
M. S. LITTLEFIELD,
Pres. J., P. and M. R. R. Co.

Witnesses:
M. W. RANSOM.
R. R. SWEPSON.

N. W. WOODFIN,
W. W. ROLLINS,
W. G. CANDLER,
W. P. WELSH,
Commissioners.

We certify this to be a true and correct copy of a contract made in the city of Washington, referred to in our agreement of to-day.

London, England, Nov'r 10th, 1870.

M. S. LITTLEFIELD.
N. W. WOODFIN.

STATE OF MARYLAND,
City of Baltimore, sct:

Be it remembered that on this fifteenth day of August, the year one thousand eight hundred and seventy, before me, the undersigned, William W. Latimer, a commissioner resident in the city of Baltimore, in the State of Maryland, duly commissioned by the executive authority and under the laws of the State of Florida to take the acknowledgment and proof of deeds to be used or recorded therein, personally appeared R. R. Swepson, whose name appears as subscribing witness to the foregoing instrument, and who, being duly sworn, on his oath says that George W. Swepson, president Florida Central Railroad Company; M. S. Littlefield, M. S. Littlefield, president of the Jacksonville, Pensacola and Mobile Railroad Company; N. W. Woodfin, W. W. Rollins, W. G. Candler, and W. P. Welsh, commissioners, duly signed, sealed, and delivered the foregoing instrument in the presence of him, the said R. R. Swepson, and of one M. W. Ransom, who then and there signed and attested the same in the presence of him, the said R. R. Swepson, and that they each subscribed their names as witnesses thereto.

In witness whereof I have hereunto set my hand and affixed my official seal, at Baltimore, the day and year aforesaid.

[SEAL.] W. W. LATIMER,
A Commissioner for Florida.

(End:)

LONDON, *Nov'r 16th*, 1870.

We hereby agree to perform all the stipulations relating to the shipping of iron required of us by the terms of the within contract.

S. W. HOPKINS & CO.

2058 *Agreement.—Nov.* 10, 1870.

M. S. Littlefield, pres't, and W. D. of W. N. C. R. R. Co., by N. W. Woodfin, com'r, in settlement with said R. R. Co.

Filed May 27th, 1879.

PHILIP WALTER, *Clerk.*

Objected to by W. N. C. R. R. Co.

P. WALTER, *Cl'k.*

2059 Whereas George W. Swepson has paid to the trustees of the internal improvement fund of the State of Florida, for and on account of F. Dibble and his associates, in payment for the Pensacola & Georgia and the Tallahassee Railroads, sold to said F. Dibble and his associates by said trustees on the 20th day of March last, bonds of said roads amounting at their face to nine hundred and sixty thousand and three hundred ($960,300) dollars, and has also paid to said trustees for the same parties the sum of four hundred and seventy-two thousand and sixty-five ($472,065) dollars, being the full amount due said trustees for said roads; and whereas, said F. Dibble, for and on behalf of himself and his associates, has obligated himself and them, and does hereby obligate himself and them, to cause bonds upon said roads as now completed, as soon as further legislative authority from said State of Florida shall be obtained therefor, to be issued, the same to be secured and in every respect to be, as stated in an agreement, executed and dated the twenty-sixth day of last March, between said F. Dibble, on behalf of himself and his associates, and said George W. Swepson, which bonds, when executed, are to be and shall be placed, as provided in said agreement, for the purposes therein set forth, and for the further purpose of enabling said Swepson to be reimbursed the said sum of four hundred and seventy-two thousand and sixty-five dollars.

Now, therefore, this indenture, made and entered into between F. Dibble, on behalf of himself and his associates, party of the first part, and George W. Swepson, party of the second part, witnesseth:

That said party of the first part, for and in consideration of the premises, has granted, bargained, conveyed, and confirmed unto said party of the second part all that property of whatever name, nature, and description, conveyed to said party of the first part by said trustees of the internal improvement fund of the State of Florida by two separate deeds of conveyance, each dated April 8th, A. D. 1869, which deeds for full description of property are hereby made part and portion of this instrument; the said property hereby conveyed to be held by said party of the second part in trust for the express purpose of enabling said party of the second part—which he hereby agrees and binds himself to do—to convey the same to that incorporation, consisting or to consist as incorporators of said F. Dibble and his associates. As soon as said Dibble and his associates shall have granted to them such a similar relief as the legislature of the said State of Florida granted to Wm. E. Jackson and his associates by act for relief of Wm. E. Jackson and his associates, approved July 29th, 1868, and also for the further purpose of securing said party of the second part in all advances made, as specified and agreed upon in the said agreement between these parties, executed and dated March 26th, 1869, and the advancement, as aforesaid, of said sum of four hundred and seventy-two thousand and sixty-five dollars, until such time as said relief shall have been granted and said party of the second part shall have conveyed said property to said incorporation, as hereinbefore provided:

To have and to hold said property to said party of the second part for the purposes and trusts herein declared.

2060 In testimony whereof said party of the first part has hereunto signed his name and affixed his seal this 22d day of April, A. D. 1869.

F. DIBBLE, [SEAL.]
For Himself and Associates.

Signed, sealed, and delivered in presence of us—
W. J. WOODWARD,
JESSE CARTER.

No stamp being present, Geo. W. Swepson is authorized to stamp.
F. D.

(Indorsed:) Filed May 26th, 1879. Phillip Walter, clerk. Objected to by def'ts' coun. P. Walter, clerk.

2061 Whereas, by an act of the general assembly of the State of Florida, entitled "An act to incorporate the Pensacola and Georgia Railroad Company," approved January the eighth, A. D. 1853, the said railroad company was duly incorporated;

And whereas the said railroad company duly and fully accepted the provisions of an act of said general assembly, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January sixth, A. D. 1855, and in writing, dated January twelfth, A. D. 1855, notified the trustees of the internal improvement fund, created under said last-mentioned act, of said acceptance;

And whereas the third section of said act to provide for and encourage a liberal system of internal improvements in this State provides, among other things, "that all bonds issued by any railroad company, under the provisions of this act, shall be a first lien or mortgage on the road-bed, iron, equipments, workshops, depots, and franchise, and upon the failure of any railroad company accepting the provisions of this act to provide the interest, as herein provided, on the bonds issued by said company, and the sum of one per cent. per annum as a sinking fund, as herein provided, it shall be the duties of the trustees, after the expiration of thirty days from said default or refusal, to take possession of said railroad and all its property of every kind and advertise the same for sale at public auction to the highest bidder, either for cash or additional security, as they may think most advantageous for the interest of the internal improvement fund and the bondholders;"

And whereas the said Pensacola & Georgia Railroad Company, on the sixth day of February, A. D. 1869, and for a long time previous thereto, to wit, more than thirty days, had failed to provide the interest on the bonds issued by said company, and the sum of one per cent. per annum as a sinking fund, as provided by said act to provide for and encourage a liberal system of internal improvements in this State, and had thereby incurred the liability of being sold by the trustees of said internal improvement fund, under the requirements of said act;

And whereas the trustees of said internal improvement fund, at a meeting of said trustees, held at the capital of said State, at the city of Tallahassee, on the sixth day of February, A. D. 1869, at which meeting were present his excellency Harrison Reed, governor; R. H. Gam-

ble, comptroller; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general; and A. R. Meek, attorney-general of said State, did resolve that: Whereas, the Pensacola & Georgia Railroad Company had failed to provide the interest on the bonds issued by said company, and the sinking fund of one per cent. per annum, as required by said act, to provide for and encourage a liberal system of internal improvements in this State, that the said trustees, by virtue of and in compliance with the provisions of said act, take possession of said road and all its property of every kind, and advertise the same to be sold at public auction to the highest bidder, for cash or additional approved security, at the office of said company, in Tallahassee afore-
2062 said, on Saturday, the twentieth day of March, A. D. 1869, and that the notice of said sale be published forthwith until day of sale in the Journal of Commerce and the New York Herald, published in New York; the Savannah Republican, published in Savannah, Georgia; the Florida Union, published in Jacksonville, in this State, and all the papers in Tallahassee aforesaid;

And whereas, in compliance with said resolution, said trustees did take possession of said road and all its property of every kind, and immediately after the adoption of said resolution, and until said day of sale, advertised the same for sale at public auction to the highest bidder for cash, at the time and place and in the newspapers named, and in compliance with the requirements of said act, and pursuant to said resolution, did proceed and offer said Pensacola & Georgia Railroad, its road-bed, iron, equipments, workshops, depots, and franchise, and all the property of said railroad, subject to said sale under said act, at public auction to the highest bidder therefor, for cash, subject, however, to the condition that the purchaser shall be bound to continue the payment of one-half of one per cent. semi-annually, to the sinking fund, until all the outstanding bonds of said company are discharged, under the penalty of an annulment of the contract of purchase and the forfeiture of the purchase money paid in, and all other conditions of said act to provide for and encourage a liberal system of internal improvements in this State; and whereas, at said sale F. Dibble and associates were the highest and best bidders, having bid the sum of one million two hundred and twenty thousand dollars for the said Pensacola & Georgia Railroad, its road-bed, iron, equipment, workshops, depots, and franchise, and all the property of said railroad subject to said sale, under said act, were knocked off to said F. Dibble and his associates;

And whereas, F. Dibble and his associates have requested said trustees to execute to said F. Dibble, on behalf of himself and his associates, a deed of said railroad and other property as aforesaid, agreeing, upon the execution and delivery of said deed, to pay the said purchase money bid:

Now, therefore, this indenture, made and entered into between Harrison Reed, governor of the State of Florida; R. H. Gamble, comptroller; S. B. Conover, State treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general of said State, constituting, ex officio, the trustees of the internal improvement fund of the State of Florida, under and by virtue of said act to provide for and encourage a liberal system of internal improvement in this State, and subsequent acts of the general assembly in relation thereto, party of the first part, and F. Dibble, on behalf of himself and his associates, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the premises, as also of the said sum of one million two hundred and twenty thousand dollars to them in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, and confirmed, and do by these presents grant, bargain, sell, alien, confirm, and deliver unto the said party of the second part, the said Pensacola & Georgia Railroad, its iron, equipments, workshops, depots, and franchise, and all its property of every kind subject 2063 to sale under the provisions of said act; to have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining to said party of the second part, their successors or assigns forever, in as full and ample manner as the said trustees of said internal improvement fund can convey the same, and the said party of the first part will, from time to time, and at all times hereafter, upon the reasonable request of the said party of the second part, their successors or assigns, make and execute all such further deeds necessary, if any, for the perfect and absolute assurance and confirmation of the said railroad and other property hereby conveyed or intended to be conveyed unto said party of the second part, their successors or assigns.

In testimony whereof the said trustees of the internal improvement fund of the State of Florida, party of the first part, have hereunto set their hands and seals this eighth day of April, anno Domini, one thousand eight hundred and sixty-nine. (The words "to wit, more than thirty days," interlined before signature in the 12 line, 2nd page.)

HARRISON REED, [SEAL.]
Governor.
R. H. GAMBLE, [SEAL.]
Comptroller.
S. B. CONOVER, [SEAL.]
Treasurer.
J. S. ADAMS, [SEAL.]
Com. of Immigration.
FRANK W. WEBSTER, [SEAL.]
Surv. Gen.
A. R. MEEK, [SEAL.]
Attorney-General.

Signed, sealed, and delivered in presence of—
GEO. W. DRIGGS.
W. M. MCINTOSH.

Be it remembered that on this eighth day of April, A. D. 1869, personally appeared before me, Harrison Reed, governor; R. H. Gamble, comptroller; S. B. Conover, treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general; and A. R. Meek, attorney-general, who each being thereunto examined, acknowledged that they executed the foregoing deed of conveyance as and for their act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and private seal the day and year last aforesaid.

JAMES D. WESTCOTT, JR., [SEAL.]
Associate Justice Supreme Court of Florida.

STATE OF FLORIDA,
County of Duval, ss:

Be it remembered that on the 22d day of April, A. D. 1871, I, Chas.

L. Mather, clerk of the circuit court and for said county, have duly recorded the foregoing deed in the public records of said county.

In witness whereof I have hereunto set my hand and the seal of said court this day and year above written.

[SEAL.] CHAS. L. MATHER, *Clerk*,
By F. B. KNAPP, *D. C.*

STATE OF FLORIDA,
Leon County, ss:

2064 Be it remembered that on this 22d day of October, A. D. 1869, the foregoing instrument of writing was presented to the subscriber, clerk of the circuit court in and for said county and State aforesaid, for record, the same being duly authenticated, I have admitted the same to record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court the day and year last above written.

[SEAL.] C. H. EDWARDS, *Clerk*,
By EDW. M. WEST, *D. C.*

Internal revenue stamps to the amount of twelve hundred and twenty dollars affixed and cancelled.

(Indorsed:) Filed May 27th, 1879. Phily Walter, clerk.

2065 Whereas, at a sale by the trustees of the internal improvement fund of the State of Florida on the 20th day of March, 1869, of the Pensacola & Georgia and the Tallahassee Railroads, F. Dibble, in behalf of himself and his associates, became the purchaser thereof, bidding for the Pensacola & Georgia Railroad $1,220,000, and for the Tallahassee Railroad $195,000; and whereas George W. Swepson is the holder of a large amount of the first mortgage bonds of the Pensacola & Georgia and Tallahassee Railroad Companies; and whereas said parties desire to come to an accommodation respecting their interests, the one through said purchase, and the other as the holder of said bonds: Now, therefore, it is hereby agreed between said F. Dibble, in behalf of himself and his associates of the one part, and said George W. Swepson of the other part, in manner and form following, that is to say:

First. That said George W. Swepson shall deliver, as he shall come into possession of them, to be surrendered to the trustees of the internal improvement fund aforesaid by said F. Dibble, in behalf of himself and his associates as part of the purchase-money for said roads respectively, the first mortgage bonds of said roads purchased by him, amounting to about nine hundred thousand dollars, for bonds of the Pensacola & Georgia Railroad Company, and to about one hundred and fifty thousand dollars of the Tallahassee Railroad Company; the bonds of the Pensacola & Georgia Railroad Co. to be surrendered at par, and those of the Tallahassee Railroad to be surrendered at their pro rata of the amount bid for said road at the said sale, and the balance or remainder of the purchase money to be supplied by said F. Dibble and his associates.

Second. As soon as may be after the title is acquired by F. Dibble, in behalf of himself and his associates, from the trustees of the internal improvement fund, first mortgage bonds are to be issued in such form and to be executed in such manner as may be devised to make them legal and binding as an obligation on said roads, their equipments, workshops, depots, and franchise; said bonds shall bear interest at the rate of six per cent. per annum, payable in New York semi-annually, principal and interest to be paid in gold, and having not more than thirty years to run. To secure said bonds, a proper deed of trust is to be executed by F. Dibble, in behalf of himself and associates, to Calvin B. Dibble and George W. Swepson as trustees, with the ordinanry conditions in such cases, and shall contain a provision that on default in the non-payment of any installment of interest for sixty days the principal shall become due, and that on such default the trustees shall enter upon and take possession of said railroads, their equipments, workshops, depots, and franchise without any legal process whatever, and a'vertise the same for sale and sell the same at public outcry for cash, the proceeds of which shall be applied to the payment of said bonds, principal and interest, and if a sufficient amount thereof shall not be realized at such sale, then to apply the same pro rata in the payment of said bonds.

Third. The bonds to be thus issued shall be delivered to Calvin B. Dibble and George W. Swepson, to be sold or negotiated, and the money realized on them or a sufficient amount thereof for that 2066 purpose shall be paid to George W. Swepson to reimburse him for the amount of money he has paid out in purchasing the first mortgage bonds aforesaid, and all amounts paid or to be paid by him for commissions and attorney's fees in connection with his business with said roads, together with interest on said amounts from the time they were paid out by him until the date of his reimbursement, and also to pay him the additional sum of one hundred & fifty thousand dollars.

Fourth. The stock is to be divided and owned in the following manner: George W. Swepson is to have and own one-third; Calvin B. Dibble is to have and own an amount of stock which, in connection or united with the stock of said Swepson, shall constitute a majority of the whole, and F. Dibble and his associates are to have and own the remainder, to be subdivided among themselves as they shall determine.

Fifth. Said Swepson is to have the right to appoint four directors of said roads, F. Dibble and his associates are to have the right to appoint four, and Calvin B. Dibble shall be appointed by both parties the ninth director. This provision is to expire as soon as said Swepson is reimbursed and paid the amounts hereinbefore mentioned, with interest, as provided, and thereafter the stock shall stand on a common footing, as in all other cases.

Sixth. Until the title is acquired from the trustees of the internal improvement fund, the roads are to remain as they are and to be operated as they are.

Seventh. None of the stock shall be transferable for the space of two years from this date, except as may be necessary to qualify the persons to be appointed as directors to be such directors.

Eighth. The roads are to protect the outstanding transportation notes or tickets of the Tallahassee Railroad Company to an extent not exceeding twenty-eight thousand dollars, and shall receive the same as usual for transportation, freight, or fare.

Ninth. F. Dibble is to be the president until the stock becomes transferable.

In testimony whereof, the said parties have hereunto set their hands and seals this twenty-sixth day of March, A. D. 1869.

FRANKLIN DIBBLE, [L. S.]
For himself and associates.
GEORGE W. SWEPSON. [SEAL.]

Witnesses:
M. D. PAPY.
A. R. MEEK.

[Revenue stamp. F. D., 26 Mar. 1869.]

(Indorsed:) Filed May 26th, 1874. Philip Walter, clerk. Objected to by def't counsel. P. Walter, cl'k.

2067 Whereas by an act of the legislative council of the Territory of Florida, approved February tenth, A. D. 1834, entitled "An act to incorporate the Tallahassee Railroad Company," the said railroad was duly incorporated;

And whereas the said railroad company duly and fully accepted the provisions of an act of the general assembly of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, A. D. 1855, and in writing presented December nineteenth, A. D. 1855, notified the trustees of the internal improvement fund, created by said last mentioned act, of said acceptance;

And whereas the third section of said act to provide for and encourage a liberal system of internal improvements provides, among other things, "that all bonds issued by any railroad company, under the provisions of this act, shall be a first lien or mortgage on the road-bed, iron, equipments, workshops, depots, and franchise; and upon a failure on the part of any railroad company, accepting the provisions of this act, to provide the interest, as herein provided, it shall be the duty of the trustees, after the expiration of thirty days from said default or refusal, to take possession of said railroad and all its property of every kind and advertise the same for sale at public auction to the highest bidder, either for cash or additional approved security, as they may deem most advantageous for the interest of the internal improvement fund and the bondholders;"

And whereas the said Tallahassee Railroad Company, on the sixth day of February, A. D. 1869, and for a long time previous thereto, to wit, more than thirty days, had failed to provide the interest on the bonds issued by said company, and the sum of one per cent. per annum, as a sinking fund, as provided by said act to provide for and encourage a liberal system of internal improvements, and had thereby incurred the liability of being sold by the trustees of said internal improvement fund, under the requirements of said act;

And whereas the trustees of said internal improvement fund, at *at* a meeting of said trustees, held at the capital of said State, at the city of Tallahassee, on the sixth day of February, A. D. 1869, at which meeting were present His Excellency Harrison Reed, governor; R. H. Gamble, comptroller; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general of said State, did resolve that: Whereas, the Tallahassee Railroad Company has failed to provide the interest on the bonds issued by said company and the sum of one per cent. per annum, as a sinking fund, as required by said act, to provide for and encourage a liberal system of internal improvements, that the said trustees, by virtue of and in compli-

ance with the provisions of said act, take possession of said road and all its property of every kind, and advertise the same to be sold at public auction to the highest bidder, for cash or additional approved security, at the office of said company, in Tallahassee, aforesaid,
2068 on Saturday, the twentieth day of March, A. D. 1869, and that the notice of said sale be published forthwith until day of sale in the Journal of Commerce and the New York Herald, published in New York; the Savannah Republican, published in Savannah, Georgia; the Florida Union, published in Jacksonville, in this State, and all the papers in Tallahassee, aforesaid;

And whereas, in compliance with said resolution, said trustees did take possession of said road and all its property of every kind, and immediately after the adoption of said resolution advertise the same for sale at public auction, to the highest bidder, for cash, at the time and place and in the newspapers named, and in accordance with the requirements of said act, and pursuant to their said resolution, did proceed and offer said Tallahassee Railroad and all its property of every kind, including road-bed, iron, equipments, workshops, depots, and franchise, for sale at public auction, to the highest bidder, for cash, subject, however, to the condition that the purchaser shall be bound to continue the payment of one-half of one per cent., semi-annually, to the sinking fund, until all the outstanding bonds are discharged, under the penalty of an annulment of the contract of purchase and the forfeiture of the purchase money paid in, and all other conditions of said act;

And whereas, at said sale, F. Dibble and associates were the highest and best bidders, having bid the sum of one hundred and ninety-five thousand dollars for the said Tallahassee Railroad and its property of every kind, including the road-bed, iron, equipments, workshops, depots, and franchise, the same was knocked off to said F. Dibble and associates, as the highest bidders therefor;

And whereas said F. Dibble and his associates requested said trustees to execute to said F. Dibble, on behalf of himself and his associates, a deed of said road and all its property as aforesaid, agreeing, upon the execution and delivery of said deed, to pay the purchase price bid:

Now, therefore, this indenture, made and entered into between Harrison Reed, governor of the State of Florida; R. H. Gamble, comptroller; S. B. Conover, State treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general of said State, constituting, ex-officio, the trustees of the internal improvement fund of the State of Florida, under and by virtue of said act to provide for and encourage a liberal system of internal improvements in this State, and subsequent acts of the general assembly of this State, in reference thereto, party of the first part, and F. Dibble, on behalf of himself and his associates, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the premises, as also of the said sum of one hundred and ninety-five thousand dollars, to them in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, and confirmed, and do by these presents, grant, bargain, sell, alien, confirm and deliver unto the said party of the second part, the said Tallahassee Railroad, its iron, equipments, workshops, depots, and franchise, and all its property of every kind subject to sale under the provisions

2069 of said act, to have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part, their successors or assigns forever, in as full and ample manner as the said trustees of said internal improvement fund can convey the same, subject, however, to the conditions and provisions stated and made known at said sale, as above set forth; and the said party of the first part will, from time to time, and all times hereafter, upon the reasonable request of the said party of the second part, their successors or assigns, make and execute all such further deeds, if any, necessary for the perfect and absolute assurance and confirmation of the said railroad and other property hereby conveyed or intended to be conveyed unto said party of the second part, their successors or assigns.

In testimony whereof, the said trustees of the internal improvement fund of the State of Florida, party of the first part, have hereunto set their hands and seals, this eighth day of April, anno Domini one thousand eight hundred and sixty-nine.

HARRISON REED, *Governor.* [SEAL.]
R. H. GAMBLE, *Comptroller.* [SEAL.]
S. B. CONOVER, *Treasurer.* [SEAL.]
J. S. ADAMS, *Com. of Immigration.* [SEAL.]
FRANK W. WEBSTER, *Surv'r Gen.* [SEAL.]
A. R. MEEK, *Attorney-General.* [SEAL.]

Signed, sealed and delivered in presence of—

GEO. W. DRIGGS.
W. M. MCINTOSH.

Be it remembered, that on this eighth day of April, A. D. 1869, personally appeared before me Harrison Reed, governor; R. H. Gamble, comptroller; S. B. Conover, treasurer; J. S. Adams, commissioner of immigration; Frank W. Webster, surveyor-general, and A. R. Meek, attorney-general, who, each being thereunto examined, acknowledged that they executed the foregoing deed of conveyance as and for their and act deed and for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and private seal the day and year last aforesaid.

[SEAL.]
JAMES D. WESTCOTT, JR.,
Associate Justice Supreme Court of Florida.

STATE OF FLORIDA,
Leon County:

Be it remembered, that on this 23d day of October, A. D. 1869, the foregoing instrument of writing was presented to the subscriber, clerk of the circuit court in and for the county and State aforesaid, for record; and the same being properly authenticated, I have admitted the same to record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court the day and year last above written.

[SEAL.]
C. H. EDWARDS, *Clerk,*
By EDW. M. WEST, *D. C.*

2070 STATE OF FLORIDA,
County of Duval, ss:

Be it remembered, that on this 22d day of April, A. D. 1871, I, Chas. L. Mather, clerk of the circuit court in and for said county, have duly recorded the foregoing deed in the public records of said county.

In witness I have hereunto set my hand and the seal of said court this day and year above written.

[SEAL.] CHAS. L. MATHER, *Clerk*,
By F. B. KNAPP, *D. C.*

Internal revenue stamps to the amount of one hundred and ninety-five dollars affixed and cancelled.

(Indorsed:) Filed May 27th, 1879. Philip Walter, clerk.

2071 STATE OF FLORIDA,
Duval County:

Whereas at a sale of the Pensacola & Georgia Railroad and of the Tallahassee Railroad, on the twentieth day of March, eighteen hundred and sixty-nine, by the trustees of the internal improvement fund, under and by virtue of the provisions of the internal improvement law, the said Pensacola & Georgia Railroad and the Tallahassee Railroad were purchased by F. Dibble and associates, consisting of Franklin Dibble, Alonzo Huling, John L. ReQua, Edward M. Cheney, Wilkinson Call, James M. Baker, and Silas L. Niblack;

And whereas by an act of the general assembly of the State of Florida, approved on the twenty-fourth day of June, eighteen hundred sixty-nine, the said Franklin Dibble, Alonzo Huling, Edward M. Cheney, and their associates and their successors and assigns were made and constituted a body politic and corporate under the name of the Tallahassee Railroad Company, by which said act of the general assembly it was intended that the title to the said Pensacola & Georgia Railroad and to the said Tallahassee Railroad, as well as the road-beds, iron, equipments, workshops, depots and franchise unto the said Pensacola & Georgia Railroad and Tallahassee Railroad belonging or appertaining, should vest in the said Tallahassee Railroad Company, which by said act was created;

And whereas doubts exist as to the completeness of the title the said Tallahassee Railroad Company acquired to the said property under the said act of incorporation:

Now, therefore, for the purposes of removing all doubts, and of perfecting to the said Tallahassee Railroad Company a title to the said late Pensacola & Georgia Railroad and to the said late Tallahassee Railroad, and in consideration of the sum of one dollar to them in hand paid by the said Tallahassee Railroad Company, the receipt whereof is hereby acknowledged, the said Franklin Dibble, Alonzo Huling, Lucy E. Huling, wife of Alonzo Huling, John L. ReQua, Helen ReQua, wife of John L. ReQua, Edward M. Cheney, Maria J. Cheney, wife of Edward M. Cheney, Wilkinson Call, James M. Baker, Fanny G. Baker, wife of James M. Baker, Silas L. Niblack, and Atalie N. Niblack, wife of Silas L. Niblack, have granted, bargained, sold, released, relinquished and quit-claimed, and by these presents do grant, bargain, sell, release, relinquish and quit-claim unto the said Tallahassee Railroad Company, which was organized and framed by the act of the general assembly of the State of Florida, approved June twenty-fourth, eighteen hundred and sixty-nine, and to their successors and assigns, all their and each of their right, title, interest, estate, claim and demand, both at law and in equity, which they the said Franklin Dibble, Alonzo Huling, Lucy E. Huling, John L. ReQua, Helen ReQua, Edward M. Cheney, Maria J. Cheney, Wilkinson Call, James M. Baker, Fanny G. Baker, Silas L. Niblack, and Atalie N. Niblack, or either of

them, have in and to the said late Pensacola & Georgia Railroad and the
said late Tallahassee Railroad, and in and to the road-bed, iron,
2072 equipments, workshops, depots and franchise unto the said late
Pensacola & Georgia Railroad and the said late Tallahassee Railroad belonging or appertaining, the said Lucy E. Huling, Helen ReQua, Maria J. Cheney, Fanny G. Baker, and Atalie N. Niblack, joining their said husbands in this conveyance for the purpose of relinquishing their dower in and to the property hereinbefore described and conveyed.

In testimony whereof the said Franklin Dibble, Alonzo Huling, Lucy E. Huling, John L. ReQua, Helen ReQua, Edward M. Cheney, Maria J. Cheney, Wilkinson Call, James M. Baker, Fanny G. Baker, Silas L. Niblack and Atalie N. Niblack have hereunto set their hands and seals this day of A. D. 1870.

F. DIBBLE. [SEAL.]
ALONZO HULING. [SEAL.]
J. L. ReQUA. [SEAL.]
ED. M. CHENEY. [SEAL.]
WILKINSON CALL. [SEAL.]
JAMES M. BAKER. [SEAL.]
SILAS L. NIBLACK. [SEAL.]

Signed, sealed and delivered in presence of—
J. P. SANDERSON.
A. B. HAWKINS.
J. H. H. BOURS.

STATE OF FLORIDA,
Duval County :

Before me , came in person Lucy E. Huling, wife of Alonzo Huling; Helen ReQua, wife of John L. ReQua; Maria J. Cheney, wife of Edward M. Cheney; and Fanny G. Baker, wife of James M. Baker, whose names appear to the foregoing deed of conveyance, who being by me severally examined separate and *and* apart from their said husbands, severally acknowledged that they executed the same freely and voluntarily, without any fear, compulsion or restraint of, from, or by their said husbands. In testimony whereof they have hereunto set their hands and seals this day of A. D. 1870.

Witness my hand and seal this day of , A. D. 1870.

(Indorsed:) Filed May 27th, 1879. Phillip Walter, clerk. Objected to by W. N. C. R. R. P. Walter, clerk.

2073 AN ACT to repeal any and all acts creating, recognizing, or continuing in existence the Western Division of the Western North Carolina Railroad Company.

The general assembly of North Carolina do enact:

SECTION 1. That chapter twenty-four of the private laws, special session of 1868, ratified August 19th, 1868; chapter twenty of the laws of 1868-'69, ratified 29th day of January, 1869; and chapter one hundred and fifty of the laws of 1871-'72, ratified 8th day of February, 1872, and any and all other acts and parts of acts creating, recognizing, or continuing in existence the Western Division of the Western North Carolina Railroad Company, are hereby repealed.

SEC. 2. That all the property, rights, credits, rights of action and effects that now exist in favor of the said Western Division of the Western North Carolina Railroad Company, or which may result from any existing matters, causes, circumstances, or contingencies, shall become absolutely the rights and property of the Western North Carolina Railroad

Company, and the said Western North Carolina Railroad Company is hereby authorized and empowered to prosecute, defend, and 2074 manage any and all suits and actions pending in the courts of this State, in the courts of the United States, or the courts of any other State or Territory, in reference to the property, rights, and credits of the said Western Division of the Western North Carolina Railroad Company; provided the said Western North Carolina Railroad Company shall not be liable or responsible for any debt, contract, obligation, or other liability of the said Western Division of the Western North Carolina Railroad Company beyond the sums it shall actually realize and receive from the transfer of property, rights, credits, &c., provided for in this sections.

SEC. 3. That all persons who are now or have been acting or assuming to act as officers, directors, agents and attorneys of the said Western Division of the Western North Carolina Railroad Company shall, within thirty days after demand upon them by the governor of the State, turn over and deliver to the board of directors of the Western North Carolina Railroad Company all books, records, papers, moneys, bonds, property, contracts, effects, and evidences of debt which may be in their 2075 possession or within their control, and upon their failure or refusal to do so shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred dollars or imprisoned, in the discretion of the court, and the superior courts of any county on the line of the Western North Carolina Railroad shall have jurisdiction of such offence.

SEC. 4. That this act shall not be construed to relieve any person from any criminal prosecution now pending, or which may hereafter be instituted in any court or courts for any criminal offence theretofore committed in relation to the Western Division of the Western North Carolina Railroad Company, nor shall it be so construed as to abridge or release any rights, rights of action, or credits which now exist or may result from existing circumstances or contingencies in favor of the said Western Division of the Western North Carolina Railroad Company.

SEC. 5. This act shall be in force from and after its ratification.

Ratified this 13th day of March, A. D. 1879.

2076
STATE OF NORTH CAROLINA,
OFFICE OF SECRETARY OF STATE,
Raleigh, 17*th March*, 1879.

I certify the above to be a true copy of the original act on file in the office.

{ STATE OF NORTH CAROLINA. SEAL OF STATE. }
W. J. SAUNDERS.
Secretary of State.

(Indorsed:) Filed May 28th, 1879. P. Walter, clerk. Western N. C. R. R. Co. vs. Geo. F. Drew, gov., et als.

2077 AN ACT to amend the charter of the Western North Carolina Railroad Company

The general assembly of North Carolina do enact: That the Western North Carolina Railroad shall consist of two separate and distinct divisions, one called the eastern division, and shall embrace the said road from Salisbury to the French Broad River, near Asheville, and the other called the western division, which shall embrace the said road from the French Broad River to Ducktown and Paint Rock, on the Tennessee line.

§2. The property appropriations and subscriptions of stocks heretofore made by the State and private stockholders for the eastern division of said road, as provided in section 1 of this act, shall be used only for the purpose of the completion and operation of said eastern division of said road, and shall be managed and controlled and directed by a board of directors, as now provided by law.

§3. The western division of said road, as provided in section 1 of this act, shall be managed, constructed, and controlled by a board of directors separate and distinct from the board of directors of the eastern division, which board of directors shall consist of twelve; eight on the part of the State, to be appointed by the governor, and four on the part of the private stockholders, to be elected under the same
2078 rules and regulations as now provided by law; Provided, that the directors on the part of the private stockholders shall be elected by the stockholders of their divisions respectively.

§4. The board of directors of each division shall have the selection of its own officers and agents, a distinct treasurer, and otherwise independent of the other.

§5. For the purpose of securing the completion of the western division, the capital stock of the Western North Carolina Railroad Company is hereby increased to a sum sufficient to attain that object, not to exceed twelve millions of dollars, and the public treasurer is hereby authorized and required to make subscription from time to time for two-thirds of the stock, and make payment as heretofore provided by law.

§6. Upon the completion of the two divisions as provided for in section 1 of this act, the whole road and property may be consolidated on such terms as are agreed between the stockholders of the respective divisions.

§7. The provisions of the above act to be in full force and operation, upon condition that the western division of said road shall be put under contract before the State shall be called upon for its subscription to said road.

§8. The said western division of the Western North Carolina Railroad shall be completed within four years from the time that the said road shall be put under contract.

2079 In general assembly read three times and ratified this 19th day of August, A. D. 1868.

State of North Carolina,
Office of Secretary of State,
Raleigh, 22 *March*, 1879.

I certify the above to be a true copy of the original act on file in this office.

{ THE GREAT SEAL OF THE STATE OF NORTH CAROLINA. } W. L. SAUNDERS,
Secretary of State.

(Indorsed:) Filed May 26th, 1879. Philip Walter, clerk. U. S. circuit court, northern dist. Fla. The western division of the Western N. C. R. R. Co. vs. George F. Drew, governor, trustee, &c., et al.

2080 AN ACT to provide for the completion of the Western Division of the Western North Carolina Railroad.

The general assembly of North Carolina do enact:

Section 1. That J. L. Henry, N. W. Woodfin, W. P. Welsh, W. G. Candler, and W. W. Rollins be, and the same are hereby, appointed and constituted a commission to examine and fully investigate the condition and affairs of the Western Division North Carolina Railroad Company as far as concerns the administration of G. W. Swepson, late president thereof, and to make a full and final settlement of all accounts and liabilities of said president, G. W. Swepson, in connection with said company. It shall be the duty of said commissioners hereby created to collect and receive the funds and other assets belonging to the said company, and due from the said G. W. Swepson, and all other officers of said company elected or appointed since its organization, and to place the same in some safe bank, there to be held, and to be faithfully applied to the construction of the said road, the construction and work in which shall remain as heretofore, under the supervision of the president and board of directors. The said commissioners shall first cause all just debts of the company to be paid, and then from time to time as the progress of the construction of said road shall require, and upon properly certified estimates of work done, shall sign joint orders with the president of the board of directors for the payment of such sums as may be proper to secure an economical and speedy completion of the said work, or so much thereof as the funds within their control may be sufficient to construct. The said commissioners shall, for the purpose aforesaid, have power to send for persons and papers to be examined by them, and 2081 make all necessary orders and regulations to that end; and if need be, the said commissioners may send one or more of their members to the city of New York or elsewhere, to ascertain and report facts. A majority of said commissioners shall be sufficient to carry out the purposes of this act, and a majority of those so present shall have full authority to transact all business. The commissioners shall report from time to time, and in such way and form as has been heretofore prescribed by law for the reports of presidents of railroads, and at least once in every six months, their action to the governor of the State, who shall report to the next general assembly.

SECTION 2. That nothing contained in this act shall be construed as exempting any person from criminal prosecution for misapplication of funds of the company.

SECTION 3. This act shall take effect, if assented to by said company, from and after its ratification.

In general assembly read three times, and ratified this 24th day of March, A. D. 1870.

STATE OF NORTH CAROLINA,
OFFICE OF SECRETARY OF STATE,
Raleigh, 24 *March*, 1879.

I certify the above to be a true copy of the original act on file in this office.

{ GREAT SEAL OF THE STATE OF NORTH CAROLINA. }
W. L. SAUNDERS,
Secretary of State.

(Indorsed:) Filed May 26th, 1879. Philip Walter, clerk.

2082 In the circuit of the United States for the northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., et al., &c.
} In equity. Two suits.

It is hereby stipulated and agreed that the bill in equity, filed in the circuit court for Leon County, State of Florida, by James D. Westcott and others against Edward Houstoun and others, and the order of injunction granted thereon, on the 7th day of January, 1871, enjoining the said Houston and others from using or disposing of a certain million of dollars in the alleged bonds of the Florida Central Railroad Company, then in the possession of the said Houstoun, or a certified copy of said pleadings may be read in evidence by either party in the trial of the above entitled suits with the same effect as if formally introduced as evidence in the cause.

Dated Tallahassee, Fla., March 13, 1879.

JOS. B. STEWART,
Solicitor for Complainant.
GEO. P. RANEY,
Sol. for Trustees I. I. Fund.

2083 Circuit court of Florida, second judicial circuit in Leon County

ROBERT H. GAMBLE AND JAMES D. WESTCOTT, Jr., plaintiffs, in behalf of themselves and other stockholders and members of the Florida Central Railroad Company,

vs.

EDWARD HOUSTON, MARIANA D. PAPY, JOHN P. Sanderson, Milton S. Littlefield, The Florida Central Railroad Company, and the Jacksonville, Pensacola and Mobile Railroad Company.

Robert H. Gamble and James D. Westcott, jr., citizens of the State of Florida, residents of the county of Leon, plaintiffs, in behalf of themselves, and others like themselves, stockholders and members of the Florida Central Railroad Company, plaintiffs, bring this their complaint against Edward Houstoun, a citizen of Florida, and likewise a resident of the county of Leon; Mariana D. Papy, a citizen of the State of Florida, and resident of the county of Leon; Milton S. Littlefield, a resident of the county of Leon, and against the Florida Central Railroad Company, a corporation created by and organized under the laws of the State of Florida, plaintiffs, complain and say: That under and by virtue of the provisions of an act of the legislature of the State of Florida, entitled "An act to incorporate 2084 the Florida, Atlantic and Gulf Central Railroad Company, and for other purposes," approved January 24th, A. D. 1851, and of the provisions of an act of the legislature of the State of Florida, entitled "An act to amend an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company," approved January 7, 1853, the Florida, Atlantic and Gulf Central Railroad Company was incorporated, and by that name the stockholders and members of said company, their successors and assigns, were authorized to construct and operate a railroad from some tributary of the Atlantic Ocean within the limits of the State of Florida, having a sufficient outlet to the ocean to admit of the passage of sea steamers running through the State in the most eligible direction to some point, bay, or arm, or tributary of the Gulf of Mexico west of the Apalachicola River in West Florida, having a sufficient outlet for sea steamers, and that in accordance with the rights conferred by these acts said company constructed a railway from the town of Jacksonville, on the St. John's River, in East Florida, to the town of Lake

City, in the county of Columbia, and operated the same for a number of years; that in accordance with the authority granted by an act entitled "An act to provide for and encourage a liberal system of internal improvements in this State," the said Florida, Atlantic and Gulf Central Railroad Company, for the purpose of constructing the railway authorized, issued a large amount of bonds; that under the provisions of the said act and the contract therein expressed by the company, these bonds constituted a first lien or mortgage on the roadbed, iron-equipments, workshops, depots, and franchise of the company; that by said act and contract it was provided that in case the said company failed to pay the interest on said bonds, and the sum of one per cent. per annum as a sinking fund, it was made the duty of certain trustees therein named, after the expiration of thirty days from such failure or refusal to take possession of said railroad and all its property of every kind, and advertise the same for sale at public auction to the highest bidder either for cash or additional approved security.

2085 Plaintiffs further show unto your honor that the said company, having failed to comply with the requirements of the statute in reference to the interest and sinking fund as aforesaid, and having done acts which authorized the trustees aforesaid to take possession of the road and sell the same, the said trustees took possession of said railroad, extending from Jacksonville to Lake City, and all its property, and after due and legal notice, and in conformity with the statute and contract, sold the same at public auction on the fourth day of March, A. D. 1868; that at said sale William E. Jackson and his associates became the purchasers thereof; that the purchasers, William E. Jackson and his associates, by an act of the legislature of the State of Florida, approved July 29, 1868, were vested with the powers and franchises granted to the Florida, Atlantic and Gulf Central Railroad Company by the aforesaid act, entitled "An act to amend an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company, approved January 7, 1853," and they and their successors and assigns were authorized and empowered to exercise the said powers and franchises so far only as they appertained to the railroad constructed as aforesaid by the Florida, Atlantic and Gulf Central Railroad Company from the city of Jacksonville, in Duval County, to Lake City, in Columbia County, in this State, and were made a body politic and corporate under the name and style of the Florida Central Railroad Company; that the said road, if a "public work" at all, is a 'completed public work," and that the Florida Central Railroad Company, under its charter, which charter is a contract between the individual stockholders upon the one side and the State and the corporation on the other, is invested with no functions, rights, or powers, except such as pertain to a completed road, and that, in point of fact, the sole purpose for which the corporation exists, and for which the charter was granted, is the operation, control, management, and maintenance of a complete line of railway extending from Jacksonville to Lake City; that the plaintiffs are stockholders and members of the said
2086 Florida Central Railroad Company, and that the said defendants, Milton S. Littlefield, Edward Houstoun, Mariana D. Papy and John P. Sanderson, are likewise stockholders and members of the said company, and that the said John P. Sanderson is the president of the said company; that the said Littlefield is or was, and now claims to be, the owner and holder of a majority of the stock of the Florida Central Railroad Company.

Plaintiffs further show and state, that at the time of the sale of the said Florida, Atlantic and Gulf Central Railroad Company as afore said by the said trustees, a line of railroad extending from Lake City to Quincy was being operated by the Pensacola and Georgia Railroad Company, a company duly incorporated for that purpose; that said railway company, in like manner as is hereinbefore as stated to the Florida, Atlantic and Gulf Central Railroad Company issued bonds, which were a first mortgage on its road-bed, property and francises; that under the act authorizing these bonds, it was provided that in case the company failed to make certain payments of the interest, as well as a sinking fund to pay the principal, the trustees of the internal improvement fund should take possession of the railroad and all its property of every kind, and sell the same, after due advertisement; that the company having so failed, a sale was made, and the road was purchased by parties, some of whom were unknown to plaintiffs; that these said purchasers subsequently transferred their bid on the said road to parties connected with the other line of railway extending from Lake City to Jacksonville.

Plaintiffs further show that subsequent to this sale a majority of the stock in both lines of railway became owned by Milton S. Littlefield, and that the said Littlefield and others devised a scheme by which, contrary to the rights of the plaintiffs, they would consolidate the two lines of railway, and force the members and the stockholders of the Florida Central Railroad Company, contrary to their charter as 2087 well as to their interests, to undertake the extension of a line of road from Quincy, Florida, to some point west in the direction of Mobile, Alabama; that in accordance with this design the said parties who owned a majority of the stock in each company, or rather who owned a majority of stock in the Florida Central Railroad Company, and the largest interest in the purchase of the Pensacola and Georgia Railroad Company, for they had not then and have not now any charter to operate the Pensacola and Georgia Railroad, or the line of road once so called, obtained the passage of an act by the legislature of the State of Florida, entitled "An act to perfect the public works of this State;" that this act provided that in order to maintain and equip a railroad from Jacksonville to Pensacola, George W. Swepson, M. S. Littlefield, J. P. Sanderson and others, their associates, successors, and assigns, were constituted a body politic and corporate under the name of the Jacksonville, Pensacola and Mobile Railroad Company, and also, that the said company should be vested with the like powers, franchises, and privileges as were or are conferred by the act to incorporate the Florida, Atlantic and Gulf Central Railroad Company, and the act to amend an act entitled "An act to incorporate the Florida and Gulf Central Railroad Company," although, in fact, all the franchise and power vested by this act in so far as they pertained to the railway from Lake City to Jacksonville, had been previously vested in the Florida Central Railroad Company, on already "perfected and completed public work."

Plaintiffs further allege and state, that these parties or the corporation were granted the exclusive right to build a railroad with one or more tracks from Quincy to the Alabama State line, and that, in order thus to build the said road, or rather to extend two already completed public railways to points further westward, the governor of the State of Florida was directed to deliver to the president of this new corporation coupon bonds of the State to an amount equal to fourteen thousand dollars per mile of the estimated length of the road from 2088 Quincy westward to the Alabama line according to the certificate of the president under the corporate seal, and the same amount per mile for the excess above this estimate if, after the road shall be definitely located, it shall be likewise certified that the length of the road is greater than the first estimate, but said estimate shall not exceed in length the roadway already completed from Quincy to Jacksonville, and from Tallahassee to St. Mark's united, the said bonds shall be of the denomination of one thousand dollars, signed by the governor, countersigned by the treasurer, sealed with the great seal of the State, shall bear seven per cent. interest, payable semi-annually, and shall be payable to bearer; they shall be dated on the first day of July, A. D. 1869, and shall be due thirty years thereafter, and principal and interest shall be payable at such place in the city of New York as the governor shall designate.

That said act further provided that, in exchange for the bonds of the State above described, the president of the said Jacksonville, Pensacola and Mobile Railroad Company should deliver to the governor of the State coupon-bonds of the company, bearing a like rate of interest, payable to the State of Florida, signed by the president, sealed with the corporate seal, coupons payable to the State of Florida, authenticated by the written or engraved signature of the president, the bonds to be of such denomination not less than one thousand dollars as the said company may choose, and principal and interest shall be payable at the same time and place as the aforesaid State bonds; that under the provisions of this act the State was to have a statuary lien on the entire length of the road and on all the property of the company, and in case of failure of the company to pay either principal or interest of the bonds, it was made lawful for the governor to enter upon and take possession of said property and franchises, and sell the same at public auction.

2089 Plaintiffs further show unto your honor that bonds purporting to be bonds of the Florida Central Railroad Company (which were not authorized by said act), to the extent and in the amount of one million dollars, were issued at the instigation of the said Milton S. Littlefield; that it is claimed that these bonds constitute a statutory lien upon the line of road in which plaintiffs are interested, and that to said bonds are in the custody and control of Edward Houstoun, under the following circumstances, viz, that on or about the 13th May, A. D. 1870, defendant M. S. Littlefield was indebted to defendant E. Houstoun, in the sum of one hundred and sixty-three thousand and twenty-six dollars and seventy cents, for the purchase of certain stock of E. Houstoun in said Florida Central Railroad Company, and on other private accounts not connected in any manner with the operation or maintainance of the said line of road from Jacksonville to Lake City; that these bonds were about being issued and placed in the control of the said Littlefield, and that the said Houstoun objecting to the creation of said liens or to their passing into the hands of purchasers, or to the State without security for his stock debt, the said Houstoun and Littlefield executed and entered into articles of agreement, of which the following is a copy:

STATE OF FLORIDA,
Leon County:

This agreement made and entered into at the city of Tallahassee, in the county and State aforesaid, between Milton S. Littlefield, party of the first part, witnesseth, that whereas the said Edward Houstoun owns and holds a certain draft, which is in the words and figures following, to wit:

$163,026 $\frac{70}{100}$. **Tallahassee**, *May* 13, 1870.

Sixty days after date pay to the order of Edward Houstoun one hundred and sixty-three thousand and twenty-six $\frac{70}{100}$ dollars, value received, and charge the same to account of

Acceptance waived.

M. S. LITTLEFIELD,
J., P. & M. R. R. Co.

Messrs. S. W. Hopkins & Co.,
71 *Broadway, N. Y.*

2090 for the payment of which said draft the said Edward Houston has and holds as security the following securities: 103 first mortgage bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, amounting to one hundred and three thousand dollars of said bond; one thousand three hundred shares of the capital stock of the Florida Central Railroad, four drafts of George W. Swepson, on M. S. Littlefield, accepted by said Littlefield; one draft for $26,520, due at six months; one draft for $27,030, due at nine months; one draft for $8,050, due at fifteen months, all of said drafts being dated August 2, 1869, and amounting in the aggregate to the sum of one hundred and nine thousand one hundred and forty dollars, exclusive of interest thereon; and whereas the said draft of $163,026.70 was given to the said Houstoun for value received in the various transactions between the parties relative to the Jacksonville, Pensacola and Mobile Railroad Company and the Florida Central Railroad Company, growing out of the late Pensacola and Georgia Railroad Company and said Florida Central Railroad Company and the Tallahassee Railroad Company; and whereas it is the great interest of said parties of the first and second parts that moneys should be raised to promote the interests of said Florida Central Railroad Company to extend and provide for the business of said company, and to pay said draft when due; and whereas the said parties of the first and second part are owners and proprietors of more than a majority of the capital stock of said Florida Central Railroad: Therefore, know all men by these presents that the said parties of the first and second part do hereby covenant and mutually agree, each with the other, that they do cause to be issued one million dollars of the first mortgage bonds of the Florida Central Railroad Company of like denomination and effect and condition as the first mortgage bonds of the Jacksonville, Pensacola and Mobile Railroad Company, which said one million of dollars of said bonds are to be placed in

2091 the hands of the said Edward Houston as additional security for the payment of said draft for one hundred and sixty-three thousand and twenty-six dollars and seventy cents, to be held by the said Houston in addition to the securities aforesaid for the faithful payment of said draft at maturity; and it is further agreed that if the said draft is not paid at maturity, then and in that case, the said Edward Houstoun is hereby authorized and fully empowered to cause said one million of dollars of the bonds of said Florida Central Railroad Company, placed in his hands as security for said draft as aforesaid, to be sold at public outcry in the city of New York after default of payment of said draft, upon giving ten days' notice of said sale of said bonds, and of the time and place of said sale to Milton S. Littlefield by mail to his residence at Tallahassee, Florida, and by giving like notice to Messrs. S. W. Hopkins & Co., No. 71 Broadway, New York City, by delivering said notice at their office, and by giving ten days' notice of said sale in the New York Herald, by advertisements, at which sale of said bonds the said Edward Houstoun may become the purchaser. And in the event of the sale being made as aforesaid the said Edward Houstoun, after first paying said draft and the expenses of said sale of bonds, shall pay over all the moneys arising from said sale, and all the securities now in his hands and heretofore set forth and enumerated, to the said Milton S. Littlefield, and the said Houstoun shall only retain of or from said sale of bonds and securities aforesaid sufficient to pay said draft and expenses of selling said bonds.

In witness whereof the said parties have hereunto set their hands and seals this 30th day of May, A. D. 1870.

MILTON S. LITTLEFIELD. [SEAL.]
E. HOUSTOUN. [SEAL.]

Signed, sealed, and executed in presence of—
D. P. HOLLAND.
E. K. HOLLINGER.

2092 Plaintiffs further show and state that subsequently and on or about the 7th day of June, A. D. 1870, this agreement was modified, and another agreement entered into, of which the following is a copy:

The agreement made between Milton S. Littlefield and Edward Houstoun, dated the 30th day of May, A. D. 1870, is hereby modified, changed, and altered, as follows, to wit:

First. In lieu of the $1,000,000 of first-mortgage bonds of the Florida Central Railroad Company, which by said agreement were to be placed in the hands of said Houstoun as security for the payment of the draft in said agreement mentioned there shall be placed in the hands of the said Houston, as security for the payment of the draft in said agreement mentioned, the same amount of bonds of the State of Florida to be exchanged for the said bonds of the Florida Central Railroad Company.

Second. If said draft be not paid at maturity, the said Houstoun is authorized and empowered to sell said bonds of the State of Florida at public outcry, giving the like notice of sale as provided for in said agreement, and said Houstoun may become a purchaser at said sale.

Third. After first paying said draft and expenses of sale said Houstoun shall, out of the balance of the proceeds arising from sale of said bonds, if sufficient for this purpose, pay to John P. Sanderson the sum of fifty-seven thousand five hundred and sixty dollars; to M. D. Papy sixteen thousand dollars; to T. W. Brevard, attorney of certain holders of bonds of the Pensacola and Georgia Railroad Company, if certain negotiations now pending for their purchase shall be consum'ated, the sum of forty thousand dollars; to John P. Sanderson, president of the Florida Central Railroad Company, the sum of three hundred and forty thousand dollars; after these payments the balance, if any, to be paid to said Littlefield.

2093 Fourth. When said draft shall mature, said Houstoun, instead of selling said bonds of the State, shall have the option and choice of returning the same to the State and receiving in lieu thereof the one million dollars of first-mortgage bonds of the Florida Railroad Company exchanged for the State bonds as aforesaid.

Fifth. If, under the option and choice given to said Houstoun to return the bonds of the State of Florida aforesaid to said State and receive in lieu thereof the bonds of the Florida Central Railroad Company, as hereinbefore provided, said Houstoun, upon delivering said bonds of the Florida Central Railroad Company, received from the

State as aforesaid, to the president of said company, shall receive and have executed and delivered to him in lieu thereof other first-mortgage bonds of said company, which said bonds shall be made payable to bearer, and shall be good, effectual, and first lien on said road.

Sixth. Upon receiving said first-mortgage bonds of the Florida Central Railroad Company from the president thereof, as above provided for, the said Houstoun shall hold the same as security for the payment of said draft, and is authorized and has the power at any time, after giving thirty days' previous notice to the president of said company, to sell the said bonds so received from the president of said company at public outcry, in the city of New York, at which said Houstoun may become a purchaser, and said Houstoun shall, after first paying said draft and the expenses of said sale, dispose of and pay over the rest and residue of the proceeds of the sale of said bonds, if any, to the persons named and for the amounts named, as provided for in the third clause hereof.

2094 Seventh. If said Littlefield shall pay said draft before or at its maturity, said Houstoun shall deposit said bonds of the State of Florida, placed in his hands under the first clause hereof, with S. W. Hopkins & Co., No. 71 Broadway, New York, with the stipulation and agreement that they, the said Hopkins & Co., shall, in disposing of said bonds, hold the proceeds of said sale subject to the claims and for the amounts mentioned in the third clause hereof, to wit: John P. Sanderson, the sum of fifty-seven thousand five hundred and sixty dollars; M. D. Papy, sixteen thousand dollars; T. W. Brevard, attorney of certain holders of Pensacola and Georgia Railroad bonds, the sum of forty thousand dollars, if negotiations now pending for their purchase shall be consum'ated; John P. Sanderson, president of the Florida Central Railroad Company, the sum of three hundred and forty thousand dollars; said Hopkins & Co., after first paying the amounts above named to the parties above named out of the proceeds of the sale of said bonds, shall pay the rest and residue, if any, of the proceeds of the sale of said bonds to said Littlefield.

Witness our hands and seals, this the 7th day of June, A. D. 1870, at Tallahassee, Florida.

M. S. LITTLEFIELD. [SEAL.]
E. HOUSTOUN. [SEAL.]

Signed, sealed, and executed in our presence, the words "the sum of forty thousand dollars" interlined on the page before signing and sealing.

(Signed) A. J. PEELER.

Plaintiffs state and allege that the said defendants, Papy and Sanderson, have each an interest in the bonds, as the foregoing contract discloses.

Plaintiffs further show that one million of the State bonds, instead of the company bonds, passed into the hands of the said Houstoun originally, and that the said Houstoun, as well as the said Littlefield 2095 and the said Sanderson and the said Papy, proceeded to the city of New York, where great efforts were made by the said Littlefield to sell said bonds. That, failing in this, the said Houstoun returned to the State of Florida, bringing with him the said State bonds, and that, in exchange for said State bonds, which he was authorized to do by contract and agreement with the parties, he obtained from the governor of the State the first-mortgage bonds of the said company, which said bonds he holds as a security for his own stock debt and the debts named in the contract, none of which are debts of the company, or if so, to but a very small amount.

Plaintiffs further show that they are informed and believe that it is not the desire of the said Sanderson, or the said Papy, that these bonds should be surrendered by the said Houstoun, but they allege that the said Houstoun, in the event certain acts are performed by the said Littlefield, to wit, the performance of his said agreement with him, feels it his duty to deliver said bonds, and will do so, unless restrained by the process of this court from so doing, and that the said Littlefield is now urging a delivery of the bonds, and there is, in the judgment of the plaintiffs, great danger that they will pass into his hands.

Plaintiffs further allege that the said Littlefield now states that he has completed arrangements, as to the State bonds, for their sale, and that he is ready to deliver the bonds to the purchasers if he gets possession of them, which he proposes to do by surrendering the company bonds to the governor.

Plaintiffs further allege that the said bonds are, as far as the said Littlefield has any control of them under this contract, improperly under his control, and that he has no right to use the road and cover it with liens to raise money to pay private debts, notwithstanding he is the owner of a majority of the stock.

Plaintiffs, as the relief to which they are entitled to, "demand" or pray:

2096 First. That defendant Edward Houstoun may be restrained and enjoined, until the hearing of this cause, from in any manner disposing of said bonds, by sale or otherwise, or parting with the control of the same, or delivering the same to any other person.

Second. That the said Houstoun may be decreed and ordered to deliver the said bonds of the said Florida Central Railroad Company up, to be canceled, as being unauthorized by, and contrary to, the rights of plaintiffs, and that the same may be canceled, and for such other relief as to your honor shall seem proper.

JAMES D. WESTCOTT, Jr.
R. H. GAMBLE.

STATE OF FLORIDA,
Leon County:

Before me, Edwin M. Randall, chief justice supreme court of Florida, came Robert H. Gamble and James D. Westcott, jr., who, being duly sworn, say that the matter set up in the foregoing complaint as of their own knowledge are true, and that those stated upon information derived from others they believe to be true.

JAMES D. WESTCOTT, Jr.
R. H. GAMBLE.

Sworn to and subscribed before me this 6th day of January, A. D. 1871.

E. M. RANDALL,
Chief Justice Supreme Court of Florida.

(Endorsed:) Filed in the office of clerk of the circuit court Leon County, May 14th, 1874. C. H. Edwards, clerk.

2097 In the circuit court for the second judicial circuit of Florida, in Leon County.

The State of Florida to Edward Houstoun, Milton S. Littlefield, Mariana D. Papy, John P. Sanderson, and The Florida Central Railroad Company, greeting:

You are hereby summoned and required to answer the complaint of Robert H. Gamble and James D. Westcott, jr., plaintiffs, against you, which will be filed in the office of the clerk of the circuit court of Leon County, at the court-house in Tallahassee, and to serve a copy of your answer on either of the undersigned, at his office in Tallahassee aforesaid, within thirty days after service of this summons, and if you fail so to answer, the plaintiffs will apply to the court for the relief demanded in this complaint.

JAMES D. WESTCOTT, JR.
R. H. GAMBLE.

Dated January 7th, 1871.

(Endorsed:) Due and legal service of this summons acknowledged. M. D. Papy. Tallahassee, Florida, January 7, 1871. Filed in the clerk's office, June 10th, 1874. C. H. Edwards, clerk.

2098 Circuit court of Florida, second judicial cicuit, in Leon County.

ROBERT H. GAMALE AND JAMES D. WESTCOTT, jr.,
vs.
EDWARD HOUSTOUN, MILTON S. LITTLEFIELD, et alias.

On reading the complaint in this cause, and upon consideration thereof, and upon the plaintiffs entering into an undertaking without security, in the sum of two thousand dollars, as required by section 171 of the act or code of procedure of this State, it is considered that the prayer of said complaint for injunction be granted, and it is ordered that the said defendant Edward Houstoun be, and he is hereby, enjoined and restrained from in any manner disposing of the bonds of the Florida Central Railroad Company in said complaint mentioned, by sale or otherwise, parting with the control of the same, to any other person until the further order of this court. Adjudged and ordered at chambers this 7th day of January, A. D. 1871.

P. W. WHITE,
Judge Second Judicial Circuit of Florida.

(Endorsed:)

2099 STATE OF FLORIDA,
Leon County:

I certify that I served a true copy of this injunctional order upon Edward Houstoun, the within named party, on the ninth (9th) day of January, 1871.

A. B. MUNGER,
Sheriff Leon Co.

Filed in the clerk's office June 10, 1874.

C. H. EDWARDS, *Clerk.*

Circuit court of Florida, second judicial circuit, in Leon County.

ROBERT H. GAMBLE AND JAMES D. WESTCOTT, jr., plaintiffs in behalf of themselves and others, stockholders and members of the Florida Central Railroad Company,

vs.

EDWARD HOUSTOUN, MARIANO D. PAPY, John P. Sanderson, Milton S. Littlefield, The Florida Central Railroad Company, and The Jacksonville, Pensacola and Mobile Railroad Company.

Whereas an injunction in accordance with the prayer of the bill in this case is about being granted by the judge of the second judicial circuit of Florida; and whereas the judge of said court, before granting said injunction, requires a written undertaking by the plaintiffs conformably to the requirements of section 171 of the code: 2100 Now, therefore, be it known that we, the undersigned, undertake and agree to and with Edward Houstoun to the following effect, that is to say:

First. That if the court shall finally decide that the plaintiffs in this suit were not entitled to the injunction prayed for and granted, we undertake and agree to and with the said Edward Houstoun to pay to him such damages, not exceeding the sum of two thousand dollars, as he may sustain by reason of said injunction.

Witness our hands and seals, at Tallahassee, Florida, this the 7th day of January, A. D. 1871.

R. H. GAMBLE. [SEAL.]
JAMES D. WESTCOTT, JR. [SEAL.]

Approved.

P. W. WHITE, *Judge.*

STATE OF FLORIDA,
Leon County:

I, Council A. Bryan, clerk of the circuit court for the county aforesaid, do hereby certify that the above and foregoing is a true copy of the original complaint, notice, injunctional order, and undertaking in the case of R. H. Gamble and James D. Westcott, jr., vs. Edward Houstoun, Milton S. Littlefield, et als., now on file in my office.

In testimony whereof I have hereunto set my hand and seal of office this 13th day of March, A. D. 1879.

[SEAL.] COUNCIL A. BRYAN, *Clerk.*

2101 STATE OF FLORIDA,
County of Leon:

I, David S. Walker, judge of the circuit court of Florida for the second judicial circuit of said State, do hereby certify that Council A. Bryan, who made and signed the foregoing certificate, was at the time of his making and signing the same, the clerk of said court, in and for the county of Leon, in said circuit; that said signature is genuine and is entitled to due respect.

Witness my hand & seal at Tallahassee, in said circuit, this 19th May, 1879.

DAVID S. WALKER, [SEAL.]
Judge 2nd judicial circuit of the State of Florida.

(Endorsed:) In Leon circ't c't. R. H. Gamble & James D. Westcott, jr., vs. E. Houstoun, M. S. Littlefield, et. al., 9, 30. Filed May 26th, 1879. Philip Walter, clerk. Objected to by deft. counsel. P. Walter, cl'k.

2102 UNITED STATES OF AMERICA.

$500.] *The State of Florida.* [No. 21.

The Tallahassee Railroad Company hereby acknowledges itself indebted to the bearer in the sum of five hundred dollars to be paid at the Bank of the Republic, in the city of New York, on the first day of January, one thousand *one* hundred & seventy-six, with interest thereon at the rate of seven per cent. per annum from this date, payable semi-annually on the first days of January and July in each year, on presenting the corresponding coupon hereunto annexed, signed by the president of said company.

In witness whereof the president has subscribed his name and caused the corporate seal of the said company to be hereunto affixed, this first day of January, in the year of our Lord one thousand eight hundred and fifty-six.

[SEAL.]

E. HOUSTOUN,
President.

Countersigned by—

C. H. AUSTIN,
State Treasurer.

2103 We, trustees ex-officio of the internal improvement fund, certify that the above bond is issued agreeably to the provisions of "An act to provide for and encourage a liberal system of internal improvements in the State," approved the 6th day of January, 1855, and of "An act to facilitate the construction of various lines of railroad provided for by said act," approved 14th December, 1855, and that the bonds so issued constitute a first lien on the road and franchise of said company. And we further certify that the internal improvement fund for which we are trustees, is pledged by law to pay the interest on said bond as it shall become due.

JAMES E. BROOME, *Governor.*
T. W. BRENARD, *Comptroller.*
C. H. AUSTIN, *Treasurer.*
M. D. PAPY, *Attorney-Gen'l.*
D. S. WALKER, *Register.*

I hereby certify that this bond is duly recorded in my office in Book A of railroad bonds, page 21.

T. W. BREVARD,
Comptroller of Public Accounts.

2104 *Coupon.*

No. 39.

Coupon for seventeen dollars and fifty cents due by the Tallahassee Railroad Company, payable at the Bank of the Republic, city of New York, on the first day of July, 1875, for six months' interest on bond No. 21, for five hundred dollars.

E. HOUSTOUN, *President.*

(Indorsed:) Filed May 23d, 1879. P. Walter, clerk.

(Pages 2105 to 2107 inclusive omitted per stipulation.)

2108 Number 1.—*James M. Ball, R. E. Stillwell, examiners.*

[2c. stamp cancelled.]

$3,917.00.] JACKSONVILLE, FLA., *Mar.* 23, 1869.

At sight, pay to the order of William E. Jackson, three thousand nine hundred and seventeen dollars, value received, & charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Mess'. SOUTTER & Co.,
53 *William St., N. Y.*

(Endorsed:)

Pay J. L. Worth, cash. The National Park Bank of N. Y. Paid.

W. E. JACKSON.

(Across the face:) Soutter & Co., bankers, March 29, 1869, 53 William st., N. Y.

Number 2.—*James M. Ball, R. E. Stillwell, examiners.*

[25c. stamp cancelled.]

$350.] TALLAHASSEE, *Mar.* 20*th*, 1869.

Fifteen days after sight, pay to the order of John Roth, three hundred and fifty dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William St., N. Y.*

Accepted March 29, 1869.

SOUTTER AND CO.

(Endorsed:) John Roth, $350. Hallgarthe & Com.

(Stamped:) Souter & Co., bankers, Ap'l 14, 1869, 53 William st., New York.

Number 3.—*James M. Ball, R. E. Stillwell, examiners.*

[Two 50c. & one 25c. stamp cancelled.]

$2,437.75.] TALLAHASSEE, 20 *Mar.*, 1869.

Fifteen days after sight, pay to the order of C. H. Tebautt, M. D., twenty-four hundred & thirty-seven ^{75} dollars, value received, and charge the same to the account of—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William St., New York.*

Accepted Mar. 29, 1869.

SOUTTER & CO.

(Endorsed:)

Pay Bank of New Orleans or order.

C. H. TEBAULT, M. D.

Pay F. Schuchardt & Sons or order.

W. ANGUS, *His Cash.*

F. Schuchardt & Sons.

(Stamped:) Soutter & Co., bank's, Ap'l 16, 1869, 53 William st., New York.

2109 Number 4.—*James M. Ball, R. E. Stillwell, examiners.*

[$1.05 stamp cancelled.]

$2,928.90.] Tallahassee, *Mar.* 19, 1869.

Thirty days after date, pay to the order of Jacob Barrett, twenty-nine hundred and twenty-eight $^{\underline{90}}$ dollars, value received, & charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. Soutter & Co.,
53 *William St., New York.*

(Endorsed:)

G. W. Swepson.

Pay the within to R. G. Rolston, pres'd't F., L. & T. C., 26 Exchange Place, corner William st., New York.

JACOB BARRETT.
R. G. ROLSTON.

(Stamped:) Soutter & Co., bankers, Ap'l 1869, 53 William st., New-York.

Number 5.—*James M. Ball, R. E. Stillwell, examiners.*

[$15.05 stamp cancelled.]

$30,040.00.] Tallahassee, *Mar.* 19*th*, 1869.

Thirty days after date pay to the order of Jacob Barrett thirty thousand and forty dollars, value received, & charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. Soutter & Co.,
53 *William St., New York.*

(Endorsed:) G. W. Swepson.

Pay the within to R. G. Rolston, pres'd't F., L. & T. Co., 26 Exchange Place, cor. William st., New York.

JACOB BARRETT.
R. G. ROLSTON.

(Stamped:) Soutter & Co., bankers, Ap'l 21, 1869, 53 William st., New York.

Number 6.—*James M. Ball, R. E. Stillwell, examiners.*

[$1.00 stamp cancelled.]

$1,750.00.] Tallahassee, *March* 19, 1869.

Thirty days after date pay to the order of J. A. Bale seventeen hundred & fifty dollars, value received, & charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Messrs. Soutter & Co.,
53 *William St., New York.*

Accepted.

SOUTTER and CO.

(Endorsed:)

Pay to the order of H. K. Thurber & Co.

J. A. BALE.
H. K. THURBER & CO.

Importers & Traders' National Bank. Paid.

(Stamped:) Soutter & Co., bankers, Ap'l 21, 1869, 53 W'm st., New York.

2110 Number 7.—*James M. Ball, R. E. Stilwell, examiners.*

[2 c. stamp cancelled.]

$5,000.00.] TALLAHASSEE, *Mar.* 18*th*, 1869.

At sight pay to order of F. H. Flagg, treas., five thousand dollars, value received, & charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER and Co.,
53 *William St., New York.*

(Endorsed:)
Pay B. C. Lewis or order.

F. H. FLAGG, *Treas.*

Pay Nourse & Brooks or order.

B. C. LEWIS.
NOURSE & BROOKS.

(Stamped:) Soutter & Co., bankers. Mar. 23, 1869. 53 William st., New York.

Number 8.—*James M. Ball, R. E. Stilwell, examiners.*

[2 c. stamp cancelled.]

$280.00] TALLAHASSEE, *Mar.* 18, 1869.

At sight pay to the order of Henry Moore, treas., two hundred & eighty dollars, value received, & charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER and Co.,
53 *William St., New York.*

(Endorsed:)
Pay John J. Cohen & Son or order.

HENRY MOORE.

Pay Kritland, Hill & Talmadge or order.

JOHN J. COHEN & SON.
KRITLAND, HILL & TALMADGE.

(Stamped:) Soutter & Co. Mar. 26, 1869. 53 William st., N. Y.

Number 9.—*James M. Ball, R. E Stilwell, examiners.*

[2 c. stamp cancelled.]

$450.] TALLAHASSEE, *Mar.* 18, 1869.

At sight pay to the order of F. H. Flagg four hundred & fifty dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William St., New York.*

(Endorsed:)
Pay to order of Shafer Bros.

F. H. FLAGG,
SHAFER BROS.,
P'r M. B.

(Stamped:) Soutter & Co., bankers. Ap'l 2, 1869. 53 W'm st., New York.

2111 Number 10.—*James M. Ball, R. E. Stilwell, examiners.*

[2 c. stamp cancelled.]

$1,050.00.] JACKSONVILLE, *Mar.* 16, 1869.

At sight pay to the order of L. J. Eleming one thousand and fifty dollars, value received, & charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William St., New York.*

(Endorsed:) L. J. Fleming, $1,050.
Also pay to the order of Wilson & Bro.

L. J. FLEMING.

Pay to the order of W. A. Ransom & Co.

WILSON & BRO.
W. A. RANSOM & CO.

(Across the face:) Soutter & Co., bankers. Mar. 22, 1869. 53 William st., N. Y.

Number 11.—*James M. Ball, R. E. Stilwell, examiners.*

[2c. stamp cancelled.]

$350.00.] SAVANNAH, *March* 15*th*, 1869.

At sight pay to the order of C. M. Holst, esq., three hundred and fifty dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William St., New York.*

(Endorsed:) C. M. Holst, esq., $350.
Also pay to the order of D. H. Baldwin.

CH. M. HOLST,
D. H. BALDWIN,
By E. SMITH, *Att'y.*

(Across the face:) Soutter & Co., bankers. Mar. 18, 1869. 53 William st., N. Y.

Number 12.—*James M. Ball, R. E. Stilwell, examiners.*

[2 c. stamp cancelled.]

$350.00.] SAVANNAH, *Mar.* 15th, 1869.

At sight pay to the order of J. W. Nevitt three hundred and fifty dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William St., N. Y.*

(Endorsed:) J. W. Nevitt, $350.
Pay to the order of F. L. Lathrop, esq.

JOHN W. NEVITT,
F. S. LATHROP.

(Across the face:) Soutter & Co., bankers. Mar. 18, 1869. 53 William st., N. Y.

2112 Number 13.—*James M. Ball, R. E. Stilwell, examiners.*

[2 c. stamp cancelled.]

$140.] TALLAHASSEE, *March 13th*, 1869.

At sight pay to the order of T. J. Perkins one hundred & forty dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William St., New York.*

(Endorsed :) T. J. Perkins, $140.
Pay Earle, Cunningham & Co. or order.
THOS. J. PERKINS.

Check to Earle, Cunningham & Co.

(Across the face :) Soutter & Co., bankers, Mar. 19, 1869, 53 William st., N. Y.

Number 14.—*James M. Ball, R. E. Stilwell, examiners.*

[2 c. stamp cancelled.]

$1,050.] TALLAHASSEE, *M'ch 13th*, 1869.

At sight pay to the order of John Macdougall one thousand & fifty dollars, value received, & charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William St., New York.*

(Endorsed :) John Macdougall, $1,050.00.
Pay to the order of Messrs. Nourse & Brooks.
JOHN MACDOUGALL.
NOURSE & BROOKS.

(Across the face :) Soutter & Co., bankers, Mar. 17th, 1869, 53 William st., N. Y.

Number 15.—*James M. Ball, R. E. Stilwell, examiners.*

[2 c. stamp cancelled.]

$7,000.00.] SAVANNAH, *March 15th*, 1869.

At sight pay to the order of George W. Anderson seven thousand dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William St., New York.*

(Endorsed :) Geo. W. Anderson, $7,000.
Pay to the order of Kirtland, Hill & Talmadge for collection.
EDWARD C. ANDERSON, JUN'R.
KIRTLAND, HILL & TALMADGE.

(Across the face :) Soutter & Co., bankers, Mar. 19, 1869, 53 William t., N. Y.

2113 Number 16.—*James M. Ball, R. E. Stilwell, examiners.*

[2 c. stamp cancelled.]

$2400.] SAVANNAH, 15 *March*, 1869.

At sight pay to the order of Claghorn & Cunningham twenty-four hundred dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William St., New York.*

(Endorsed:) Claghorn and Cunningham, $2,400.
Pay to Messrs. Howes & Macy or order.

CLAGHORN & CUNNINGHAM.
HOWES & MACY.

(Across the face:) Soutter & Co., bankers, Mar. 19, 1869, 53 William st., N. Y.

Number 17.—*James M. Ball, R. E. Stilwell, examiners.*

[2 c. stamp cancelled.]

$210.] TALLAHASSEE, *March* 12*th*, 1869.

At sight pay to the order of F. H. Flagg two hundred & ten dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. St., New York.*

(Endorsed:) F. H. Flagg, $210.
Pay to B. C. Lewis or order.

F. H. FLAGG.

Pay to Nourse & Brooks or order.

B. C. LEWIS.
NOURSE & BROOKS.

(Across the face:) Soutter & Co., bankers, Mar. 19, 1869, 53 William st., N. Y.

Number 18.—*James M. Ball, R. E. Stilwell, examiners.*

[2 c. stamp cancelled.]

$6,650.] TALLAHASSEE, *M'ch* 12*th*, 1869.

At sight pay to the order of J. P. King sixty-six hundred & fifty dollars, value received, and charge the same to account of—

E. HOUSTOUN, *Agent.*

To Messrs. SOUTTER & Co.,
53 *Wm. Street, New York.*

(Endorsed:) J. N. O. P. King, 6,650.

J. N. O. P. KING.

Pay Nat. Park Bank N. Y. or order for collection acc't of—

BLAOCHSUNY.

The National Park Bank of New York. Paid.

(Across the face:) Soutter & Co., bankers, Mar. 19, 1869, 53 William st., N. Y.

2114 Number 19.—*James M. Ball, R. E. Stillwell, examiners.*

[25 c. stamp cancelled. 50 c. stamp cancelled. Rev. stamp cancelled.]

$1,820.] TALLAHASSEE, *March 9th*, 1869.

Thirty days after date, pay to the order of myself eighteen hundred & twenty dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed:) S. Simpkins, $1,820.
Pay S. Simpkins or order.

E. HOUSTOUN, *Ag't.*

Pay B. C. Lewis or order.

S. SIMPKINS.

Pay Nourse & Brooks or order.

B. C. LEWIS.
NOURSE & BROOKS.

(Across the face:) Soutter & Co., bankers, Mar. 10, 1869, 53 William st., N. Y.

Number 20.—*James M. Ball, R. E. Stillwell, examiners.*

[Rev. stamp cancelled. Rev. stamp cancelled.]

$32,200.] TALLAHASSEE, *March 5th*, 1869.

Thirty days after date, pay to the order of myself thirty two thousand two hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN *Ag't.*

To Messrs SOUTTER & Co.,
53 *Wm. st., N. Y.*

(Endorsed:)
Pay A. B. Hawkins, ex't'r, $32,200, or order.

E. HOUSTOUN, *Ag't.*

Pay H. L. Ritch & Co. or order.

ALEXANDER B. HAWKINS, *Ex't'r.*

Pay to the order of A. Halsey, cash'r.

H. L. RITCH & Co.

Received payment, 10.

A. HALSEY, *Cashier.*

(Across the face:) Received payment, 10, A. Halsey, cashier.

Number 21.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled. Rev. stamp cancelled.]

$3,580.] TALLAHASSEE, *March 5th*, 1869.

Thirty days after date, pay to the order of myself eight thousand five hundred & eighty dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

2115 (Endorsed) Wm. Denham, 8,580.
Pay Wm. Denham or order.

E. HOUSTOUN, *Ag't.*

Pay to the order of Duncan & Johnston.

W. DENHAM.

Pay W. H. Cox, cashier, or order.

DUNCAN & JOHNSTON.

(Across the face:) Paid at the Merchants' National Bank.

Number 22.—*James M. Ball, R. E. Stillwell, examiners.*

[Rev. stamp cancelled.]
$2600.] TALLAHASSEE, *March 5th*, 1869.

Thirty days after date, pay to the order of myself twenty-six hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed:) A. B. Hawkins, $2,600.₀₀.
Pay A. B. Hawkins, pres't, or order.

E. HOUSTOUN, *Ag't.*

Pay H. L. Ritch & Co. or order.

ALEXANDER B. HAWKINS, *Pres't.*

Pay to the order of A. Halsey, cash'r.

H. L. RITCH & Co.

Received payment, 10.

A. HALSEY, *Cashier.*

(Across the face:) Received payment, 10, A. Halsey, cashier.

Number 23.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]
$7,000.] TALLAHASSEE, *March 1st*, 1869.

Thirty days after date, pay to the order of myself seven thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed:) Henry Moore, $7,000.
Pay Henry Moore or order.

E. HOUSTOUN, *Ag't.*
HENRY MOORE.

Pay J. L. Worth, esq., cashier, or order, for account National Bank of Augusta, Ga.

G. M. THEW, *Cash.*

(Across the face:) Received payment, J. L. Worth, cashier.

2116 Number 24.—*James M. Ball, R. E. Stillwell, examiners.*

[Rev. stamp cancelled.]

$11,900.] TALLAHASSEE, *March* 1*st*, 1869.

Thirty days after date pay to the order of myself eleven thousand and nine hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed:) $11,900. Bones, Brown & Co.
Pay Bones, Brown & Co. or order.

E. HOUSTOUN, *Ag't.*

Pay to order of Messrs. Brown, Bros. & Co.
BONES, BROWN & CO.,
For BROWN, BROTHERS & CO.
J. W. POST.

Number 25.—*James M. Ball, R. E. Stillwell, examiners.*

[Rev. stamp cancelled.]

$9100.] TALLAHASSEE, *March* 1*st*, 1869.

Thirty days after date pay to the order of myself ninety-one hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co,
53 *Wm. street, New York.*

(Endorsed:) J. and T. A. Bones, $9100.
Pay J. & T. A. Bones or order.

E. HOUSTOUN, *Ag't.*

Pay to order of Messrs. Brown, Bros. & Co.
JOHN & THO'S A. BONES,
For BROWN, BROTHERS & CO.
J. W. POST.

Number 26.—*James M. Ball, R. E. Stillwell, examiners.*

[Rev. stamp cancelled.]

$2450.] TALLAHASSEE, *March* 1*st*, 1869.

Thirty days after date pay to the order of myself twenty-four hundred & fifty dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

2117 (Endorsed :) W. T. Jones, $2450.
Pay to W. T. Jones or order.

E. HOUSTOUN, *Ag't.*

Pay John J. Cohen & Son or order.

W. T. JONES.

Pay to the order of Kirtland, Hill & Talmadge.

JOHN J. COHEN & SON,
Per E. W. BARNES.
J. H. TALMADGE, *C'r.*

Paid.

Number 27.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$4,000.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date pay to the order of myself four thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. st., New York.*

(Endorsed :) Tho's W. Coskery, $4,000; stock, 100 shares.
Pay Tho's W. Coskery or order.

E. HOUSTOUN, *Ag't.*

Pay to the order of Messrs. Lee, Bliss & Co.

THO'S W. COSKERY.
LEE, BLISS & CO.

(Across the face:) Soutter & Co., bankers, Mar. 24, 1869, 53 William st., N. Y.

Number 28.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$4,000.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date pay to the order of myself four thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed :) Rob't Schley, trustee, $4,000; stock, 100 shares.
Pay Rob't Schley, trustee, or order.

E. HOUSTOUN, *Ag't.*
ROBERT SCHLEY, *Trustee.*

Pay J. L. Worth, esq., cashier, or order, for account National Bank of Augusta, Ga.

G. M. THEW, *Cashier.*

(Across the face:) The National Park Bank of New York. Paid.

2118 Number 29.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamps cancelled.]

$6400.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date, pay to the order of myself sixty-four hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William street, New York.*

(Endorsed:) A. Gould, pres'd't, $6400.00. Stock, 160 shares.

Pay to A. Gould, pres'd't, or order.

E. HOUSTOUN, *Ag't.*

Pay Mess. M. & G. Wilkinson or order.

A. GOULD, *Pres'd't.*

Pay E. J. Oakley, cash., or order.

M. & J. WILKINSON.

(Across the face:) Merchants' Exch. National Bank, N. Y., 13. Paid

Number 30.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamps cancelled.]

$2,000.] TALLAHASSEE, *Feb'y 19th*, 1879.

Thirty days after date, pay to the order of myself two thousand dollars, value received dollars, and charge the same to account of—(acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Mess. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed:) A. Gould, $2,000. Stocks, 50 stock.

Pay A. Gould or order.

E. HOUSTOUN, *Ag't.*

Pay Mr. Maurice Wilkinson or order.

A. GOULD.
M. WILKINSON.

Pay E. J. Oakley, cashier, or order.

GEO. WILKINSON.

(Across the face:) Merchants' Exch. National Bank, N. Y., 13. Paid.

Number 31.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamps cancelled.]

$2,000.00.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date, pay to the order of myself two thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William st., New York.*

2119 (Endorsed:) G. P. Curry, $2,000. Stock, 50 shares.

Pay G. P. Curry or order.

E. HOUSTOUN, *Ag't.*

Pay to Anstell, Inman & Co.

G. P. CURRY.
ANSTELL, INMAN & Co.

(Across the face:) Soutter & Co., bankers, Mar. 24, 53 William st., N. Y.

Number 32.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamps cancelled.]

$1600.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date, pay to the order of myself sixteen hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 Wm. street, New York.

(Endorsed:) H. H. Hickman, $1600. Stock, 40 stock.

Pay H. H. Hickman or order.

E. HOUSTOUN, *Ag't.*

Pay cashier of National Park Bank of New York or order.

H. H. HICKMAN,
C. F. McCAY,
Cash'r Sav. B'k of Augusta.

(Across the face:) Received payment, J. L. Worth, cashier.

Number 33.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamps cancelled.]

$1600.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date pay to the order of myself sixteen hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 Wm. street, New York.

(Endorsed:) Maurice Wilkinson, $1600.
Pay Maurice Wilkinson or order.

E. HOUSTOUN, *Ag't.*
M. WILKINSON.

Pay E. J. Oakley, cash'r, or order.

M. & G. WILKINSON.

(Across the face:) Merchants' Exch. National Bank, N. Y., 13. Paid.

2120 Number 34.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$2,000.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date pay to the order of myself two thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed :) Rob't A. Reid, $2,000; stock, 50 *stock.*
Pay Rob't A. Reid or order.

E. HOUSTOUN, *Ag't.*
ROB'T A. REID.

Pay J. L. Worth, esq., cashier, or order for account National Bank of Augusta, Ga.

G. M. THEW, *Cash.*

(Across the face :) The National Park Bank of N. Y. Paid.

Number 35.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamps cancelled.]

$12,000.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date pay to the order of myself twelve thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed :) Edward Thomas, $12,000; stock, 300 shares.
Pay Edward Thomas or order.

E. HOUSTOUN, *Ag't.*

Pay cashier of the National Park Bank of N. Y. or order.

EDW. THOMAS.
C. F. McCAY,
Cashier Sav. B'k of Augusta.

(Across the face :) Received payment. J. L. Worth, cashier.

Number 36.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$7,350.] TALLAHASSEE, *M'ch 18th*, 1869.

At sight pay to the order of Sorrel & Bros. seventy-three hundred and fifty dollars, value received, and charge the same to account of— 2121

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed :) Sorrel and Brothers, $7,350.

SORREL BROS.
G. M. SORREL.

Pay to the order of B. Cartwright, esq., cashier.

T. M. CUNNINGHAM, *Cash.*

Paid the National City Bank of New York.

(Across the face:) Soutter & Co., bankers. Mar. 24, 1869. 53 William st., N. Y.

Number 37.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$2,000.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date pay to the order of myself two thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed:) J. C. Fargo, $2,000; stock, 50 shares.

Pay J. C. Fargo or order.

E. HOUSTOUN, *Ag't.*

Pay M. Wilkinson or order.

J. C. FARGO.
M. WILKINSON.

Pay E. J. Oakley, cash., or order.

M. & G. WILKINSON.

(Across the face:) Merchant's Exch. National Bank, N. Y. 13. Paid.

Number 38.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$11,600.] TALLAHASSEE, *Feb'y* 19th, 1869.

Thirty days after date pay to the order of myself eleven thousand and six hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed:) James B. Walker, $11,600; stock, 290 shares.

Pay James B. Walker or order.

2122 E. HOUSTOUN, *Ag't.*

Pay Geo. M. Thew, esq., cashier, or order, for account National Bank of Augusta, Ga.

JAMES B. WALKER.

Pay to J. L. North, esq., cash., or order, for account National Bank of Augusta, Ga.

G. M. THEW, *Cash.*

(Across the face:) The National Park Bank of New York. Paid.

Number 39.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$400.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date pay to the order of myself four hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. Street, New York.*

(Endorsed:) James W. Walker. $400.00. Stock, 10 shares.

Pay James W. Walker or order.

E. HOUSTOUN, *Ag't.*
JAS. W. WALKER.

Pay T. L. Worth, esq., cash'r, or order, for account National Bank of Augusta, Ga.

G. M. THEW, *Cash.*

(Across the face:) The National Park Bank of New York. Paid.

Number 40.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$1,600.] TALLAHASSEE, *Feb'y* 19*th*, 1869.

Thirty days after date pay to the order of myself sixteen hundred dollars, value received, & charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 Wm. Street, New York.

(Endorsed:) James Miller. $1,600. Stock, 40 shares.

Pay James Miller or order.

E. HOUSTOUN, *Ag't.*
JAMES MILLER,
JAS. W. WALKER.

Pay T. L. Worth, esq., cashier, or order, for account National Bank of Augusta, Ga.

G. M. THEW, *Cash.*

(Across the face:) The National Park Bank of New York. Paid.

2123 Number 41.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$2,800.] TALLAHASSEE, *Feb.* 19*th*, 1869.

Thirty days after date pay to the order of myself twenty-eight hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 Wm. Street, New York.

(Endorsed:) B. H. Warren. $2,800. Stock, 70 shares.

Pay B. H. Warren or order.

E. HOUSTOUN, *Ag't.*

Pay Geo. M. Thew, esq., cashier, or order, for account National Bank of Augusta, Ga.

B. H. WARREN.

Pay J. L. Worth, esq., cashier, or order, for account National Bank of Augusta, Ga.

G. M. THEW, *Cash.*

(Across the face:) The National Park Bank of New York. Paid.

Number 42.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$2,000.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date pay to the order of myself two thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. Street, New York.*

(Endorsed:) Henry Moore. $2,000. Stock, 50 shares.

Pay Henry Moore or order.

E. HOUSTOUN, *Ag't.*
HENRY MOORE.

Pay J. L. Worth, esq., cashier, or order, for account National Bank of Augusta, Ga.

G. M. THEW, *Cashier.*

(Across the face:) The National Park Bank of New York. Paid.

2124 Number 43.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled. Rev. stamp cancelled.]

$17,600.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date pay to the order of myself seventeen thousand six hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed:) John W. Walker. $17,600. Stock, 440 shares.

Pay John W. Walker or order.

E. HOUSTOUN, *Ag't.*
JOHN W. WALKER.

Pay J. L. Worth, esq., cashier, or order, for account National Bank of Augusta, Ga.

(Across the face:) The National Park Bank of New York. Paid.

Number 44.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$2,400] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date pay to the order of myself twenty-four hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed:) D. R. Wright. $2,400.00. Stock, 60 shares.

Pay D. R. Wright or order.

E. HOUSTOUN, *Ag't.*

Pay to the order of Lee, Bliss & Co.

D. R. WRIGHT.
LEE, BLISS & CO.

(Across the face:) Soutter & Co., bankers. Mar. 24, 1869. 53 William st., N. Y.

Number 45.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$800.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date pay to the order of myself eight hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.
53 *Wm. street, New York.*

2125 (Endorsed:) Mrs. M. C. D'Autignal. $800. Stock, 20 shares.

Pay Mrs. M. C. D'Autignal or order.

E. HOUSTON, *A'gt.*
H. H. D'AUTIGNAL.

(Endorsement guaranteed. J. L. Worth, cashier.)

Pay J. L. Worth, esq., cashier, or order, for account National Bank of Augusta, Ga.

G. M. THEW, *Cash.*

(Across the face:) The National Park Bank of New York. Paid.

Number 46.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$4,000.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date pay to the order of myself four thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. street, New York.*

(Endorsed:) John & Tho's A. Bones. $4,000.00. Stock, 100 shares.

Pay John & Thos. A. Bones or order.

E. HOUSTOUN, *Ag't.*

Pay to order of Messrs. Brown Bros. & Co.

JOHN & THOS. A. BONES.

Pay to the order of the Merchants' Nat'l Bank.

BROWN BROS.

(Across the face:) Paid at Merchants' National Bank.

Number 47.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$7,200.] TALLAHASSEE, *Feb'y 19th*, 1869.

Thirty days after date pay to the order of myself seventy-two hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. Street, New York.*

(Endorsed:) Augusta Factory, $7,200. Stock, 80 shares.

Pay Augusta Factory, or order.

E. HOUSTOUN, *Ag't.*

Pay J. L. Worth, esq., cash.

W. E. JACKSON, *Pres'd't.*

(Across the face:) The National Park Bank of New York. Paid.

2126 Number 48.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$15,600.] TALLAHASSEE, *Feb'y* 19*th*, 1849.

Thirty days after date pay to the order of myself fifteen thousand & six hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. Street, New York.*

(Endorsed:) Wm. E. Jackson, $15,600.00. Stock, 390 shares.

Pay W. E. Jackson, or order.

E. HOUSTON, *Ag't.*

Pay to J. L. Worth, esq., cash'r.

W. E. JACKSON.

(Across the face:) The National Park Bank of New York. Paid.

Number 49.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$6,000.] TALLAHASSEE, *Feb'y* 19*th*, 1869.

Thirty days after date pay to the order of myself six thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *Wm. Street, New York.*

(Endorsed:) John Craigg, assignee, $6,000. Stock, 150 shares.

Pay John Craig, assignee, or order.

E. HOUSTOUN, *Ag't.*
JNO. CRAIG,
Assignee.

Pay J. L. Worth, cash'r, or order.

JNO. CRAIG.

(Across the face:) The National Park Bank of New York. Paid.

Number 50.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$23,450.] TALLAHASSEE, *Feb'y* 19*th*, 1869.

Thirty days after date pay to the order of myself twenty three thousand four hundred and fifty dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William St., New York.*

2127 (Endorsed:) Wm. Shear, $23,450.00. Bonds, $43,000. Stock, 210 shares.

Pay Wm. Shear, or order.

E. HOUSTOUN, *Ag't.*

Pay George T. Jackson, or order, Wm. Shear, for deposit.

GEORGE T. JACKSON.

(Across the face:) Paid at the National Bank of Commerce, New York.

Number 51.—*James M. Ball, R. E. Stilwell, examiners.*

[Revenue stamp cancelled.]

$2,400.] TALLAHASSEE, *Feb'y* 19*th*, 1869.

Thirty days after date pay to the order of myself twenty-four hundred dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William St., New York.*

(Endorsed:) W. W. Alexander, $2,400. Stock, 60 shares.

Pay W. W. Alexander, or order.

E. HOUSTOUN, *Ag't.*
W. W. ALEXANDER.

Pay J. L. Worth, esq., cash., or order, for account National Bank of Augusta, Ga.

G. M. THEW, *Cash'r.*

(Across the face:) The National Park Bank of New York. Paid.

Number 52.—*James M. Ball, R. E. Stilwell, examiners.*

[Rev. stamp cancelled.]

$6,000.] TALLAHASSEE, *Feb'y* 19*th*, 1869.

Thirty days after date pay to the order of myself six thousand dollars, value received, and charge the same to account of (acceptance waived)—

E. HOUSTOUN, *Ag't.*

To Messrs. SOUTTER & Co.,
53 *William St., New York.*

(Endorsed:) John Craig, $6,000. Stock, 150 shares.
Pay John Craig, or order.

E. HOUSTOUN, *Ag't.*

Pay to J. L. Worth, cash., or order.

JNO. CRAIG.

(Across the face:) The National Park Bank of New York. Paid.

2128 The people of the State of New York, by the grace of God free and independent, to all whom these presents shall come or may concern, greeting:

[SEAL.]

Know ye that we, having examined the records and files in the office of the clerk of the county of New York, and clerk of the supreme court of said State for said county, do find a certain decree there remaining, in the words and figures following, to wit:

2129 At a special term of the supreme court of the State of New York, held at the court-house in the city and county of New York, on the 27th day of December, 1872.

Present, Hon. George C. Barrett, justice.

JOHN COLLINSON, PLAINTIFF,
vs.
SIDNEY W. HOPKINS, ROBERT J. CARPENTER, and Frank H. Collins, composing the firm of S. W. Hopkins & Co., The Jacksonville, Pensacola and Mobile Railroad Company, The Western Division of the Western North Carolina Railroad Company, Samuel D. Babcock, Joseph Stewart, D. G. Ambler, Francis H. Flagg, and Converse L. Chase, defendants.

Whereas an order was entered on the 6th day of December, 2130 1872, in the above-entitled action by consent of all the parties who appeared therein, to which order reference is hereby made;

And whereas in and by the said order it is provided that John Collinson, the plaintiff, shall deposit the surplus moneys resulting from the sale of the bonds mentioned in the said order in the National Trust Company, in the city of New York, to be held and disposed of subject to the further order of this court to be made in this action upon notice to the attorneys for all the parties who have appeared therein, and to John L. Requa, in the action secondly mentioned in the said order, and the said proceeds so deposited stand in place of the said bonds themselves, subject to the same rights and liens, if any, on the part of either or any of the parties to either of said actions now existing as against said bonds;

And whereas on this 27th day of December an order has been entered herein modyfying said order of 6th December, by substituting the New York State Loan and Trust Company as depositary of the surplus proceeds of the bonds to be sold in the place of the National 2131 Trust Company of the city of New York;

And whereas an agreement was made between the Jacksonville, Pensacola and Mobile R. R. Co. and the Western Division of the Western North Carolina R. R. Co., dated 15th day of June, 1872, of which a copy is hereto annexed, and which was mutually ratified by both said companies;

And whereas the Jacksonville, Pensacola and Mobile Railroad Company passed certain resolutions on the 2nd day of October, 1872, of which a copy is hereto annexed, and which was accepted by the said Western Division of the Western North Carolina Railroad Company, and they have complied with the said resolution by a release and discharge of the injunction and receivership mentioned in said resolution:

Now, therefore, in pursuance of the said agreement and resolutions, and upon the consent and stipulation of Horace Barnard, esq., attorney for the defendants The Jacksonville, Pensacola & Mobile R. R. Co., D. G. Ambler, Francis H. Flagg, and Converse L. Chase, and of 2132 Algernon S. Sullivan, esq., attorney for the defendant The Western Division of the Western North Carolina R. R. Co., and on hearing Martin & Smith, esqrs., attorneys for Samuel D. Babcock and for Joseph Stewart, and on hearing Barlow, Larocque and Macfarland, attorneys for John Collinson, the plaintiff, and on the consent and stipulation of Messrs. Sewell & Pierce, attorneys for S. W. Hopkins & Co., it is ordered, adjudged, and decreed as between all the said parties represented as aforesaid by the said Horace Barnard and the said Algernon S. Sullivan that the said New York State Loan and Trust Company make payment of $200,000 to the said Western Division of the Western North Carolina Railroad Company or to N. W. Woodfin, esq., commissioner, etc., or to his order, out of the first proceeds of the said bonds, to be paid to the said Trust Company in pursuance of the said order, after first providing for the payment of the balance of the receiver's fees in said action of the said John Collinson, adjusted at the sum of $9,000; and that the said sum of two hundred thousand dollars, when so 2133 paid to the Western Division of the Western North Carolina Railroad Company, shall be in full satisfaction and discharge of all the claim or lien whatever of the said last-mentioned company upon the said bonds or said proceeds, and that such payment to them when made as aforesaid shall form a credit on the said indebtedness mentioned in said agreement, it being understood and agreed that this decree is confined to the said bonds or their proceeds, and is not to affect otherwise the rights of either party, as provided for in said agreement or resolutions or in any other respect.

It is further decreed that no payment shall be made under this decree until notice of ten days shall be given to the parties or their attorneys in this action and to the plaintiff in the action secondly mentioned in said order.

And it is further ordered and decreed that nothing herein contained should prejudice the rights, legal or equitable, of John L. Requa, the plaintiff in the action secondly mentioned in said order, or prevent or estop him from obtaining any relief to which he may be entitled in said action.

Enter.

G. C. B.

2134 We consent and stipulate to the entry of the above order.

HORACE BARNARD,
Attorney for the J., P. & M. R. R. Co., Defendants,
and Defendants Flagg, Ambler & Chase.
ALGERNON S. SULLIVAN,
Attorney for the Western Division of the Western
North Carolina R. R. Co.
SEWELL & PIERCE,
Attorneys for S. W. Hopkins & Co.

(Endorsed:) Filed Dec. 27th, 1872.

2135 An agreement made this 15th day of June, 1872, between the Western Division of the Western North Carolina Railroad Company, by Nicholas W. Woodfin, chairman of the commissioners, &c., and hereto duly authorized, of the first part, and the Jacksonville, Pensacola and Mobile Railroad Company, by Converse L. Chase, their attorney, by virtue of a power of attorney, a copy of which is hereto annexed, of the second part.

Whereas differences and disagreements have for a long time existed between the parties hereto, and litigations have been and are still pending between them, and they have come to an adjustment thereof as hereinafter stated:

Now, this agreement witnesseth, that the parties of the first part, in consideration of the sum of one dollar to them paid by the parties of the second part, the receipt whereof is hereby acknowledged, agree with them as follows:

That in case there shall be paid within two months from the date hereof to the parties of the first part by or on behalf of the said 2136 J., P. & M. R. R. Co., or their trustees, or by or on behalf of the said Chase, the sum of three hundred thousand dollars, that such payment shall be and operate as a release for the claim of the parties of the first part upon eight hundred eight per cent. Florida bonds, the subject of difference between the parties hereto and upon the proceeds thereof and as a release to S. W. Hopkins & Co. from all claims and causes of action of the parties of the first part against them, S. W. Hopkins & Co., and as a release of all equitable liens of the said parties of the first part upon any stock, but not as a release to the said Jacksonville, Pensacola and Mobile Railroad Company, or to any other party or parties, except S. W. Hopkins & Co., nor as a release from any claim, lien, or equity, right of property, stocks, title, or otherwise to which the parties of the first part are now entitled, except as aforesaid, unless they shall pay to the said parties of the first part the sum of three hundred thousand dollars.

The claims of the parties of the first part against the parties of the second part having been adjusted and are hereby adjusted and settled at the sum of $600,000, which the parties of the second part agree 2137 to pay, *which the parties of the second part agree to|pay* as follows: $300,000 thereof within said period of two months, and the remaining $300,000 within six months from the date hereof, which last payment is to be secured by the deposit with Duncan, Sherman & Co., of New York, of one million of dollars of the Florida State land-grant bonds to which said parties of the second part shall become entitled, or by the deposit of such mortgage bonds to a like amount as they shall issue and as shall be satisfactory to the parties of the first part.

Nothing herein contained is intended, nor shall the same be construed, as impairing, affecting, or postponing any of the claims, demands, liens, or equities, actions, or rights of action of the parties of the first part against the parties of the second part, or against S. W. Hopkins & Co., or against any other person or persons, or upon or against the said bonds or proceeds, &c., upon any stocks or other property, unless the said first-mentioned sum of $300,000 shall be paid within the time limited therefor, as above.

It is expressly agreed that nothing herein contained is intended 2138 to be, nor shall the same be, a personal liability on the part of the said Converse L. Chase.

It is mutually agreed that this agreement shall not be binding upon either party until both of the said railroad companies shall have duly ratified the same.

In witness whereof the parties hereto have hereunto executed this agreement by their respective representatives, as above.

WESTERN DIVISION OF THE WESTERN NORTH CAROLINA RAILROAD COMPANY,
(Sig.) By N. W. WOODFIN, [L. S.]
Chairman of the Commission.
JACKSONVILLE, PENSACOLA AND MOBILE R. R. CO.,
By CONVERSE L. CHASE, [L. S.]
Attorney in fact.

In presence of—
A. S. SULLIVAN.

[U. S. int. rev. sta'ps, 25 c., cancelled, being 5 c. on each page.]

2139 UNITED STATES OF AMERICA,
State of Florida, Duval County :

Be it remember' that at a meeting of the directors of the Jacksonville, Pensacola and Mobile Railroad Company, held in pursuance to a call duly made therefor, at their office, in the city of Jacksonville, in the said State of Florida, on the twelfth day of April, A. D. 1872, there was adopted the following resolution, which had been previously adopted by a majority vote of all the capital stock of the stockholders of the said Jacksonville, Pensacola and Mobile Railroad Company, a resolution of said stockholders in the words and figures following, i. e.:

"Resolved by the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company, That the president of the said company be, and he is hereby, authorized and directed to cause to be made, executed, and delivered to Converse L. Chase, esq., a power of attorney, constituting him, the said Converse L. Chase, the attorney in fact of the said Jacksonville, Pensacola and Mobile Railroad Company, with full power and authority to proceed to the city of New York, in the State of
2140 New York, or wherever else it may be necessary for the purpose
and for and on account of the said Jacksonville, Pensacola and Mobile Railroad Company, to consider any proposition for settlement and adjustment of any and all disagreements and differences between the said Jacksonville, Pensacola and Mobile Railroad Company, and all parties, persons, and corporations of associations, and particularly with the firm of S. W. Hopkins & Co., of New York and London, and, in his discretion, for and in the name of the said the Jacksonville, Pensacola and Mobile Railroad Company, to reject or accept any and every, or either such settlement or adjustment, with power to alter or modify the same, for and on account of the said company, which said power of attorney shall be duly attested under the corporate seal of the company, and certified by the secretary thereof.

"Resolved further, That we do hereby ratify and approve of all our said attorney shall lawfully do by virtue thereof."

Now, therefore, know all men by these presents, that under and by virtue of the foregoing resolutions of the stockholders thereof, the said
the Jacksonville, Pensacola and Mobile Railroad Company doth
2141 hereby constitute and appoint the said Converse L. Chase attor-
ney of the said Jacksonville, Pensacola and Mobile Railroad Company, for it, and in its name, place, and stead, to settle and adjust all and every the differences and disagreements of the said company aforesaid, with all and every person, parties, corporations or associations, and particularly with S. W. Hopkins & Co., of New York and London, and generally to do and exercise all and singular the powers and authority contemplated in the foregoing resolutions, hereby ratifying and allowing all that our said attorney shall lawfully do by virtue hereof.

In witness whereof the said president of the said Jacksonville, Pensacola and Mobile Railroad Company and the said F. H. Flagg, the secretary thereof, have hereto attached their names and affixed the corporate seal of the said company.

Done at Jacksonville, Fla., this eighteenth day of April, A. D. one thousand eight hundred and seventy-two.

[SEAL.] (Sig.) M. S. LITTLEFIELD,
Pres't J., P. & M. R. R. Co.
F. H. FLAGG, *Secretary.*

Attest:
AUGUSTUS SHERMAN.

[U. S. rev. stamp, 50 c., cancelled.]

2142 STATE OF FLORIDA,
Duval County, city of Jacksonville:

I, Augustus Sherman, a commissioner for the State of New York, residing in the city of Jacksonville, Duval County, and State of Florida, do certify that on the 13th day of April, in the year 1872, personally appeared before me, in the city of Jacksonville, Duval County aforesaid, Milton S. Littlefield, who is personally known to me to be the individual described in and who has executed the foregoing instrument as the president of the Jacksonville, Pensacola and Mobile Railroad Company, and he then and there acknowledged to me that he executed the said instrument as such president of said company; and I do further certify that I know said Milton S. Littlefield to be the president of said railroad company.

In witness whereof I have hereunto set my hand and official seal, at the city of Jacksonville, in the county and State aforesaid, this thirteenth day of April, one thousand eight hundred and seventy-two.

[SEAL.] AUGUSTUS SHERMAN.
A Commissioner for the State of New York.

2143 STATE OF NEW YORK,
City and County of New York, ss:

I, Richard Stagpoole, a notary public in and for the State of New York, residing in the city of New York, do hereby certify that I have compared the foregoing copy agreement with the original thereof, and after such comparison and careful inspection of such copy, I certify that such copy is a true and correct copy of such original, and of every part thereof.

In witness whereof I have hereunto set my hand and affixed my notarial seal the 17th day of June, 1872.

[SEAL.] (Sig.) RICH'D STAGPOOLE,
Notary Public.

2144 Whereas on the 15th day of June, A. D. 1872, at New York, a certain agreement in writing was entered into by and between the Western Division of the Western North Carolina Railroad Company by Nicholas W. Woodfin, chairman of the commissioners, &c., and the Jacksonville, Pensacola and Mobile Railroad Company, by their attorney (duly authorized therefor), Converse L. Chase; which said agreement was sanctioned and ratified by said Jacksonville, Pensacola and Mobile Railroad Company.

And whereas, by reason of our inability to dispose of our securities, said agreement has not yet been performed by this company.

And whereas (and since said agreement), by consent of said Converse L. Chase, attorney, &c., in two certain suits in chancery, at London, England, entitled C. "Collinson vs. Collins," and "Jacksonville and Pensacola and Mobile Railroad Company vs. Collinson," a decree was agreed upon and is said to have been made by Vice-Chancellor Wickens affecting the rights of the parties thereto in respect of certain bonds of the State of Florida, which bonds were issued to said Jacksonville, Pensacola and Mobile Railroad Company.

2145 Now, therefore, at a meeting of the directors of the Jacksonville, Pensacola and Mobile Railroad Company, held pursuant to a call duly made at their office, in the city of Jacksonville, in Florida, on the second day of October, A. D. 1872, it is resolved—

I. That said agreement with the Western Division of the Western North Carolina Railroad Company of the 15th day of June, 1872, and the adjustment and settlement thereby of the indebtedness of this the Jacksonville, Pensacola and Mobile Railroad Company to the said the Western Division of the Western North Carolina Railroad Company, are hereby approved and confirmed and shall stand as this company's act.

II. That in consideration of the release and discharge in New York
of a certain injunction and receivership upon certain Florida State
bonds in a pending suit there, wherein John Collinson is complainant,
our said attorney, Converse L. Chase (or some duly appointed agent),
may and shall in the name and on behalf of this company by drafts, orders
or assignments signed by him in the name of and on behalf of this
2146 on the National Trust Company, or upon their agent in London,
or on any other parties, make payment of $200,000 on account of
said Western Division of the Western North Carolina Railroad Company, or to said N. W. Woodfin, commissioner, &c., out of any the first
proceeds of said State bonds. And the deficiency in the payment of
the sum of $300,000 (provided in said agreement to be paid in two
months) shall be due as a present debt of this company, and, in addition, shall be secured to be paid to in all respects, as said agreement
provides for the payment of $300,000, payable in six months from the
15th day of June, 1872, said additional security to be of the same character, deposited with the same parties and in the same proportions of
bonds for said deficiency as for said $200,000.

III. That the president of the Jacksonville, Pensacola and Mobile
Railroad Company is hereby authorized and directed to cause to be executed, under the seal of said company, and to deliver any and all agreements and powers of attorney, to authorize and enable the said
2147 L. Chase to perform said original agreement and to carry out
these resolutions.

IV. That Messrs. Barlow, Larocque and Macfarland, or their successors, attorneys, and counsellors of the Jacksonville, Pensacola and Mobile Railroad Company, in the city of New York, in the suits there pending, are hereby authorized and directed to consent of record to the entry of judgments and decrees in said suits, settling and adjudging the liabilities and obligations of this company, as specified in said agreement of the 15th day of June, A. D. 1872, and in these resolutions.

OFFICE OF THE JACKSONVILLE, PENSACOLA
AND MOBILE RAILROAD COMPANY,
Jacksonville, Florida, October 2d, 1872.

I do hereby that the foregoing is a true copy from the records of the company of resolutions adopted at a meeting of the board of directors of the Jacksonville, Pensacola and Mobile Railroad Company, a quorum being present, held at Jacksonville, Fla., the 2nd day of October, A. D. 1872.

2148 [SEAL.] R. STEWART,
Assistant Secretary Jacksonville, Pensacola
and Mobile Railroad Company.

(Endorsed:) Filed December 27th, 1872.

2149 All which we have caused by these presents to be exemplified
and the seal of our said supreme court to be hereunto affixed.

Witness Charles Donohue, a presiding justice at the city of New York, the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and third.

HUBERT O. THOMPSON, *Clerk.*

I, Charles Donohue, a presiding justice of the supreme court of the State of New York, for the city and county of New York, do hereby certify that Hubert O. Thompson, whose name is subscribed to the preceding exemplification, is the clerk of the said county of New York, and the clerk of the said supreme court for said county, duly appointed and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, April 25th, 1879.

C. DONOHUE, *J.*

2150 STATE OF NEW YORK,
City and County of New York, ss:

I, Hubert O. Thompson, clerk of the supreme court of said State, in and for the city and county of New York, do hereby certify that Charles Donohue, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State, in and for the city and county of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 25th day of April, 1879.

[SEAL.] HUBERT O. THOMPSON, *Clerk.*

(Indorsed:) N. Y. supreme court. John Collinson vs. Sidney W. Hopkins & others. Decree; exemplified copy. Filed May 26, 1879. Philip Walter, clerk.

2151 The people of the State of New York, by the grace of God free and independent, to all to whom these present' shall come or may
[L. S.] concern, greeting:

Know ye that we, having examined the records and files in the office of the clerk of the county of New York, and clerk of the supreme court of said State for said county, do find a certain order there remaining, in the words and figures following, to wit:

2152 At a special term of the supreme court of the State of New York, held at the court-house in the city and county of New York, on the 18th day of January, 1873.

Present, Hon. George C. Barrett, justice.

JOHN COLLINSON, PLAINTIFF,
vs.
SIDNEY W. HOPKINS, ROBERT J. CARPENTER, and Frank H. Collins, composing the firm of S. W. Hopkins & Co.; The Jacksonville, Pensacola and Mobile Railroad Company; The Western Division of the Western North Carolina Railroad Company; Samuel D. Babcock, Joseph Short, D. G. Ambler, Francis H. Flagg, Converse L. Chase, and Lawrence P. Bayne, defendants.

Whereas an order was duly entered on the 6th day of December, 1872, in the above-entitled action, by consent of all parties who appeared therein, to which order reference is hereby made;

And whereas in and by the said order it was provided that John Collinson, plaintiff, shall deposit the surplus monies resulting from the sale of the bonds mentioned in the said order, in the National Trust
2153 Company in the city of New York, to be held and disposed of subject to the further order of this court to be made in this action, on notice to the attorneys for all the parties who appeared therein, and to John L. Requa, in the action secondly mentioned in the said order, and the said proceeds so deposited stand in the place of the said bonds themselves, subject to the same rights and liens, if any, on the part of either or any of the parties in either of said actions now existing against said bonds.

And whereas, by another order duly entered in this action on the 27th day of December, 1872, it was further ordered that the said order bearing date the 6th day of December, 1872, directing a delivery to the plaintiff by the receiver of the bonds therein mentioned, be, and the same was thereby, modified by substituting the New York Loan and Trust Company as the depository of the surplus proceeds of the bonds to be sold, in place of the National Trust Company in the city of New York mentioned in said order.

And whereas it is admitted by the parties who consent to the entry of this order that in and by a certain agreement bearing date the
2154 17th day of June, 1872, between the said Jacksonville, Pensacola and Mobile Railroad Company, of the first part, L. P. Bayne & Co. and L. P. Bayne, of the second part, Sidney W. Hopkins and others of the third part, Francis H. Flagg and Converse L. Chase, trustees, &c., of the fourth part, and Henry J. Rogers of the fifth part, it was among other things agreed that the claim of the said Lawrence P. Bayne against the said Jacksonville, Pensacola amd Mobile Railroad Company was thereby admitted and adjusted at the sum of one hundred and fifty thousand dollars and interest, and that the said Lawrence P. Bayne had, and shall have, a lien upon the twelve hundred eight per cent. Florida bonds mentioned in the pleading in this action for the amount of his said claim, and one hundred and fifty thousand dollars and interest from the seventeenth day of June, 1872.

And whereas it is in like manner admitted by the said parties that there is now due and owing to the said Lawrence P. Bayne on his claim and on his said lien on the said bonds the sum of ninety-six thou-
2155 sand six hundred and fifty dollars, paper currency of the United States, with interest thereon from the said 29th day of August, 1872.

And whereas it is in like manner admitted by the said parties that Thomas B. Coddington had, on the said 29th day of August, 1872, a claim and lien to the amount of forty thousand dollars, and interest from the 29th day of August, 1872, on one thousand of the said twelve hundred bonds, so delivered to the said John Collinson upon the footing of the said agreement with him, and the said decree of the said court of chancery, and such lien of said Thomas B. Coddington, attached and still attaches to the proceeds or so much thereof as may be necessary of the said one thousand bonds, and he is entitled to be paid out of such proceeds said sum of forty thousand dollars, United States currency and interest as aforesaid.

And whereas it is in like manner admitted by the said parties that by the said trust deed or indenture duly made in the State of Florida between the said Jacksonville, Pensacola and Mobile Railroad Company of the first part, and Francis H. Flagg, D. G. Ambler, and Converse L. Chase of the second part, and bearing date the second day of October, 2156 1871, the said parties thereto of the first part transferred and assigned to the said parties thereto of the second part, among other things, the proceeds of all the said eight per cent. Florida bonds, and to be applied as provided for in the said indenture or trust deed, as will more fully appear by reference to the same.

And whereas it is in like manner admitted by the said parties that the said Chase and the said Flagg alone accepted the trust reposed in them under and in virtue of said indenture or trust deed, and the other trustee therein named, D. G. Ambler, disclaimed and declined to accept the said trust, and the same devolved wholly on the said Flagg and the said Chase.

And whereas the said Francis H. Flagg recently died, leaving the said Converse L. Chase sole surviving trustee under and in virtue of the said indenture or trust deed, and he and the said Flagg, during the lifetime of the said Flagg, were entitled, and ever since the death of the said Flagg has been entitled, as such trustee, to all the proceeds of said twelve hundred bonds, subject nevertheless to the aforesaid lien of
the said L. P. Bayne for the said balance due him as aforesaid,
2157 and subject to the said lien of said Thomas B. Coddington as
aforesaid.

And whereas, by an order or decree heretofore entered in this action, on the 27th day of December, 1872, it was ordered, adjudged, and decreed as between all the parties who consented to the entry of said decree that two hundred thousand dollars be paid to the defendants, the Western Division of the Western North Carolina Railroad Company, out of the first proceeds of said bonds to be paid to the said trust company after first providing for the payment of the balance of the receiver's fees in this action adjusted at the sum of nine thousand dollars.

Now, therefore, in consideration of the premises and on the consent and stipulation of Horace Barnard, esq., attorney for the defendants, the Jacksonville, Pensacola and Mobile Railroad Company, and Converse L. Chase, surviving trustee as aforesaid, and of Algernon S. Sullivan, esq., attorney for defendants, the Western Division of the Western North Carolina Railroad Company, and for the defendant, Lawrence P. Bayne, it is ordered as between all of the said parties consenting and stipulating as afore-
said that the said Thomas B. Coddington had and still has a lien
2158 on the proceeds of the said one thousand bonds for the said sum
of forty thousand dollars paper currency of the United States, with the interest as aforesaid, subject nevertheless to the payment of the balance of the said receiver's fees adjusted as aforesaid, and also subject to the payment in the first place of the said sum of two hundred thousand dollars to the said Western Division of the Western North Carolina Railroad Company; and it is further order that as between all of the said parties consenting and stipulating as aforesaid that the said Lawrence P. Bayne had, and still has, a lien on the said twelve hundred bonds and proceeds to the amount of the said balance of ninety-six thousand six hundred and fifty dollars and interest as aforesaid, subject nevertheless to the payment of the said balance *of the said balance* of the said receiver's fees adjusted as aforesaid, and to the payment as hereinbefore mentioned to the said Western Division of the Western North Carolina Railroad Company; and it is further ordered as between all the said parties consenting and stipulating as aforesaid that the
said Converse L. Chase as such surviving trustee is the owner
2159 of and entitled to receive all of the residue of the said proceeds;
and it is further ordered that this order is made without prejudice to the rights of any party to this action who has not expressly

consented in writing to the entry thereof, and also without prejudice to the rights of John L. Requa, the plaintiff in the action secondly mentioned in the order of the 6th of December above referred to.

We consent to and stipulate for the entry of the above order.

Dated New York, January 18th, 1873.

(Sig.) HORACE BARNARD,
Att'y for J., P. & M. R. R. Co., and
C. L. Chase, Su'v. Trustee.
ALGERNON S. SULLIVAN,
Att'y for the Western Division the Western North Carolina
Railroad Company, and for Lawrence P. Bayne.

(Endorsed:) Filed Jan. 18th, 1873.

2160 All which we have caused by these presents to be exemplified and the seal of our said supreme court to be hereunto affixed.

Witness Charles Donohue, a presiding justice at the city of New York, the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and third.

HUBERT O. THOMPSON, *Clerk.*

I, Charles Donohue, a presiding justice of the supreme court of the State of New York for the city and county of New York, do hereby certify that Hubert O. Thompson, whose name is subscribed to the preceding exemplification, is the clerk of the said county of New York, and clerk of said supreme court for said county, duly appointed and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, April 25th, 1879.

CH. DONOHUE, J.

2161 STATE OF NEW YORK,
City and County of New York, ss:

I, Hubert O. Thompson, clerk of the supreme court of said State in and for the city and county of New York, do hereby certify that Charles Donohue, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the city and county of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereto set my hand and affixed the seal of the said court, this 25th day of April, 1879.

[SEAL.] HUBERT O. THOMPSON, *Clerk.*

(Endorsed:) New York supreme court. John Collinson vs. Sidney W. Hopkins & others. Order. Exemplified copy. Filed May 26th, 1879. P. Walter, clerk.

2162 The people of the State of New York by the grace of God free and independent, to all whom the' presents shall come or may concern, greeting:

Know ye that we, having examined the records and files in the office of the clerk of the county of New York, and clerk of the supreme court of said State for said county, do find a certain complaint, answer, [L. S.] reply, affidavits, supplemental complaint and supplemental answer, &c., stipulation & order, there remaining in the words and figures following, to wit:

2163 *Complaint, answer, reply, affidavits to hold to bail and on motion for injunction, supplemental complaint, and supplemental answer, &c.*

Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiff,
against
SIDNEY W. HOPKINS and others, defendants.

2164 Supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiff,
against
SIDNEY W. HOPKINS, FRANK A. COLLINS, AND Robert J. Carpenter, defendants.

Place of trial, city and county of New York. Summons for relief.

To the defendants above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber, at his office, number 32 Chambers street, in the city of New York (district attorney's office), within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated June 19th, 1871.

ALGERNON S. SULLIVAN,
Plaintiff's Attorney, 32 *Chambers St.*

2165 Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
ag'st
SIDNEY W. HOPKINS, FRANK A. COLLINS, AND Robert J. Carpenter.

The complaint of the Western Division of the Western North Carolina Railroad Company, plaintiff in the above-entitled action, against Sidney W. Hopkins, Frank A. Collins, and Robert J. Carpenter, the defendants therein:

The said plaintiff, by Algernon S. Sullivan, their attorney, respectfully show to this court that they are a body corporate and politic, created and existing under and by virtue of and act of the legislature of the State of North Carolina, passed on the 15th day of February, in the year 1855, entitled "An act to incorporate the Western North Carolina

"Railroad Company"; and another act of the legislature of the same State, passed the 19th day of August, in the year 1868, entitled
2166 "An act to amend the charter of the Western North Carolina Railroad Company," and that the defendants, at and during the times of the transactions hereinafter mentioned were, and from thence hitherto, have been, and still are, co-partners together, doing business in the cities of New York and London, England, under the firm name and style of S. W. Hopkins & Company.

That on or about the tenth day of November, in the year 1870, at the said city of London, by virtue of an agreement between the owners and holders of the bonds hereinafter mentioned, and the said plaintiffs and said defendants, eight hundred instruments, for the payment of money or bonds of the State of Florida, commonly called Florida bonds, each of said bonds being for the sum of one thousand dollars, payable in the gold coin of the United States, with interest thereon at the rate of eight per cent. per annum, and then being in the possession of said defendants, were assigned and transferred to said defendants to be held as the property of the plaintiffs, and to be sold on account of said plaintiffs, and the proceeds of the sale thereof to be paid over to
2167 the said plaintiffs; and said defendants thereupon acknowledged to said plaintiffs in writing that they held said bonds for sale as the agents of said plaintiffs.

And said plaintiff further alleges that said defendants have since sold a large amount of said bonds, if not the whole thereof, and have received a large amount of money, to wit, not less than four hundred thousand dollars in the gold coin aforesaid, on account of the sales thereof, and that they have paid over to the plaintiffs on account of such sales, the sum of $53,776.66, and a further sum of $1,000 and no more; that said plaintiffs have since such sales were made of such bonds frequently and from time to time demanded of the said defendants that they account for and pay over to them the residue of the moneys so received by them as aforesaid on account of such sales, but that said defendants have refused and still refuse to account for or pay over the same.

And the said plaintiffs further say that by reason of the refusal to account as aforesaid, they are not certainly informed as to whether said defendants have in fact sold all of said bonds; but they allege
2168 that said defendants have fraudulently for a long time prior to the bringing of this action, made use of said bonds and the proceeds thereof for their own private schemes and enterprises, and that they fraudulently and in violation of their trust in the premises, design and intend to continue to so use said bonds if any remain unsold in their hands, and the proceeds of such as may have been sold, and that the personal credit of said defendants is very low, and their personal pecuniary responsibility wholly insufficient to furnish any sufficient protection in the premises to the plaintiffs, and that the said plaintiffs will be without adequate remedy in the premises as to any of their said bonds remaining unsold, unless the benefit is vouchsafed to them by this court of its orders and judgment by way of injunction and specific relief.

Wherefore the said plaintiffs demand judgment, that the said defendants account to them in respect of the said bonds and the sales thereof, and the moneys or other proceeds of such sales, and that they pay over and deliver to said plaintiffs the amount of moneys or othe proceeds so received by them with interest, and that as to any o

2169 said bonds which remain unsold they surrender and deliver up the same.

W. W. ROLLINS,
ALGERNON S. SULLIVAN,
Pl'ffs Att'y'.

CITY AND COUNTY OF NEW YORK, *ss:*

W. W. Rollins, being duly sworn, deposes and says that he is president of the Western Division of the Western North Carolina Railroad Company, the plaintiff in the above-entitled action, that the facts stated in the foregoing complaint are true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

W. W. ROLLINS.

Sworn to before me this 19th day of June, 1871.

GEO. A. BLACK,
Com. of Deeds, N. Y. City.

2170 Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
against
SIDNEY W. HOPKINS, FRANK A. COLLINS, AND Robert J. Carpenter.

Sufficient cause having been shown to me by the verified complaint herein and by affidavit, I do hereby order and direct that Sidney W. Hopkins, Frank A. Collins, and Robert J. Carpenter, the defendants in the above entitled action, and each of them and their and each of their agents, attorneys, or servants, be, and they and each of them hereby are, enjoined and restrained and ordered to refrain from selling, assigning, transferring, or any manner parting with or disposing of any of a certain parcel of eight hundred instruments in writing for the payment of money or bonds of the State of Florida, commonly called or known as Florida bonds, at any time held by said defendants as the agents of the Western Division of the Western North Carolina Railroad Company, and which may not have been sold by said defendants, and from in any manner parting with or disposing of 2171 the proceeds of any of said eight hundred bonds as may have been sold; and that the said defendants show cause on the complaint and affidavits served herewith, before one of the judges of this court, at a special term thereof to be holden at the chambers of said court at the city hall, in the city of New York, on the first Monday of July next, at twelve o'clock noon, why this injunction should not be continued until the trial of this action, and why the plaintiffs therein should not have such further order or relief by way of the appointment of a receiver or otherwise as may be just.

Dated June 20th, 1871.

GEORGE G. BARNARD, *J. S. C.*

Order to arrest and hold to bail.

Supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiff,
against
SIDNEY W. HOPKINS, FRANK A. COLLINS, AND Robert J. Carpenter, defendants.

2172 To the sheriff of the city and county of New York:

It having been made to appear to me by affidavit that the plaintiff above named has a sufficient cause of action against Sidney W. Hopkins, Frank A. Collins, and Robert J. Carpenter, you are required forthwith to arrest Sidney W Hopkins, Frank A. Collins, & Robert J. Carpenter, the defendants in this action, for the cause aforesaid, and hold each of them to bail in the sum of three hundred thousand dollars, and to return this order to Algernon S. Sullivan, plaintiff's attorney, at his office, No. 32 Chambers street (dist. att'y's office), New York City, on the first Monday of July, one thousand eight hundred and seventy-one.

Dated June , 1871.

GEORGE G. BARNARD, *J. S. C.*

A. S. SULLIVAN,
Plaintiff's Attorneys, No. 32 Chambers street (dist. att'y's office).

Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiffs,
ag'st
SIDNEY W. HOPKINS, FRANK A. COLLINS, AND Robert J. Carpenter, defendants.

2173 CITY AND COUNTY OF NEW YORK, *ss:*

Nicholas W. Woodfin, being duly sworn, deposes and says that he is a citizen and resident of the State of North Carolina, and one of the commissioners appointed by an act of the legislature of said State, passed the 24th of March, 1871, entitled "An act to provide funds for the completion of the Western Division of the Western North Carolina Railroad Company," which said act was afterwards, and prior to any of the transactions hereinafter mentioned with the defendants above named, duly accepted, ratified, and approved by the stockholders and afterwards by the board of directors of the Western Division of the Western North Carolina Railroad Company, the plaintiff above named; and that by the provisions of said act, and the acceptance, ratification, and approval thereof as aforesaid, this deponent, together with the other persons named in said act as commissioners, have the power and are charged with the duty of recovering and receiving certain of the debts, dues, claims, and assets of the said company, including, among other things, the eight hundred bonds hereinafter mentioned of the State of Florida and the proceeds thereof.

2174 And this deponent further says that the said Western Division of the Western North Carolina Railroad Company is a body politic and corporate of the said State of North Carolina by virtue a certain act of the legislature of that State, passed on the 15th day of February, in the year 1855, entitled "An act to incorporate the Western North Carolina Railroad Company," and a certain other act of the said legislature passed the 19th day of August, in the year 1868, entitled "An act to amend the charter of the Western North Carolina Railroad Company," and divers other acts of the same legislature amendatory of the said two above mentioned acts, and that Sidney W. Hopkins, Frank A. Collins, and Robert J. Carpenter, the defendants above named, were, at and during the time of the transactions herein stated to have been had with them, and from thence hitherto have been, and still are, as this deponent is informed and verily believes, merchants and bankers and copartners in business, having their principal office or place of business in the city of New York, where they carry on their business under the firm name of S. W. Hopkins and Company, and another office or place of 2175 business or branch house in London, England, where they carry on their business under the like firm name.

And this deponent further says that for a long time prior to the 10th day of November, 1870, he, together with others of said commissioners, had diligently engaged in efforts to recover, as far as possible, a large portion of the funds and property of said company which had been by certain officers of said company improperly and in violation of their official duty and trusts diverted from the uses of said company and misapplied or squandered in divers ways, and that such efforts had, prior to the day last mentioned, been so far successful that deponent and others of said commissioners associated with him had procured an agreement, bearing date at Washington, D. C., the 16th day of April, 1870, to be executed by and between certain railroad companies, bodies corporate of the State of Florida, and one M. S. Littlefield and George W. Swepson, of the first part, and deponent and others of said commissioners, of the second part, whereby it was agreed in substance that the proceeds of certain bonds for the payment of money of the State 2176 of Florida, then about to be issued and delivered to or for said parties of the first part, and by them, upon the issue thereof, to be placed in the hands of the said firm of S. W. Hopkins and Company for sale, should be divided and paid over as the same were received, one-half to said Florida railroads and the other half to the said commissioners for the use and benefit of the said Western Division of the Western North Carolina Company until the sum of one million two hundred and eighty-seven thousand and thirty-six dollars, with interest at the rate of eight per cent. from the date of the agreement last mentioned, should be received by said commissioners, which agreement was based by way of consideration upon the fact conceded by all the parties thereto, that the said Florida railroad companies had received to the extent of the sum last mentioned the monies and funds of the said Western Division of the Western North Carolina Railroad Company wrongfully diverted as aforesaid, and that it was represented by and on the part of the parties to the said agreement, before the execution thereof, that the amount of bonds of the said State of Florida so to be issued as aforesaid was four millions of dollars.

2177 And this deponent further says that after the making of the agreement last mentioned, and prior to the said 10th day of November, 1870, bonds of the said State of Florida, of the character aforesaid, to the amount of three millions of dollars or thereabouts, were in fact issued and delivered to the said Florida railroad companies, and were afterwards and before said 10th day of November, 1870, and in accordance with the contemplation of the parties to the said last mentioned agreement, placed in the hands of the said firm of S. W. Hopkins & Company, in the city of New York, for sale, and that at or about the time when the said bonds were so placed in the hands of the said firm for sale, the said firm and the several members thereof had, as deponent has reason to believe and does believe, due knowledge and notice of the agreement last above mentioned, and of the rights of the said Western Division of the Western North Carolina Railroad Company.

And this deponent further says that afterwards and in the month of August, in the year 1870, M. S. Littlefield, hereinbefore named,
2178 who had the principal management of the financial affairs of the said Florida railroads, and to whom the said three millions dollars of bonds last mentioned had been delivered on the issue thereof, and by whom the same had been placed in the hands of the defendants for sale, as above mentioned, wrote a letter, addressed to S. W. Hopkins and Company, a copy of which is annexed hereto, marked Exhibit A, which letter this deponent received from said Littlefield, and in the month last aforesaid delivered to the defendant Sidney W. Hopkins, in the city of New York, and at the same time asked him if he would recognize and accept the order contained in said letter; that said Hopkins put this deponent off, upon the pretense that he desired to consult with his counsel, and said that as soon as he could so consult he would give this deponent an answer; but that deponent, upon calling next day at the office of said firm of S. W. Hopkins & Company, in the city of New York, ascertained that said Sidney W. Hopkins had gone to one of the Western States, and he could obtain from no one else at said
2179 office a satisfactory answer as to whether said firm would recognize or accept the order contained in the letter of said Littlefield, and thereupon he wrote and left with the defendants, at their said office, in the city of New York, a letter, of which a copy is annexed hereto, marked Exhibit B, to which deponent received from said defendants an answer, a copy of which is annexed hereto, marked Exhibit C; that such answer not being satisfactory to deponent he again visited the office of said S. W. Hopkins & Company and saw the writer of said letter, one L. L. Spring, who appeared to have charge as partner, or otherwise, of the business of said firm, and remonstrating with him concerning the unsatisfactory character of said answer, and insisted that he, deponent, was entitled to an express recognition and acceptance of the order contained in said letter of said Littlefield, and afterwards again visited said office, together with his counsel, Algernon S. Sullivan, esq., who explained to said Spring that deponent was
2180 entitled to such express recognition or acceptance, and no satisfaction in the premises.

And deponent further says that before he received said letter from said Littlefield he had received information that said Littlefield designed in a very short time to leave New York, where he then was, and go to Europe, without the knowledge of deponent, which was the reason why deponent desired to obtain from him such a letter, and that when he applied to said Littlefield and requested him to give him, deponent, such a letter, said Littlefield at first refused so to do, upon divers pretexts; but that deponent insisted that he should give such a letter, and threatened that unless he did, he, deponent, would take legal proceedings to protect the interests of the said Western Division *of the said Western Division* of the Western North Carolina Railroad Company in the said Florida bonds, and that thereupon the said Littlefield wrote said letter and almost immediately thereafter embarked for Europe; and that said Littlefield, for several days prior to the departure
2181 of said Sidney W. Hopkins for the West as aforesaid, was in the

habit of frequent and confidential communication with said Sidney W. Hopkins, and deponent says that, from the circumstances hereinbefore stated, he had reason to apprehend, and did apprehend, that said Littlefield and said Sidney W. Hopkins were in collusion with each other, and that it had been arranged and understood between them that the order contained in said letter of said Littlefield should not be recognized or accepted by said firm of S. W. Hopkins & Co., and that some fraudulent scheme was in contemplation by said Littlefield and said Hopkins prejudicial to the rights and interests represented by deponent, and having been informed prior to that time that said bonds had been, some time in July, 1870, transmitted by said firm of S. W. Hopkins & Co. to their branch house aforesaid in London, he deemed it expedient and necessary, in order to the protection of the rights and interests aforesaid, to proceed himself with all possible dispatch to London, England, with the view
2182 of their taking suitable measures to secure such rights and interests; and that he did accordingly forthwith embark for England, and arrived in London on or about the 29th of August, 1870; that he then ascertained that the said Littlefield was on the continent of Europe, in company with the defendants Collins, and deponent remained in London awaiting his return, and while so awaiting was very frequently at the office or place of business of said branch house of the defendants in London, where he saw and frequently conferred, from time to time, with the defendants Collins (who returned to London before said Littlefield) and Carpenter in reference to the transactions hereinbefore mentioned; that deponent soon after his arrival in London as aforesaid exhibited to said defendant Carpenter copies of the said letters of said Exhibits A, B, and C, but learned from him that he had already received copies of the same from the said firm of S. W. Hopkins & Co., New York, and deponent demanded of said Collins and Littlefield that the order contained in the said letter of Littlefield
2183 should then be recognized and accepted, which they at first refused to do; but at a later period, and after deponent had declared to them his determination to take such legal measures as should seem best calculated to secure the rights and interests he represented, they informed deponent they would recognize and accept said order in any manner deponent might desire, provided deponent would return to New York, where, as they pretended, deponent might with advantage attend to the interests connected with the negotiation of said Florida bonds; but that deponent refused to accede to such terms, being then determined to remain until he could see said Littlefield, and, if possible, better secure the rights and interests he, deponent, represented.

And deponent says that he also learned from said defendant Carpenter, on his arrival in London, that the said Florida bonds so issued and placed with said S. W. Hopkins, as hereinbefore mentioned, had been received by said S. W. Hopkins and Co., in London. But the said Carpenter pretended and represented that the same had been taken
2184 by the said Littlefield and the defendant Collins to the continent of Europe, for purposes connected with the negotiation thereof.

And deponent further says, that some weeks after his arrival in London aforesaid, the said Littlefield returned from the continent to that city, and that thereupon deponent had frequent interviews with him, both alone and together with said Collins and Carpenter, and that after divers negotiations between all these parties last mentioned, a mode of satisfying the agreement hereinbefore mentioned was arranged and agreed upon by and between this deponent, the said Littlefield and said firm of S. W. Hopkins & Company; and thereupon a new agreement in

writing was drawn up and executed by the said Littlefield, acting on behalf of himself and as the president of and in behalf of the Jacksonville, Pensacola and Mobile Railroad Company, a corporate body then recently created as was stated and represented by said Littlefield under the laws of the said State of Florida, by an amalgamation of the Florida railroad companies hereinbefore mentioned, and into which the
2185 said first mentioned Florida railroad companies had become
merged, as the party of the first part, and by deponent acting on the part and in behalf of said Western Division of the Western North Carolina Railroad Company, as the party of the second part therein, and that the said firm of said S. W. Hopkins & Company, in pursuance of the arrangement and understanding under which the said last mentioned agreement was drawn and executed as aforesaid, endorsed upon the back thereof their undertaking or guaranty in writing guaranteeing the performance of the obligations assumed by the parties therein of the first part, in respect of furnishing and delivering railroad iron to and for the parties therein of the second part, which agreement, with the guaranty aforesaid endorsed thereon, was afterwards duly delivered, and that a copy of said agreement and guaranty is annexed hereto, marked Exhibit D; and that at the same time the said firm of S. W. Hopkins & Company delivered to deponent a written acknowledgement to the effect that said firm held the eight hundred of said Florida bonds mentioned in said last mentioned agreement as the agent of said last mentioned railroad company, a copy of which said written ac-
2186 knowledgement is annexed hereto, marked Exhibit E; and de-
ponent says that at that time, as was stated and represented by said Littlefield, Collins and Carpenter, said firm held the whole of said three millions dollars of said Florida bonds, which said bonds were three thousand in number, each for the sum of one thousand dollars, payable in the gold-coin of the United States with interest at the rate of eight per cent.; and immediately afterward deponent executed in writing and delivered to said firm of S. W. Hopkins & Company a letter of instructions concerning the sale of said eight hundred of said bonds, of which last mentioned letter a copy is annexed hereto, marked Exhibit F.

And this deponent further says, that thereupon he returned to the city of New York, where he arrived on or about the 30th day of November, 1870, and upon his arrival visited several times the place of business of said defendants in said last-mentioned city, and there had several interviews with the defendant Sidney W. Hopkins and conferred with him concerning the agreement which had been made as last
2187 above mentioned; that on the first of the visits last mentioned the
said Sidney W. Hopkins informed him that he had the day before received from the branch house of his said firm in London a telegram apprising him of a sale of a large amount of the said bonds, including the said eight hundred belonging to the said last-mentioned railroad company, and produced the said telegram and read the same to deponent, and that it was, as read by said last-mentioned defendant, in substance and in the very words, or nearly so, as follows: "Satisfactory sale of fifteen hundred bonds—eight hundred for Woodfin, seven hundred for us. Private. Tell Woodfin only. Contract by mail; by City of Paris."

And deponent further says, that on the following day he went to the said office of S. W. Hopkins & Company with William W. Rollins, one of the commissioners hereinbefore mentioned, associated with deponent, and also the president of the said last-mentioned railroad company, and stated to said Sidney W. Hopkins that said Rollins was such

president, and that he could keep no secret from him concern-
2188 ing the said company, and wished the said Hopkins to read to
him the said telegram, which he, the said Hopkins, then did.

And deponent further says, that being then about to go to Raleigh, North Carolina, where the legislature was then in session, the said Sidney W. Hopkins earnestly requested him, upon some pretense that it would be detrimental to negotiations connected with said bonds if the agreement made in London as hereinbefore mentioned were known, not to make the same public, and with the view of enabling deponent to furnish some reason therefor to those who had the right to call upon him for an account of his doings in the premises, gave deponent a letter to be exhibited to such persons as he thought fit, a copy of which letter is annexed hereto, marked Exhibit G.

And deponent further says, that at this time the said Sidney W. Hopkins faithfully promised to obtain, as soon as possible, all the particulars concerning the sale mentioned in the telegram aforesaid, and to
communicate fully and promptly to deponent and to said Rollins,
2189 and by letter if they should not be in New York, all the informa-
tion he should at any time receive concerning the said eight hundred bonds and any sale thereof; and that prior to his departure from London as hereinbefore mentioned, the defendant Collins had in like manner promised to keep deponent fully informed concerning the said last-mentioned bonds and concerning everything which might happen affecting the same.

And deponent further says, that he thereupon left the city of New York, together with said Rollins, and went to North Carolina, where he remained until about the middle of March, 1871, when, having received no communication from said defendants, or any of them, concerning said Florida bonds, and no iron having arrived in accordance with the said agreement in London, deponent again came to the city of New York for the sole purpose of learning what had been done with said eight
hundred bonds and the proceeds thereof, and attending generally
2190 to the interests of said last-mentioned railroad company involved
in the agreement hereinbefore mentioned and the transactions connected therewith, and that a few days after his arrival in New York he was then joined by said Rollins and James L. Henry, another of said commissioners associated with deponent, who visited New York for the same purpose.

That upon this visit deponent and said Rollins remained about three weeks, and the said Henry about two weeks; and during the period of about ten days after their arrival, they, the said three persons last named, were almost daily at the office of said defendant, where they saw from time to time said Sidney W. Hopkins and said Carpenter. That at this time, in answer to the inquiries of deponent and his said associates concerning said bonds, said Hopkins and Carpenter stated that the sale mentioned in the telegram hereinbefore mentioned had not been consummated, but that the completion thereof was awaiting the fur-
nishing of evidence to be procured from Florida, touching
2191 the regularity and validity of said bonds; and further stated on
divers occasions thereafter, and during the same visit of deponent and his said associates, that the sale of said Florida bonds was proceeding in London slowly, and professed to be unable to furnish deponent and his associates with the particulars of such sales or any other more definite information in respect thereto.

And deponent further says that he also made inquiries during the visit last mentioned concerning the iron mentioned in the last above mentioned agreement, and which was to be furnished by said Littlefield;

in answer to which said Sidney W. Hopkins informed deponent that such iron had not been shipped in consequence of the slow sales of said Florida bonds. That during the visit last mentioned, the inquiries of deponent and his associates concerning the promise were made almost daily of said Sidney W. Hopkins or said Carpenter, and it was represented to them by said Hopkins and Carpenter that they were in
2192 daily expectation of receiving advice from London of sales of said bonds, and of remittances of money on account thereof; and that as soon as any such remittances were received, payment should be made to deponent and his associates.

That after deponent and his said associates had remained in New York about ten days, said Hopkins and Carpenter announced their intention of going to the West, but stated that they should be absent but for a few days; that deponent and his associates remonstrated against their both leaving New York, while communications and remittances from London were from day to day expected, and it was finally agreed that said Carpenter should not go, but should remain in New York; but that notwithstanding they did both leave New York together, and were absent about nine or ten days, during which time deponent and said Rollins were obliged to remain in New York awaiting the expected remittances from London; that upon the return of said Hopkins and Carpenter deponent could obtain no satisfactory intelligence from them as to what was being done in London in reference to said bonds or
2193 the shipment of said iron, and said Hopkins pretended that it was necessary for him to proceed at once to Florida upon business in some way connected with said Florida bonds, and told deponent that he was then able to pay over ten thousand pounds sterling, and in a very short time would be able to pay over at least one hundred and fifty thousand dollars more, or thereabouts, and probably, indeed, the whole amount of the proceeds of the sales of said eight hundred bonds.

That he accordingly did pay over to deponent and his associates on or about April 3d, 1871, the sum of fifty-three thousand seven hundred and seventy-six dollars and sixty six cents ($53,776 66), for which amount he requested deponent and his associates to draw on said firm of S. W. Hopkins and Company, and at the same time to sign a letter addressed to said firm respecting the same. That deponent objected to so drawing such draft and signing such letter, for the reason that it would appear as if he and his associates were borrowing money instead of receiving the proceeds of bonds sold, but said Hopkins
2194 represented to deponent that it was important that the business should be put in that shape for the reason that he did not wish one Houston, who also had bonds of a similar description in the hands of said firm for sale, to know that he was receiving and paying over proceeds of the sales of said bonds, and that deponent and his said associates accordingly drew the draft as desired by said Hopkins, and signed a letter in form as drawn up by him, a copy of which letter is hereto annexed, marked Exhibit H. But deponent says that the said Hopkins did not pretend that the said money so paid over by him was in fact an advance, but paid it over as and for so much proceeds of sales of said eight hundred bonds, and the same was so received by deponent and his said associates, who afterwards applied the same to the use of said company.

And deponent further says that at this time the said Hopkins further stated to deponent that he was in daily expectation of receiving advices from London of the purchase and shipment of iron, pursuant to
2195 the terms of said agreement made in London, and upon deponent representing to him the pressing need of said iron for

the use of the said company represented by him, said Hopkins promised that in any event the said defendants would ship from New York to Norfolk for said company five hundred tons of railroad iron within thirty days, and further promised to keep deponent fully informed concerning sales of said bonds, or anything which might happen affecting the same, and thereupon deponent and said Rollins returned to North Carolina.

And deponent further says, that afterwards and about the 7th of May, 1871, he and the said Rollins—no further communications having been received from said defendants concerning said bonds or shipments of iron, and the shipment of iron from New York, as promised by said Hopkins, not having been made—again visited New York for the sole purpose of attending to the business connected with said agreements, hereinbefore mentioned; but were informed, upon inquiry at the office of said defendants, that said Hopkins was in Florida, and said Carpenter in Michigan, and *and* the only information they were able to obtain was given to them by one Spring, who had charge of the business of said defendants, and held their power of attorney for that purpose, which was to the affect that sales of said bonds were proceeding in London slowly, but at rather better prices. 2196

And deponent further says, that on the 12th of June, he and said Rollins again visited New York on the same business, and upon going on that day to the office of said defendants, were told by said Spring, that although said Hopkins had returned to New York on the previous Saturday, he had not been at the office that morning. That on the next day deponent and said Rollins again visited said office about one o'clock p. m., and were told by said Spring that said Hopkins had not been to the office that day, but that he was expected momentarily; that after the lapse of an hour or thereabouts, deponent and said Rollins again called at said office, and were told by said Spring that said Hopkins was then in, but engaged upon very important business, but was very anxious to see deponent, and proposed to meet him, deponent, at his, deponent's, hotel, between 9 and 10 o'clock the next day; that deponent accordingly remained at his hotel the next day from nine o'clock a. m. until about three o'clock p. m., sending in the meantime to said Hopkins a telegram to which no answer was received, and about four o'clock p. m., of the same day, deponent and the said Rollins again visited the office of defendants, and were told by said Spring that Hopkins was in, but that he declined seeing deponent or having any further interview with him or said Rollins. 2197

And deponent further says, that from the facts and circumstances hereinbefore mentioned, and from diligent inquiry made by him from all other sources of information known to him, he verily believes and charges that sales have been made by said defendants of all or nearly all of said eight hundred Florida bonds, and that said defendants have received the proceeds thereof to a very large amount, if not to the whole amount thereof; that the rates at which said bonds have been so sold, as deponent is informed and believes from his knowledge derived during his visit to London, and at other times, and from the quotations of the value thereof in Europe, are from fifty to seventy cents on the dollar in gold, and that the said defendants, as deponent verily believes, have received in money, for and on account of sales of said eight hundred of said bonds, not less than four hundred thousand dollars in the gold coin of the United States, or its equivalent. 2198

And this deponent further says that the said defendants have not

paid over to deponent or his associates, or the said company represented by him, any other moneys except the said sum of fifty-three thousand seven hundred and seventy-six dollars and sixty-six cents aforesaid, and the sum of one thousand dollars ($1,000) paid in March, 1871, and nineteen pounds sterling, being the passage money on deponent's re-
2199 turn from Europe on his visit aforesaid to London, and that they have never shipped any iron whatever in accordance with said agreement made in London, or performed, with the exception aforesaid, any of their promises in the premises; but that they have from the outset, and ever since the making of the agreement made in London as aforesaid, behaved towards deponent and his said associates and the company represented by them in an utterly faithless manner, and have continually delayed, postponed, and put them off by false pretences, excuses, and pretexts almost without number.

And deponent further says that said defendants, as deponent is informed and believes, are themselves largely interested with said Littlefield in the Florida Railroad enterprises with which the issue of said Florida bonds is connected, as well as with other railroad enterprises in some Western State, and that they are contemplating and striving to enrich themselves therefrom, and that as deponent verily
2200 believes they are and have been from the outset dealing in the most shameless manner with the property and interests of said last mentioned railroad company which have been placed in their hands and under their control, and that they are, in conjunction with said Littlefield, now using and design and intend to continue to use the moneys they have received on account of sales of said eight hundred bonds, so far as they have sold the same, and the said bonds themselves which remain unsold, if any, in order to advance their own private schemes and enterprises in utter violation of the rights of the railroad company last mentioned.

And said deponent further says that he has reason to believe and does believe that unless the most stringent methods and means of redress and security which the law affords are vouchsafed to said company last mentioned, the said defendants will deal with the moneys
2201 received by them on account of sales of said eight hundred bonds and with such of the bonds themselves, if any, which remain unsold in such manner as to utterly and forever deprive said last mentioned company of the benefit thereof.

N. W. WOODFIN.

Sworn to before me this 19th day of June, 1871.

GEO. A. BLACK,
Com'r of Deeds, N. Y. City.

EXHIBIT A.

(Copy.)

NEW YORK, *August*, 1870.

Messrs. S. W. HOPKINS & Co.,
70 *Broadway, N. Y.*:

GENTLEMEN: You will please pay the money which may come into your hands from the sale of any bonds which I have placed with you over to G. M. Roberts, esq., treasurer of the Western Division of the Western North Carolina Railroad Company, according to the terms of a contract made and entered into between the commissioners
2202 appointed by the legislature of the State of North Carolina, George

W. Swepson and myself, dated Washington, D. C., April, 1870, upon your receiving orders signed by the board of directors of the said Western Division W. N. C. R. R. Co. and the board of commissioners hereinbefore named.

Very respectfully,
(Signed) M. S. LITTLEFIELD.

EXHIBIT B.

(Copy.)

NEW YORK, *Aug.* 11*th*, '70.

Messrs. S. W. HOPKINS & CO.:

GENTEMEN: On yesterday I delivered to you a copy of the contract made between the Western Division of the Western North Carolina Railroad Company by the commissioners appointed by the legislature of the State of North Carolina, and approved by the said corporation of the one part, and M. S. Littlefield, acting for himself and as president of the Jacksonville, Pensacola and Mobile Railroad, and George W. Swepson, president of the Florida Central Railroad Co., of the other part, 2203 dated the 16th of April, 1870, by which it was stipulated that said Western Division of the West. North Carolina Railroad Co. should receive one-half of the proceeds of the sales of certain State bonds which were to be placed in your hands to sell, and at the same time I handed you a letter from Gen. M. S. Littlefield directing you to pay over to G. M. Roberts, esq., treasurer of said West. Division West. North Carolina Railroad Co., the part of the proceeds of the sales of said bonds, when received, to which said corporation will be entitled according to said contract.

It only remains for me to request of you the favor to acknowledge the receipt of said letter and copy of contract, and to comply therewith, as the money may be received by you.

Respectfully,
(Signed) N. W. WOODFIN,
For the W. D. W. N. C. R. R.

2204 EXHIBIT C.

(Copy.)

[S. W. Hopkins & Co., 71 Broadway, New York, 58 Old Broad st., London.]

NEW YORK, *August* 11*th*, 1870.

N. W. WOODFIN, Esq., *Comm'r, &c.*:

DEAR SIR: Acknowledging the receipt of your favor of 11th inst., would say that the letter and contract mentioned therein have been received and placed on file, and shall have the consideration and attention to which they are entitled.

We remain, dear sir, very respectfully,
S. W. HOPKINS & Co.
P'r L. L. S.

2205

EXHIBIT D.

Memorandum of an agreement and final settlement made this tenth day of November, A. D. 1870, at London, England, between General Milton S. Littlefield, of the State of Florida, in the United States of America, and the Jacksonville, Pensacola and Mobile Railroad Company, by Milton S. Littlefield, the president thereof, the parties of the first part, and the Western Division of the Western North Carolina Railroad Company, acting through and represented by Colonel Nicholas W. Woodfin, chairman of the commission appointed by the general assembly of the State of North Carolina, by an act ratified the 24th day of March, A. D. 1870, to settle with George W. Swepson, and for other purposes, which act was approved by the stockholders of the said Western Division of the Western North Carolina Railroad Company, of the second part.

Whereas, on the 16th day of April, A. D. 1870, at the city of Washington, in the District of Columbia, in the United States of America, a contract in writing was made and entered into by and between the Florida Railroad Company, George W. Swepson, president; General Milton S. Littlefield; the Jacksonville, Pensacola and Mobile Railroad Company, by Milton S. Littlefield, the president thereof, as parties of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by Nicholas W. Woodfin, W. G. Candler, W. W. Rollins, and W. P. Welch, commissioners appointed by the legislature of the State of North Carolina, by an act ratified the twenty-fourth day of March, 1870, which act was duly ratified, approved, adopted, and made a part of the charter of the said party of the second part, the said corporation, a copy of which contract is attached hereto, and made a part of this contract; and

Whereas the said Jacksonville, Pensacola and Mobile Railroad Company have received certain bonds of the State of Florida under sundry acts of the legislature of said State, which bonds, by the term of the laws authorizing the issue of the same, are made payable, both principal and interest, in the gold coin of the United States, and bearing interest at the rate of eight per cent. per annum; and

Whereas by reason of the present war in Europe, all financial operations are more or less restricted, which has up to this time prevented the negotiation for the sale of said bonds; and

Whereas the said Western Division of the Western North Carolina Railroad Company, through and by its representative, N. W. Woodfin, chairman as aforesaid, is pressing the immediate payment, by the said party of the first part, of the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, with interest at the rate of eight (8) per cent. per annum since the first day of November, A. D. 1869, to pay or settle the said claim now will cause a great sacrifice to the said party of the first part; and

Whereas the said Nicholas W. Woodfin, as chairman of the said commission for the Western Division of the Western North Carolina Railroad Company, for the purpose of removing embarrassments
2206 out of the way, which in his judgment prevented the sale of said bonds, and to avoid litigation, did, on the 17th of October, 1870, contract with Henry Clews & Co., bankers in the cities of New York and London, to purchase a certain claim held by them against George W. Swepson, amounting to about twenty thousand dollars, lawful money of the United States of America, which contract was made with the knowledge and approval of the said party of the first part, for

the reason it was understood by all parties to the said agreement that this would secure the full co-operation of the said Henry Clews & Co. to aid in the sale and negotiations of the said Florida bonds:

Now, therefore, be it remembered that for and in consideration of the premises herein stated, and for various other good and sufficient considerations, and for the further purpose of aiding the said Western Division of the Western North Carolina Railroad Company to complete their road from the junction with the main line, at Asheville, to Paint Rock, at the State line between the States of North Carolina and Tennessee, and to complete their road without delay, on the one hand, and to avoid a hasty sale and sacrifice of the said bonds on the other hand, it is agreed by and between the parties of the first and second parts, that, in full compromise, payment, satisfaction, and accord of the obligation of the party of the first part to pay to the party of the second part the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents lawful money of the United States of America, with interest thereon at the rate of eight per cent. from and after the first day of November, A. D. 1869, as *portions* of the said contract made and executed at the city of Washington aforesaid, and that the said party of the first part may be fully and finally discharged from all and every liability on account of the terms and conditions of the said contract, hereunto appended, the said party of the first part agree to furnish the iron to the said party of the second part sufficient to lay a single track of railroad from the junction at Asheville, along the French Broad River, to Paint Rock, at the Tennessee State line, and into the State of Tennessee to the present terminus of the Cincinnati, Cumberland Gap and Charleston Railroad, with turn-outs and side-tracks, provided that the whole railroad shall not exceed, including turn-outs and side-tracks, fifty-three miles in length. The iron shall be of good quality of English iron, weighing not less than fifty pounds per lineal yard, with the necessary chairs and spikes to lay the same, the iron to be shipped in the quantities, and at the times and places as follows, to wit:

To Norfolk, Virginia, on or before the tenth day of December, A. D. 1873, three hundred tons; to the same place on or before the 10th day of January, A. D. 1871, five hundred tons; to the same place on or before the first day of April, A. D. 1871, one thousand tons; and the rest to be shipped to New York, in the State of New York, on or before the first day of September, A. D. 1871; but the said party of the first part may ship the iron as fast as he may wish, all duties and freights on the above described iron to be paid by the party of the first part.

And it is further agreed by the party of the first part that he will ship in addition to the above-mentioned quantity of iron, one thousand tons of the same weight and quality as the above-described iron, with
the necessary chairs and spikes to lay the same, to New York,
2207 duties and freight paid, on or before the first day of Sep-
tember, A. D. 1871, the shipping of which iron Messrs. S. W. Hopkins & Co. are to guarantee.

In addition to the shipping of the iron, the said party of the first part does hereby sell and deliver to the said party of the second part, by placing to the order of the party of the second part, with Messrs. S. W. Hopkins & Co., eight hundred bonds of the State of Florida of the denomination of one thousand dollars each, numbers of said bonds to be designated by said party of the first part, but upon the express stipulation and conditions that the said bonds are to be left with

Messrs. S. W. Hopkins & Co. for sale at such prices as the said party of the second part may direct.

And it is further agreed by the party of the first part that he will pay to the party of the second part two hundred pounds sterling, the receipt whereof is hereby acknowledged.

And it is further agreed by the party of the first part to assume and discharge the obligation of the party of the second part to Henry Clews & Co., of about twenty thousand dollars, lawful money of the United States of America.

Now, when the foregoing undertakings and agreements of the party of the first part are fully accomplished and performed, it is to be taken as a full compliance with and final discharge of the parties of the first part to this contract, as well as all parties of the first part, to the said contract executed at the city of Washington aforesaid, a copy of which is hereto annexed; and this shall operate as a receipt and final discharge thereof from all obligations growing out of the same.

MILTON S. LITTLEFIELD.
MILTON S. LITTLEFIELD,
President J., P. & M. Railroad Company.

N. W. WOODFIN,
Chairman of the Board of Commissioners.

2208 Memorandum of agreement and settlement between the Florida Central Railroad Company, George W. Swepson, president, and the Jacksonville, Pensacola & Mobile Railroad Company, Milton S. Littlefield, president, and Milton S. Littlefield, majority owner of the stock of said companies and also of the stock of the Tallahassee Railroad Company, of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by N. W. Woodfin, W. G. Candler, W. Pink Welsh, and W. W. Rollins, commissioners appointed by an act of the legislature of North Carolina, approved by the stockholders of said corporation, of the second part, witnesseth:

That whereas George W. Swepson, late president of the Western Division of the Western North Carolina Railroad Company, made certain investments of the funds of said company in securities of and interests in the said Florida Central Railroad, Jacksonville, Pensacola & Mobile Railroad, and the Tallahassee Railroad, of the said State of Florida, as per report made by the said George W. Swepson to the said commissioners, amounting in the aggregate to the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, to bear interest from the first day of November, 1869, at the rate of eight per cent. per annum; and whereas the said George W. Swepson heretofore conveyed to the said Milton S. Littlefield, subject to the payment of the above recited claim, his interest in the above recited railroads; and whereas the said Littlefield has received authority from the legislature of the State of Florida and the several railroad companies to receive bonds to be issued by and for account of the several railroad companies, which bonds are to be exchanged for bonds of the State of Florida to be issued for the purpose of aiding the finances of said several railroad companies, all of which bonds are now in a state of preparation; and whereas the said Milton S. Littlefield has made a contract with S. W. Hopkins & Co., No. 71 Broadway, N. Y., for the disposition of said bonds as the same may be issued, the proceeds of the issue of the bonds of the Florida Central Railroad Company of the State of Florida, amounting to nine hundred and sixty thousand dollars, are to be applied to the payment of the existing liabilities of the said several railroad companies, including the sum of one hundred and fifty thousand dollars to be paid to the commissioners aforesaid for the purpose of paying existing liabilities of the said Western Division of the Western North Carolina Railroad Company.

It is understood and agreed by the parties of the first and second parts that the proceeds of the sale of said bonds so to be issued by the said Florida railroad companies and the said State of Florida are to be equally divided, dollar for dollar, between the Western Division of the Western North Carolina Railroad Company and the said Florida Railroads, and as the commissioners aforesaid receive by this first sale of bonds only the sum of one hundred and fifty thousand dollars, it is further understood and agreed that out of the proceeds of 2209 the sale of the issue of the bonds of the Jacksonville, Pensacola & Mobile Railroad there is first to be received by the commissioners aforesaid a sum sufficient to be equal to the amount received by and on account of the said Florida railroads, and then an equal amount is to be received by the said commissioners and the said Florida railroads, dollar for dollar, until the entire amount of one million two hundred and eighty-seven thousand and thirty-six dollars and three cents, with interest at eight per cent., as aforesaid, being the sum reported by the parties of the first part as due to the Western Division of the Western North Carolina Railroad, is fully paid.

It is further understood and agreed by the parties of the first and second parts that all the interest owned or claimed by the said parties of the first part, George W. Swepson and Milton S. Littlefield, or which they as individuals have a right to control, in the said Florida railroads, are hereby pledged for the faithful fulfilment of this contract without the right on the part of any party to interfere with our management or control of the affairs of the road.

(Signed)
GEORGE W. SWEPSON,
President Florida Central Railroad Co.
M. S. LITTLEFIELD.
M. S. LITTLEFIELD,
President J., P. & M. Railroad Company.
N. W. WOODFIN,
W. W. ROLLINS,
W. G. CANDLER,
W. P. WELCH,
Commissioners.

Witnesses:
M. W. RANSOM.
R. R. SWEPSON.

Correct copy of the original.

M. S. LITTLEFIELD.
N. W. WOODFIN.

(Endorsement:)

LONDON, *Nov.* 16, '70.

We hereby agree to perform all the stipulations relating to the shipping of iron required of us by the terms of the within contract.

S. W. HOPKINS & CO.

(Endorsement:)

We approve and ratify the within contract.

W. G. CANDLER,
W. W. ROLLINS,
J. S. HENRY,
Comm's.

2210 **EXHIBIT E.**

[S. W. Hopkins & Co., 51 Old Broad street.]

LONDON, *Nov.* 16*th*, 1870, E. C.

NICHOLAS W. WOODFIN, Esq.,
Chairman of the Commissioners of the Western Division of the Western North Carolina R. R. Co.:

SIR: We are in possession of your favor of this day's date, covering order from Messrs. Littlefield, president Jacksonville, Pensacola and Mobile Railroad Company, dated November 16th, 1870, for eight hundred Florida bonds.

We accept the said order and agree to hold the within described bonds as agents for the Western Division of the Western North Carolina Railroad Company, subject to the order of the commissioners.

We remain your most obedient servt's,

S. W. HOPKINS & CO.

2211 **EXHIBIT F.**

LONDON, *Nov.* 16*th*, 1870.

Messrs. S. W. HOPKINS & Co.,
London:

GENTLEMEN: I do hereby authorize and instruct you to sell or dispose of the eight hundred bonds of the State of Florida, eight per cent. gold, given in aid of the Jacksonville, Pensacola and Mobile Railroad Company now lodged with you, at not lower than £60 for each bond. However, I leave the price to your own good judgment; if you think it impossible to sell at £60 for each bond, then you are hereby authorized to sell at the best price you can get.

I remain, gentlemen, your obedient servant,

N. W. WOODFIN,
Chairman.

2212 **EXHIBIT G.**

[S. W. Hopkins & Co., 71 Broadway, near Wall street.]

NEW YORK, *Dec'r 2nd*, 1870.

N. W. WOODFIN, Esq.,
Asheville, N. C.:

DEAR SIR: We have received, per steamer City of Brussels, a copy of the new contract entered into between yourself, on the part of the commissioners of North Carolina, and Gen. M. S. Littlefield, on the part of the Jacksonville, Pensacola and Mobile Railroad Company. This contract is certainly very advantageous for those you represent, any apparent concessions you have made being more than compensated by the security of your present position and the definite period fixed for its fulfilment, but we beg to suggest that its provision, and, in fact, its existence, should not, for the present, be made public, as you are aware how delicate a matter is the negotiation of a security, and how easily the efforts of the enemies may prove fatal to its success.

Very truly, yours,

S. W. HOPKINS & CO.

2213 **EXHIBIT H.**

NEW YORK, *April 3d*, 1871.

Messrs. S. W. HOPKINS & CO.,
58 *Old Broad Street, London:*

GENTLEMEN: We have this day (by our chairman, N. W. Woodfin, esq.) drawn on you at sixty days' sight for £10,000 (ten thousand pounds sterling) as an advance against eight hundred (800) Florida State eight per cent. gold bonds held by you for negotiation for account of the commissioners of the Western Division Western North Carolina Railroad Co.

We are, gentlemen, yours, respectfully,

(Signed) N. W. WOODFIN.
(Signed) W. W. ROLLINS.
(Signed) J. L. HENRY.

Supreme court city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiffs,
against
SIDNEY W. HOPKINS, FRANK A. COLLINS, AND Robert J. Carpenter, defendants.

2214 CITY AND COUNTY OF NEW YORK, *ss:*

William W. Rollins, being duly sworn, deposes and says that he is a citizen and resident of the State of North Carolina; that he has read the affidavit of Nicholas W. Woodfin, annexed hereto, and that he is one of the commissioners associated with said Woodfin, appointed as stated in said affidavit, and that he is president of the company named in the above title; that he has knowledge of, and participated in, the efforts mentioned in the said affidavit to recover the funds and property of the Western Division of the Western North Carolina Railroad Company, and the agreement dated at Washington, D. C., April 15th, 1870, mentioned in said affidavit.

Deponent further says that upon the return of said Woodfin from his visit to London, England, as mentioned in said affidavit, he met the said Woodfin in the city of New York, and had an interview, together with said Woodfin, with Sidney W. Hopkins, one of the defendants above named, at one of which said Hopkins read the telegram mentioned in said affidavit, and that said telegram was read in the words stated by said Woodfin in his said affidavit. 2215

Deponent further says that in the months of March and April, 1871, he was with the said Woodfin in the city of New York, for the purpose of attending to the business of said railroad company growing out of and connected with the agreement made in London, and the guaranty in respect thereof, of the said defendants as stated in said affidavit of said Woodfin, and that the statements in said affidavit of said Woodfin relating to the statements and admissions and representations of said Hopkins and Robert Carpenter concerning sales of Florida bonds and concerning railroad iron and promises by said Sidney W. Hopkins are true as therein stated.

Respondent further says that he accompanied said Woodfin upon the two subsequent visits made by him to New York, as mentioned in said affidavit, and that the statements of said Woodfin therein of the
2216 various calls at the office of said defendants upon such two last-mentioned visits, and of what took place and was said on the occasions of such calls, are true to the knowledge of deponent.

Deponent further says that he visited the city of New York in the month of February, 1871, and remained in said city nearly two weeks upon the same business, and was frequently at the office of said defendants, and was postponed, baffled, and put off in a similar manner, as deponent and said Woodfin were on the occasions when they were in New York together, as described by said Woodfin in his said affidavit. And deponent further says that he has reason to believe, and does believe, from the facts within his knowledge, as hereinbefore mentioned, and from the information which he has derived by diligent inquiry from other sources of information, that said defendants have sold the whole or nearly the whole of the eight hundred Florida bonds held by them for the said railroad company, and have received the proceeds
2217 thereof to the amount of not less than four hundred thousand dollars in the gold coin of the United States, or its equivalent; and he says that it is impossible to obtain from them without the aid of legal proceedings the moneys so received by them, or any account in respect thereof.

Deponent further says that as he has learned from said Hopkins and Carpenter themselves, and from other sources, the said defendants are largely interest' and involved with said Littlefield and others in railroad enterprises in Florida which require the use of large amounts of money, and that he verily believes that said defendants are now, and have for a long time in violation of their trust been, using the moneys received by them on account of sales of said eight hundred bonds or portions thereof, for their own purposes, and in order to enable themselves to carry on the enterprises in which they are so engaged, and that they fraudulently design and intend to continue to so use said moneys,
2218 and also to so use such, if any, of said eight hundred bonds as still remain in their hands unsold.

And deponent says that by reason of the premises the said railroad company has a just cause of action against said defendants to compel them to account for and pay over to said company the amount of money so received by them as aforesaid, and also to compel them to deliver up to said company such of said eight hundred bonds as remain in their hands unsold.

W. W. ROLLINS.

Sworn to before me this 1st day of June, 1871.

GEO. A. BLACK,
Com'r of Deeds, N. Y. City.

2219 Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
agst.
SIDNEY W. HOPKINS AND OTHERS.

CITY AND COUNTY OF NEW YORK, *ss:*

Before me personally came Robert W. Pulliam (of Asheville, North Carolina), who having first been duly sworn, makes oath and says that he was well acquainted in and prior to the year 1869 with Mr. George W. Swepson, also of North Carolina.

Affiant further says that said Swepson was president of the plaintiffs herein, and by virtue of his office held bonds of the State of North Carolina to the amount of nearly six millions of dollars, said bonds having been furnished by said State to said plaintiffs, to be used solely for the purpose of con'tracting their railway.

2220 Affiant further says that said Swepson, to this affiant's personal knowledge, arranged to purchase in his own name a large amount of mortgage bonds of the Pensacola and Georgia Railroad Company, whose railroad was in the State of Florida, and, in order to obtain the money wherewith to purchase said bonds, said Swepson pledged and used the North Carolina State bonds above described, and which belonged to the plaintiffs in the above entitled action.

Affiant further says that said Swepson used of said money, in and about said purchase, about seven hundred thousand dollars, with which he purchased about one million of dollars in said Florida Railroad bonds.

Affiant further states that he was present when the said Swepson made the arrangements for the said purchase.

Affiant further says that subsequently said Swepson was displaced from the presidency of the plaintiffs, and was succeeded in that
2221 office by General Milton S. Littlefield, and in order to reimburse and secure as far as practicable, to said plaintiffs, the value of their bonds thus misapplied as above stated, the said Swepson assigned and transferred to said Littlefield in trust for said plaintiffs, all the bonds, stock, claims, and interests which he, said Swepson, had acquired in said Pensacola and Georgia Railroad Company, and in any other Florida railroad companies.

Affiant further says that he was president of the Raleigh National Bank, and by reason of his position, he had constant intercourse with the parties above named during the period occupied in the transactions above referred to, and affiant was then cognizant of the details of said transactions.

And affiant further states that to his knowledge and information and belief, the affidavit made herein by George W. Swepson, on the 9th instant, is correct and true.

R. W. PULLIAM.

2222 Subscribed and sworn to before me this 11th day of September, A. D. 1871.

D. KLEIN,
Notary Public.

Supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
agst.
SIDNEY W. HOPKINS AND OTHERS.

On the annexed affidavit and all other papers and proceedings in this action let the plaintiffs or their attorney show cause before me at chambers at the new court-house in the city of New York on Friday, the 30th instant, at 10 o'clock in the forenoon, why the order of arrest in this action should not be discharged or why the bail should not be reduced or why such further or other order should not be made as shall be just.

New York, June 28, 1871.

GEORGE G. BARNARD, *J. S. C.*

2223 Supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
agst.
SIDNEY W. HOPKINS AND OTHERS.

CITY AND COUNTY OF NEW YORK, *ss:*

Sidney W. Hopkins, being duly sworn, doth depose and say that he is the defendant Hopkins in this action mentioned, and he further says as follows:

First. That whatever claim the plaintiffs had for which they have claimed a right to receive any of the Florida bonds mentioned in this action, or the proceeds thereof, was against George W. Swepson individually in the first instance and no other person whatever, and was afterwards against Milton S. Littlefield, individually, and was not against the Florida Railroad mentioned in the affidavits in this action or any of them; that critical examination of the copy of the original agree-
2224 ments annexed to the affidavits on the part of the plaintiffs in this action will show this averment to be true. Said agreement recites "that whereas George W. Swepson late president of the Western Division of the Western North Carolina Railroad Company made certain investments of the funds of said company in securities of and interest in the said Florida Central Railroad, Jacksonville, Pensacola and Mobile Railroad and the Tallahassee Railroad of the said State of Florida, as per report made by the said George W. Swepson to the said commissioners, amounting in the aggregate to the sum of $1,287,436.03, to bear interest from the first day of November, 1869, at the rate of eight per cent. per annum," "and whereas the said George W. Swepson heretofore conveyed to the said Milton S. Littlefield, subject to the payment of the above recited claim, his interest in the above recited railroads," and said agreement also contains the clause "it is further
2224½ understood and agreed by the parties of the first and second part that all the interest owned or claimed by the said parties of the first part, both George W. Swepson and Milton S. Littlefield, or which they as individuals have a right to control in the said Florida Railroad, are hereby pledged for the faithful fulfillment of this contract."

And deponent doth further say as further evidence of the truth of the above allegation that the plaintiff in this action recently begun a suit in this court against one E. Houston and Milton S. Littlefield, in which the said plaintiffs aver the fraudulent misapplication by the said George W. Swepson of the funds of the said plaintiffs, and allege in substance that in order to reimburse them for their property and funds taken and misappropriated by and on account of the said Swepson, he, said Swepson, transferred to said Littlefield a large amount of property (meaning the stock of the Florida Railroad) and in which 2225 they further allege that said Littlefield has never accounted to the plaintiffs for any of said property, "and said Littlefield is largely indebted to plaintiffs therefor."

And they in said complaint further aver that he, said Littlefield, had expressly pledged to the plaintiffs the whole of the interests and rights held by him, said Littlefield, of every kind, in said Florida Central Railroad Company and in any and all other railroads in Florida, to secure said plaintiffs all moneys due to them by said George W. Swepson or by said defendant, Littlefield, as will more fully appear by reference to said complaint.

Second. That it was represented to this deponent's firm by Nicholas W. Woodfin, chairman of the commission mentioned in the affidavits on behalf of the plaintiffs in this action and otherwise, that the plaintiffs in this action had a valid claim upon the Jacksonville, Pensacola and Mobile Railroad Company for the whole or a large part of the 2226 four thousand bonds issued by the State of Florida, and it was upon the faith of these representations that the house of the defendant, S. W. Hopkins & Co., was induced to sign and deliver the letter dated London, November 16th, 1870, more particularly hereinafter mentioned.

And deponent further says that, under the circumstances before mentioned, he is advised and charges that said letter of acceptance is void against these defendants as being a fraud upon them.

Third. And deponent doth further say that the said letter of acceptance was in the words and figures following:

LONDON, *November* 16, 1870.

NICHOLAS W. WOODFIN, Esq.,
Chairman of the Commissioners of the
Western Division of the Western North Carolina R. R Co.:

SIR: We are in possession of your favor of this day's date, covering order from M. S. Littlefield, president Jacksonville, Pensacola and Mobile Railroad Company, dated November 16, 1870, for 800 Florida bonds.

2227 We accept the said order and agree to hold the within described bonds as agents for the Western Division of the Western North Carolina Railroad Company subject to the order of the commissioners.

We remain, sir, your most obedient servants,

S. W. HOPKINS & CO.

And deponent says that the order referred to in the words in said letter "We accept the said order" was in the words and figures following:

LONDON, *November* 16, 1870.

Messrs. S. W. HOPKINS & Co.,
58 *Old Broad street, London, and* 71 *Broadway, New York:*

GENTLEMEN: On the 10th day of November, A. D. 1870, I made a final settlement with the Western Division of the Western North

Carolina Railroad Company, represented by Mr. Nicholas W. Woodfin, chairman of the commissioners appointed by the legislature of 2228 North Carolina to collect the moneys due said company. The commissioners are N. W. Woodfin, W. G. Candler, W. W. Rollins, W. P. Welsh, and J. L. Henry.

One of the terms of said settlement were that it should place, to the order of said company, any 800 of the Florida 8 per cent. gold bonds my railroad contracted with you to negotiate on the 13th day of April last. Therefore, you will place to the order of the Western Division of the Western North Carolina Railroad Company 800 of said bonds, and sell or dispose of the same as the said chairman may direct; but this order is subject to the following conditions:

First. The said bonds are to remain in your hands to sell.

Second. The proceeds of said bonds are to be transferred to your New York house and disbursed to said company upon the order of a majority of said commissioners.

I remain, gentlemen, your most obedient servant,

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

2229 That the above copies of said acceptance and said order are from press copies thereof in the hands of deponent, sent to him by his London office.

That the contract referred to in said order as dated the "13th day of April last," was a contract in writing, between the Jacksonville, Pensacola and Mobile Railroad Company and S. W. Hopkins & Co., which, among other things, recited "whereas a certain number of miles of said road are now completed, and said company is entitled to receive from the said State of Florida about the sum of four million dollars of bonds. Said agreement, among other things, constituted the said S. W. Hopkins & Co. financial agents to sell, negotiate, and dispose of all the said four million dollars of the said bonds of the State of Florida."

And said deponent says that his firm has received the said four million of bonds, and has contracted to sell the same and they have delivered a large number of said bonds, but they have in their posses- 2230 sion, undelivered, many more than eight hundred of said bonds, upon which they have not yet received any payment whatever.

Fourth. And deponent doth further say that by the terms of the said agreement, a copy of which is annexed to the affidavits on the part of the plaintiffs, and dated the 10th day of November, 1870, it is provided that the numbers of the 800 bonds mentioned in said agreement were to be designated by the said party of the first part to the said agreement, "but upon the express stipulations and conditions that the said bonds are to be left with S. W. Hopkins & Co. for sale." And deponent says that the numbers of said 800 bonds have never been designated by the said party of the first part, nor otherwise to the knowledge or belief of deponent.

Fifth. And deponent doth further say that an action has just been begun in this court in favor of the Jacksonville, Pensacola and Mobile Railroad Company against the plaintiffs in this action, this 2231 deponent and his partners, the commissioners mentioned in the papers of the plaintiffs herein, and Milton S. Littlefied, a copy of the complaint in which action is hereunto annexed as a part of this affidavit.

That said complaint is verified as appears by said annexed copy, and has attached thereto the affidavit of Aaron Barnett, a copy of which said last-mentioned affidavit is also hereto annexed, and deponent says that he is informed and believes that every averment in the said complaint and in the affidavit of verification and the other affidavit thereto annexed is true.

Deponent says that he has been served with a copy of said complaint and with a notice of motion for an injunction as prayed in said complaint.

Sixth. And deponent doth further say' that he denies upon information and belief that there was any other consideration for the agreement mentioned in the ninth folio of the affidavit of Nicholas W. Woodfin sworn on the 19th day of June, 1871, than the claim of the plaintiffs in this action against said Swepson and said Littlefield individually. 2232

And deponent says that the sale of the Florida bonds mentioned in the 32nd folio of the affidavit of the said Woodfin afterwards fell through and was never completed, and in confirmation thereof deponent refers to a letter dated London, 27th March, 1871, signed George Richardson, in the possession of deponent and ready to be produced if required, and he says that the fact that said sale had fallen through was well known to the said Woodfin when he made his affidavit.

And deponent further says that the £10,000 sterling referred to in folios 44 and 45 of the affidavit of said Woodfin was what it purported to be, an advance, and was not a payment.

And deponent doth further say that his firm are not interested with said Littlefield in the Florida railroad enterprises as stated in the affidavit of the said Woodfin, except so far as they, said S. W. Hopkins & Co., have undertaken the negotiation of lands and the sale of iron, and that they are not connected with the said Littlefield in other railroal enterprises in some Western State or any other railroad enterprise whatever, and he admits that his firm has endeavored to make a reasonable profit out of their business transactions, but they have not otherwise striven to enrich themselves, and he denies that they design or intend to use any of the moneys whatever or the bonds in question in this action, or any of them, in order to advance their own private schemes and enterprises in violation of the rights of any railroad or any person whatever, and he denies all the allegations to the contrary thereof in folios 60, 61, 62, and 63 of the affidavit of the said Woodfin. 2233

And deponent doth further say that he denies each and every allegation in the affidavits made on the part of the plaintiffs in this action and in the complaint herein, inconsistent with the statements of this affidavit, and deponent doth further say that his firm are entirely unembarassed in their pecuniary affairs and abundantly able to pay all the damages claimed in this action. 2234

And further saith not.

S. W. HOPKINS.

Sworn to before me this 28th day of June, 1871.

EDMUND T. DAVIS,
Notary Public, New York City.

Amended answer.

Supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
ag'st
SIDNEY W. HOPKINS, FRANK H. COLLINS, and Robert J. Carpenter.

And the said defendants, by Sewell & Pierce, their attorneys, for answer to the complaint of the plaintiff show:

2234½ They admit that the plaintiff is a body corporate, created under the laws of the State of North Carolina as in the complaint alleged, and that the defendants are and were at the times in said complaint set forth partners doing business in New York and London under the firm-name of S. W. Hopkins & Co.

And said defendants, further answering, say that on the 10th day of November, 1870, these defendants, as the financial agents of the Jacksonville, Pensacola and Mobile Railroad Company, a corporation created under the laws of the State of Florida, for the purpose of perfecting the public works of that State were engaged in negotiating for the sale of four thousand bonds of the State of Florida, which before that time had been issued to the said Jacksonville, Pensacola and Mobile Railroad Company to aid in the construction of a railroad within said State of Florida from Quincy towards Mobile, a large proportion of which 2235 said bonds were then in the possession of the said defendants in the city of London, and which said bonds were of the denomination of one thousand dollars each, payable in gold coin of the United States, with interest at eight per cent. per annum. That said bonds were so placed in the hands of said defendants by the Jacksonville, Pensacola and Mobile Railroad Company for the purpose of negotiating the sale thereof for said company, and for the purchase with the proceeds of materials for the construction of said railroad.

That on the day aforesaid, and prior thereto, one Nicholas W. Woodfin represented to the defendants that he and certain other persons had been appointed by the legislature of the State of North Carolina a commission invested with full power to settle certain claims which the plaintiff herein had against the said Jacksonville, Pensacola and Mobile Railroad Company, amounting to over one million of dollars, and 2236 falsely and fraudulently represented to these defendants that the said Jacksonville, Pensacola and Mobile Railroad Company was in truth indebted to the plaintiff herein in the sum aforesaid, by reason of the fact that the said Jacksonville, Pensacola and Mobile Railroad Company had received from one George W. Swepson, a former president of the plaintiff, the aforesaid sum of over one million dollars, the property of the plaintiff, which said sum the said Jacksonville, Pensacola and Mobile Railroad Company had expended for its own use and had had the benefit of, and that Milton S. Littlefield, the president of said Jacksonville, Pensacola and Mobile Railroad Company, had full power and authority from the board of directors of said last-named company to settle with the said commission on behalf of the plaintiff the said claim, and for that purpose to transfer to the plaintiff such amount 2237 of the bonds aforesaid in the hands of the defendants as would be sufficient to liquidate the said claim.

That, after making the representations aforesaid, the said Woodfin did present to the defendants in London an order signed by said Littlefield, as the president of said Jacksonville, Pensacola and Mobile Railroad Company, directing these defendants to hold for the plaintiff any eight hundred of the said bonds, and when the same should be sold to transfer the proceeds to the said commissioners for the plaintiff.

That these defendants believing the representations of the said Woodfin to be true, and relying upon them, did agree with said Woodfin to hold any eight hundred of said bonds, and when the same should be sold to deliver the proceeds to the plaintiff, and defendants allege that there was no other consideration whatever for said agreement, 2238 but that the same was made in the belief that the plaintiff had a valid claim on said Jacksonville, Pensacola and Mobile Railroad Company, as stated by said Woodfin, and that said Littlefield had full authority from the board of directors of said company to order said transfer.

That said representations so made by the said Woodfins, were false in this, that the plaintiff had no valid claim against said Jacksonville, Pensacola and Mobile Railroad Company; that said last named company never received any money from George W. Swepson, or any other person the property of the plaintiffs, and never expended or had the benefit of any moneys of the plaintiffs, and said Littlefield had no authority whatever from the board of directors of said Jacksonville, Pensacola and Mobile Railroad Company to transfer any of the said bonds to the plaintiffs or to divert any of the proceeds thereof from the purpose for which the same were issued. That all of the aforesaid 2239 facts were well known to said Woodfin, but that said Woodfin made the aforesaid false and fraudulent representations with the intent of deceiving the defendants, and of fraudulently obtaining from them the said eight hundred bonds, or the proceeds thereof.

That the said pretended claim against the said Jacksonville, Pensacola and Mobile Railroad Company is in fact a claim for money misappropriated by said Swepson when president of the plaintiffs, which claim was assumed by said Littlefield, and that in executing and delivering to the plaintiffs the said order for said bonds directed to these defendants, the said Littlefield was attempting to pay a private individual indebtedness of his own with the bonds of said company, which the said Woodfin at the time well knew.

And these defendants deny that they have sold the said eight hundred bonds, or any part of them, or received the proceeds thereof.

2240 And these defendants deny each and every allegation in the complaint contained not hereinbefore specifically admitted, denied or answered.

II. And for a second and separate answer and counter claim, the defendants show all the allegations, matters, and things which in their first answer hereto they have shown with the same effect as if the same was repeated verbatim in this second and separate answer, and further show,

That relying upon the said representations of the said Woodfin, and believing the same to be true, these defendants, on the 5th day of April, 1871, advanced and paid to the plaintiffs the sum of fifty-three thousand seven hundred and seventy-six dollars and sixty-six cents, by way of a loan upon the security of said bonds. No part of which has been paid.

Wherefore the defendants demand judgment:

2241 First. That the acceptance by the defendants of said order of said Littlefield, signed by him as president of the Jacksonville,

Pensacola and Mobile Railroad Company be declared to be void and of no effect, and that the same be delivered up and cancelled.

Second. That defendants have judgment against the plaintiffs for fifty-three thousand seven hundred and seventy-six dollars and sixty-six cents, with interest from said 5th of April, 1871, and costs.

SEWELL & PIERCE,
Def'ts' Att'ys.

City and County of New York, ***ss:***

Sidney W. Hopkins, one of the defendants above named, being duly sworn, deposes and says, that the foregoing answer is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

S. W. HOPKINS.

Sworn to before me this 10th day of July, 1871.

ELEAZAR MILLER,
Notary Public, New York County.

2242 Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
against
SIDNEY W. HOPKINS, FRANK H. COLLINS, and Robert J. Carpenter.

The reply of the Western Division of the Western North Carolina Railroad Company, the plaintiffs in this action, to so much of the answer of the defendants therein as seeks to set up a counter-claim.

The said plaintiffs, by Algernon S. Sullivan, their attorney, deny that Nicholas W. Woodfin, named in said answer, at the time or times in that behalf mentioned in the said answer, or at any other time, made the representations alleged in the said answer to have been made by him; and they further deny that the order mentioned in said answer as having been presented by said Woodfin to said defendants, is correctly described in said answer.

2243 And said plaintiffs further replying say that prior to the tenth day of November, 1870, the said plaintiffs had a good and valid equitable lien upon the four thousand Florida State bonds mentioned in the said answer for a much larger sum than the entire value of eight hundred of said bonds, and that at the same time the said defendants by reason of certain contracts to which they were, parties in respect of said bonds and the proceeds thereof, and in other ways, had an interest in the settlement of said lien, and were very desirous of reducing the same to as low an amount as possible; and that accordingly, on or about the day last mentioned, a conditional settlement of the lien, rights and claims of the said plaintiffs in respect of the said four thousand bonds was made by an agreement between the Jacksonville, Pensacola and Mobile Railroad Company and one Milton S. Littlefield, the president thereof, therein named as parties of the first part, and
2243½ the plaintiffs herein named as parties of the second part, whereby it was among other things agreed by said parties of the first part, that eight hundred of the said bonds should be and the same were thereby sold absolutely to the said plaintiffs, and in pursuance thereof

the order was delivered to said Woodfin the agent of said plaintiffs, and the same was thereupon duly accepted by said defendants.

And the said plaintiffs say that said last mentioned agreement was made with the full knowledge of said defendants, and in pursuance in part of their express wishes and request, and was entered into on the part of the plaintiffs upon the faith and in part in consideration that the said defendants would faithfully perform all the obligations which by the terms of said agreement would devolve upon them, which said defendants before the making of said agreement promised the said plaintiffs to do.

And the said plaintiffs further say that by the terms of said
2244 agreement the said parties of the first part had the privilege of
designating out of the said four thousand bonds, the particular eight hundred which should pass to the plaintiffs under the agreement aforesaid, which said privilege the said parties of the first part, a few days after the day last mentioned, waived, of which waiver the said defendants had at the time thereof due notice; and the said plaintiffs say, that on or about the 16th day of November aforesaid, the said defendants duly accepted the said above mentioned order, but the said plaintiffs deny that they, the said defendants, accepted the same, or agreed with said Woodfin to hold said or any eight hundred of said Florida bonds, relying upon any representations of said Woodfin; on the contrary, the said plaintiffs allege that the said defendants accepted said order with full knowledge of the premises hereinbefore in this behalf stated, and because they were especially desirous that the agreement aforesaid should be made, and that the said Woodfin should be made to believe that the same would be carried out and performed in good faith, and the said plaintiffs, further replying, deny the allegations and each
of them in said answer, that the plaintiffs had no valid claim
2245 against the Jacksonville, Pensacola and Mobile Railroad Com-
pany, and that the said company never had the benefit of any moneys of the plaintiffs, and that said Littlefield had no authority whatever from the board of directors of said last mentioned company to transfer any of said bonds to the plaintiffs, or that the facts alleged in the said answer and herein denied, or any of them, were ever known to said Woodfin; and they deny that said Woodfin ever made any statement or representation whatever alleged in said answer to be false or fraudulent, or any representation whatever with any false or fraudulent intent, or with any intent to deceive said defendants, or to obtain from them the said eight hundred bonds or any of them, or the proceeds thereof, or any thereof.

And said plaintiffs further deny that their claim in respect of any of the said four thousand bonds was a claim merely for money misappropriated by George W. Swepson, named in said answers, or that the said Littlefield, in the executing or delivering the said order directed
to the said defendants for said eight hundred bonds was attempt-
2246 ing to pay a mere private individual indebtedness of his own
with the bonds of said Jacksonville, Pensacola and Mobile Railroad Company.

And the said plaintiffs, further replying, deny the allegations and each of them, contained in that part of said answer beginning with the words "That relying," in the twelfth folio thereof, and ending with the words "has been paid" in the same folio.

ALGERNON S. SULLIVAN,
Plaintiff's Attorney.

CITY AND COUNTY OF NEW YORK, ss:

W. W. Rollins, being duly sworn, deposes and says, that he is president of the Western Division of the Western North Carolina Railroad Company, the plaintiffs named in the foregoing reply, and that he has heard the said reply read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

W. W. ROLLINS.

Sworn to before me this 19th day of July, 1871.

GEORGE S. McKAY,
Notary Public, N. Y. County.

2247 Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiffs,
ag'st
SIDNEY W. HOPKINS, FRANK A. COLLINS, AND Robert J. Carpenter, Aaron Barnett, Curtis Woodruff, Jeremiah P. Robinson, and the Jacksonville, Pensacola and Mobile Railroad Company, defendants.

The supplemental complaint of the Western Division of the Western North Carolina Railroad Company, against Sidney W. Hopkins and the other defendants above named.

The said plaintiffs, by Algernon S. Sullivan, their attorney, respectfully show to this court, that on or about the 19th day of June, in the year 1871, they made and served their original complaint and brought an action in this court against the defendants above named, Sidney W. Hopkins, Frank H. Collins, and Robert J. Carpenter, and that a copy of their said original complaint is annexed hereto and made a
2248 part of their supplemental complaint, and is marked A.

And said plaintiffs further show that at the time of the bringing of the said action said plaintiffs procured from a judge of this court upon the said original bill and the affidavit of Nicholas W. Woodfin and William W. Rollins, an order of arrest directing the sheriff of the city and county of New York to hold the said three last named defendants to bail in the sum of three hundred thousand dollars, and also an injunction order enjoining and restraining the said three last named defendants from parting with the proceeds or any of the proceeds, of any of the eight hundred bonds mentioned in said original complaint, which had been sold or disposed of by said three last-named defendants, and also from parting with any of the said eight hundred bonds which had not been sold by them.

And the said plaintiffs further shows that the said Sidney W. Hopkins, having been duly served with the summons and complaint in said action, and also with the said injunction, he afterwards gave bail,
2249 and the said three last-named defendants duly appeared in said
action and put in their joint answer to said original complaint, by which said answer the said three last-named defendants not denying that the said eight hundred bonds were transferred and assigned to the plaintiffs, as alleged in said original complaint, nor denying that they

thereupon acknowledged to the plaintiffs in writing that they hold the same for sale as the agents of the plaintiffs, but denying that they had sold the greater part or any of said eight hundred bonds, and denying that they had received four hundred thousand dollars in gold coin on account thereof, pretended by way of defence to said original action, that they had been led to give the said written acknowledgment in consequence of pretended fraudulent representations, and further pretended that the said eight hundred bonds were really the property of the Jacksonville, Pensacola and Mobile Railroad Company, one of the defendants above named.

And the said plaintiffs further allege that more than twenty days have elapsed since the service of the said answer, and that testi-
2250 mony has been taken in said action.

And the said plaintiffs further show that they have lately, and since the bringing of their said action, discovered, as the fact is, that the said defendants, Hopkins, Collins and Carpenter, composing the firm of S. W. Hopkins & Company did, after the bringing of said action as aforesaid, and the making of the aforesaid complaint, purchase in the city of New York, a large amount, to wit: two thousand tons and upwards of iron rails or bars for the laying of railroad track, and that they paid for the same, as the plaintiffs are informed and believe, with the proceeds of a part of the four thousand Florida State bonds mentioned in the complaint, and that as the plaintiffs have discovered, with certainty, since the 18th day of August, 1871, of the said four thousand bonds they, the said S. W. Hopkins & Company have sold and disposed of twenty-eight hundred, of which two thousand, at least, were so sold and disposed of by them prior to the bringing of this action, and that they have received for all the bonds so sold not less than one million five hundred thousand dollars.

2251 And the said plaintiffs further show that at the time the said eight hundred bonds were assigned and transferred to the plaintiffs, as alleged in the said original complaint, there was not, nor was there at any time thereafter, any setting apart or designation of said particular eight hundred bonds.

And the said plaintiffs further allege that they have discovered, within a few days past, and the fact is, as they are informed and believe, that the said S. W. Hopkins & Company, at the time of the purchase by them of the said iron rails or bars aforesaid, purchased the same in order to send them to the said Jacksonville, Pensacola and Mobile Railroad Company, and as a fulfillment, in part, of an obligation on their part, under an agreement between them and said last mentioned railroad company respecting the sale of said four thousand bonds, and the disposition of the proceeds thereof, and that soon after such purchase they, the said S. W. Hopkins & Company, made a contract for the shipment of all the said two thousand tons of iron rails or bars to Jacksonville, in the State of Florida, for the said last mentioned railroad com-
2252,3 pany, and proceeded to ship, and have already shipped to Jacksonville aforesaid, a large amount of said iron.

And said plaintiffs further show that the agreement mentioned in the complaint, under which the said eight hundred bonds aforesaid were signed and transferred to the plaintiffs, was an agreement to which the said Jacksonville, Pensacola and Mobile Railroad Company was a party, and that the same was made for the purpose of satisfying prior obligations of a larger amount on the part of said railroad company to these plaintiffs, and they say that by reason thereof, and of the facts set forth in the original complaint and in this supplemental complaint, these

plaintiffs have, as they are advised and believe, a priority over the said last mentioned railroad company, and the right to receive the proceeds of the said four thousand bonds, to the extent of eight hundred thereof, before the said railroad company receive any of such proceeds, but that at all events they have the right to share in the proceeds of the sale of the said bonds, as the same are and have been sold to the extent
2254 of their interest therein, and they say, that as they are informed and believe, the said Jacksonville, Pensacola and Mobile Railroad Company has already received from the proceeds of the sales of said four thousand bonds very large sums of money, so that if any accounting were had in respect of the said railroad iron, the said plaintiffs would be found to be entitled to the whole thereof, even without giving them the benefit of said priority.

And the said plaintiffs further allege that the said railroad iron, or all of the same which remains unshipped, is now in possession of the defendants Curtis Woodruff and Jeremiah P. Robinson, who are storekeepers, under the firm of Woodruff & Robinson.

And said plaintiffs further allege that the defendant Aaron Barnett claims to have purchased the said railroad iron from said S. W. Hopkins & Company on or about the eighth day of August, 1871, but they say that the said Barnett is a director of the said last-mentioned railroad company, and has at all times had due notice and knowledge of the rights of the plaintiffs in the premises, and that his claim is fraudulently set
2255 forth by him in collusion with said S. W. Hopkins & Company and with said last-mentioned railroad company, in order to defeat the rights of the plaintiffs and others.

And the said plaintiffs further show that said S. W. Hopkins & Company have in their hands, as plaintiffs are informed and believe, a very large amount of the proceeds of the sales of said four thousand bonds, which belong to these plaintiffs and to other parties interested therein, and that they intend to conceal and fraudulently retain such proceeds to their own use, and that to that end the defendants Sidney W. Hopkins and Robert J. Carpenter are keeping themselves out of the reach of process of law in this State, by absenting themselves therefrom at times, and other times lurking and concealing themselves therein, and that, as plaintiffs believe and are advised, their principal, if not their only means of securing their rights in the premises, is to invoke the equitable interposition of this court in respect to the proceeds of said bonds, in whatever form the same may be found.

And the plaintiffs further say that the said Jacksonville, Pen-
2256 sacola and Mobile Railroad Company are a corporate body, created by and existing under the laws of the State of Florida.

Wherefore, the said plaintiffs demand judgment that this complaint be allowed as supplemental to the said original complaint, and that it be adjudged that the whole of the said railroad iron is in equity the property of the said plaintiffs by virtue of their right of priority as hereinbefore mentioned, or if not this relief then that an accounting be had between said last-mentioned railroad company and the plaintiffs in respect to the proceeds of the sales of said bonds, to the end that it be ascertained how much of the proceeds of the same, represented by the said iron, belong to the plaintiffs and how much to the said last mentioned railroad company, and that the said iron be sold and the proceeds thereof be distributed according to the result of such accounting, and that in the meantime any removal or disposition of said iron be prevented by an injunction order, and that a receiver thereof be appointed with the usual powers, and that the plaintiffs have such further or such other relief as may be just, with their costs.

ALGERNON S. SULLIVAN,
Plaintiff's Attorney.

2257 CITY AND COUNTY OF NEW YORK, *ss:*

Nicholas W. Woodfin, being duly sworn, deposes and says that he is a resident of the State of North Carolina, and that he is charged by the plaintiffs in the foregoing entitled action with the duty of attending to the bringing and prosecution of the original action mentioned in the foregoing supplemental complaint and of this supplemental action.

Deponent further says that he has read the foregoing supplemental complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

N. W. WOODFIN.

Sworn to before me this 21st day of August, 1871.

GEORGE A. BLACK,
Com'r of Deeds, N. Y. City.

2258 *Supplemental action.*

Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
ag'st
SIDNEY W. HOPKINS AND OTHERS.

CITY AND COUNTY OF NEW YORK, *ss:*

Nicholas W. Woodfin, being duly sworn, deposes and says, that he is a citizen and resident of North Carolina, and has been by the legislature of that State and by the plaintiffs above named charged with the duty of seeking to recover for said plaintiffs very large sums of money belonging to said plaintiffs which has been wrongfully misappropriated, and that he has been actively engaged for the greater part of the time during a year past in endeavors to recover such moneys, and in the course of such endeavors has attended to the bringing and prosecution of the action mentioned in the supplemental complaint, to which this affidavit is annexed, and he further says that, as was his duty, he has made himself very familiar with the matters stated and set forth
2259 in the original complaint mentioned in said supplemental complaint, as well as those set forth in said supplemental complaint, and that a large part of said matters are within his personal knowledge, and are true to his personal knowledge, and that all the rest of such matters are, as he verily believes, true.

And this deponent further says, that at the time of the bringing of the original action mentioned in said supplemental complaint, the defendant Sidney W. Hopkins was arrested and held to bail by the order of one of the judges of this court in the sum of three hundred thousand dollars, and an order to show cause was granted on the said original complaint and the affidavits of William W. Rollins and this deponent, of which the affidavit of this deponent was the principal and most material one, why the defendants in the said original action should not be restrained from parting with the proceeds of the eight hundred bonds mentioned in said complaints received by them, and with such of said eight hundred bonds as remained undisposed of, with an interim injunction order. That said last mentioned defendant moved to 2260 vacate said order of arrest, and said motion to vacate, as well as the motion for an injunction, have been argued with great fullness before Mr. Justice Cardoza, who has not as yet rendered his decision thereon.

And said deponent further says, that on the argument of said motion the said defendants last mentioned not having then put in their answer, did not deny by their affidavits or otherwise the allegations of the plaintiffs that they had sold the greater part of said eight hundred bonds, and received as the proceeds of such sales the sum at least of four hundred thousand dollars in gold coin, but put their cause upon the pretence that the written acknowledgment mentioned in said original complaint that they held eight hundred bonds as the agents of the plaintiffs, was obtained from them upon certain statements made by this deponent, which statements they alleged were untrue, although they did not presume to charge deponent with any fraud or deceit in the making of them; and upon the further pretence that the said eight hun- 2261 dred bonds were in fact originally the property of the Jacksonville, Pensacola and Mobile Railroad Company, a Florida corporation, and that the transfer and assignment thereof to the plaintiffs was without the authority of said company, but as these pretences would not of themselves be sufficient to defend them, the said defendants, against their written acknowledgment aforesaid, they, said defendants, collusively procured, as deponent has the best information and reasons for believing, a pretended action to be brought against themselves and said plaintiffs by the said Florida corporation, for the pretended purpose of setting up the claim of said Florida corporation to said eight hundred bonds and the proceeds thereof, and of enjoining said defendants from parting with the same.

And deponent further says, that Sidney W. Hopkins, one of said defendants in said original action, was arrested a few days before the 28th day of June, 1871, under the order of arrest aforesaid, and that his affidavit on which he moved to vacate his order set forth the 2262 bringing of said pretended action, and that said last mentioned affidavit and the complaint in said pretended action against himself were both sworn to on the same 28th day of June, and before the same notary public, the said complaint being verified by Aaron Barnett, one of the defendants herein, and the summons in said pretended action was dated the same day, and the attorneys of record for said Florida corporation in said pretended action were the counsel for the said Sidney W. Hopkins and the other defendants in said original action, who prepared the affidavit aforesaid of said Hopkins.

And deponent further says, that in said pretended action notice of motion was given for an injunction restraining the defendants therein, the said Hopkins and his copartners Collins and Carpenter, composing the firm of S. W. Hopkins & Company, from parting with said bonds and their proceeds, and also restraining the plaintiffs in said original action from prosecuting the same against the said S. W. Hopkins 2263 & Company, and such motion was argued at the same time with the other motions hereinbefore mentioned, and that on such argument the same counsel appeared and argued for the said S. W. Hopkins & Company and the said Florida corporation.

And deponent further says, that after the argument of said motions said S. W. Hopkins & Company put in their joint answer to the said original action of the plaintiff, but that in such answer they made no pretense, by way of defence, that the said Florida corporation made the claim and brought the pretended action aforesaid.

And deponent further says, that after the said original action of the plaintiff was at issue, and on or about the 20th of July last, he gained information which led him to believe that the said S. W. Hopkins & Company had purchased the railroad iron mentioned in said supplemental complaint, and that they designed the same for said Florida Railroad Corporation, and they had made such purchase with part of the proceeds of the four thousand bonds mentioned in said supplemental complaint, but such information was not sufficient to enable 2264 him to act thereon. but he says that shortly thereafter the firm of L. P. Bayne & Company, of the city of New York, creditors of the said Florida Corporation, caused the said iron to be attached, as being the property of said corporation. Whereupon said S. W. Hopkins & Company claimed the same, which claim was tried on or about the 7th day of August, 1871, before the sheriff of Kings County and a jury, and the title found in said S. W. Hopkins & Company; that said L. P. Bayne & Company thereupon indemnified the said sheriff, who had executed the attachment, and thereupon Aaron Barnett, one of the defendants herein, who is one of the directors of said Florida Corporation, and the same person who verified the complaint in the pretended action aforesaid, appeared and made another claim in his own name to said property, pretending to have purchased the same, and that upon the trial of the claim last mentioned, before the same sheriff and a jury, the 19th day of August, the said Barnett produced a pretended 2265 receipted invoice of the said iron from said S. W. Hopkins & Company to himself, dated the 17th day of July last, and certain orders for the delivery of said iron to him, dated the 8th day of said August, but he did not pretend that he had taken possession of said iron until after the trial of the claim first aforesaid, nor would he undertake to swear, although pressed upon this point, that said invoice was received by him before said 7th of August, but stated that he did not know when he received it.

Deponent further says, that he has, within a few days last past, learned from one Mr. Gleason, late lieut. governor of Florida, who is one of a committee constituted by said Florida Corporation for the purpose, among other things, of attending to its financial concerns with S. W. Hopkins & Company, that said firm, prior to the month of July last, made out an account and statement of the disposition made by them of said four thousand bonds, and the proceeds thereof, and delivered the same to said corporation, and that it appears by the same that said S. 2266 W. Hopkins & Company had, prior to the third of June, 1870, out of the proceeds of the said four thousand bonds, and said S. W. Hopkins & Company so claim, paid over to or for said Florida Corporation the sum of nine hundred and five thousand one hundred and nineteen 77-100 dollars, without including the sum paid for said railroad iron, and that after the purchase of said railroad iron the said S. W. Hopkins & Company charged the same on the foot of said account or statement to said Florida Corporation, at the sum of $150,000.

And deponent further says that, as he is informed by said Gleason and verily believes, the said account or statement, with the last-mentioned charge thereon, was in the possession of said Barnett prior to the 17th day of July last.

Deponent further says that the testimony of John Collinson has been taken in said original action de bene esse, and that in such testimony he stated that he was the party who had agreed to buy the said 2267 four thousand bonds of said S. W. Hopkins & Company, and that he had paid the said firm on account thereof in full for 2,800 of the same, at the rate of one hundred and thirty-eight pounds sterling for each bond, less a deduction of the amount of three coupons for each bond, each of said coupons being four per cent., and the bonds being each for $1,000 in gold.

Deponent further says that said iron will, as he is informed and believes, be shipped to Florida in a very few days, unless such removal is enjoined by this court. And this deponent further says that, as he verily believes, the said plaintiffs will not be able, by any judgment and execution against the defendants, Hopkins, Collins, and Carpenter, personally to recover the amount of the proceeds of the sale of said Florida bonds which belong to the said plaintiffs, and that the interposition of the equitable powers of this court is absolutely necessary in order to prevent an irreparable injury to the rights of the plaintiffs.

N. W. WOODFIN.

Sworn to before me this 21st day of August, 1871.

GEO. A. BLACK,
Comm'r of Deed' N. Y. City.

2268 *Injunction by order.*

Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiffs,
against
SIDNEY W. HOPKINS, FRANK A. COLLINS, ROBERT J. Carpenter, Aaron Barnett, Curtis Woodruff, Jeremiah P. Robinson, and the Jacksonville, Pensacola and Mobile Railroad Company, defendants.

It appearing satisfactorily to me by the affidavit of Nicholas W. Woodfin, and the verified supplemental complaint, that sufficient grounds for an order of injunction exist, I do hereby order that the defendants in the above-entitled action show cause before me at the chambers of the judges of the supreme court, in the city hall, in the city of New York, on the first Thursday of September, 1871, at 10½ o'clock a. m., why an order should not be made restraining the defendants, Aaron 2269 Barnett, Curtis Woodruff, Jeremiah P. Robinson, and the Jacksonville, Pensacola and Mobile Railroad Company, and each of them, from selling, removing, or in any manner disposing of or interfering with the railroad iron, or any part thereof, consisting of iron rails, bars, &c., now in the custody of Woodruff & Robinson, storekeepers in Brooklyn, and now or lately held by them on account of or subject to the order of Aaron Barnett, or Barnett & Company, and why a receiver should not be appointed thereof, &c.

And in the meantime, and until the hearing and decision on the motion, I hereby order that the said last above named defendants, and each of them, and their and each of their officers, agents, servants, or clerks do absolutely refrain from selling, removing, or in any manner disposing of or interfering with the said railroad iron, or any part thereof, and from aiding or assisting in any removal of or interference with the same or any part thereof, until the further order of this court; and in 2270 case of disobedience to this order, you will be liable to the punishment therefor prescribed by law.

Dated August 21, 1871.

ALBERT CARDOZO, *J. S. C.*

Supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
ag'st
SIDNEY W. HOPKINS, FRANK H. COLLINS, AND Robert J. Carpenter, impleaded.

The answer of the above-named defendants to the supplemental complaint of the plaintiffs, by Sewell & Pierce, their attorneys, shows:

First. That the defendants herein answer as before they have answered to the complaint in this action, and make their said answer a part of this their supplemental answer, and ask that the same be taken to be a part hereof, with the same force and effect as if the con- 2271 tents thereof were herein repeated verbatim; and they also refer to said answer as to what they admitted and what they denied of the allegations in the complaint.

Second. The defendants deny that after the bringing of this action, which was brought on or about the 21st day of June, 1871, they purchased two thousand tons of iron, as set up in the supplemental complaint, but allege that they purchased the same before the commencement of this action, in the regular course of their business, and that the said iron was the property of these defendants, and say that said iron or a part of it was purchased with the intent that the same should be sold by them to the Jacksonville, Pensacola and Mobile Railroad Company; and they deny that after such purchase they made a contract with the said company for the shipment of said iron.

And defendants admit that they have sold 2,800 of the 4,000 bonds mentioned in the complaint, and have received a large amount of 2272 money therefor, to wit, the sum of $997,920, after deducting the commissions and allowances to which they were entitled, which they have duly credited said railroad company in account, and a large part of said sum had been advanced by the defendants before the sale of said bonds.

Third. And defendants show that after crediting said company with the said sum, the said company is indebted to defendants to a large amount, to wit, in the sum of several hundred thousand dollars, including obligations of these defendants for said company.

Fourth. And defendants say that the proceeds of said bonds were paid into the office of these defendants in London, at divers different times, and that during the period of time covered by such payments, divers other large sum of money were paid into their said London office, the proceeds of other and different business, and that all the moneys so received were mingled together, and that remittances were made by the London office to the New York house from time to 2273 time in round amounts, without any reference to a specification of the sources from which the same were derived, and such remittances went into the general funds of the New York house; and said iron, as well as other iron, was paid for, and other payments were made from the said general funds, and the proceeds of the sale of said bonds were not kept separately; wherefore the defendants deny that the iron in the complaint mentioned was purchased with the proceeds or a part of the proceeds of said bonds.

Fifth. And defendants deny that the assignment or transfer of the said 800 bonds to the plaintiffs was made to satisfy prior or other obligations of the said Jacksonville, Pensacola and Mobile Railroad Company to the plaintiffs, but, as defendants are informed and believe, was unlawfully made for the purpose of satisfying an obligation of Milton S. Littlefield to the plaintiffs, and for which said company were not liable. 2274

Sixth. And defendants deny that they have any of the proceeds of said 4,000 bonds, or of any of them, on their hands, and deny that they intended to conceal or fraudulently retain the same, or any part thereof, to their own use, and deny that Hopkins or Carpenter are keeping themselves absent from the State, or lurking or concealing themselves therein; but, on the contrary hereof, allege that all of said defendants are pursuing the ordinary business of their mercantile establishment, and that the defendant Hopkins has at all times since the commencement of this action been daily in his office in the city of New York, excepting for a short period in the month of August, when his business required his presence in a Western State, and that his absence at that time was only for about ten days.

Wherefore the defendants do pray that the complaint and supplemental complaint may be dismissed with costs.

SEWELL & PIERCE,
Def'ts' Att'ys.

2275 CITY AND COUNTY OF NEW YORK, *ss:*

Sidney W. Hopkins, being duly sworn, deposes that he has heard read the foregoing answer; that he is one of the defendants named therein; that the same is true of his own knowledge, excepting as to those matters therein stated on information and belief, and as to those matters, he believes it to be true.

S. W. HOPKINS.

Sworn to before me this 18th day of Oct., 1871.

RICHARD STACKPOOLE,
Notary Public.

(Endorsed:) Filed Dec. 29, 1871.

2276 *Stipulation not to sue.*

Supreme court.

WESTERN DIVISION OF THE WESTERN NORTH Carolina Railroad Company
ag'st
SIDNEY W. HOPKINS, FRANK HOPKINS, & ROBERT J. CARPENTER.

The court having ordered that the order of arrest in this action be set aside on condition that the defendants stipulate not to sue the plaintiff for false imprisonment, it is hereby stipulated and agreed by the defendants herein that they will not at any time sue the plaintiff on any cause of action which may exist in their favor by reason of the procurement of the order of arrest herein, or the arrest of defendants, or either of them, thereunder.

Dated Jan. 5th, 1872.

SEWELL & PIERCE,
Defendants' Attorneys.

(Endorsed:) Filed Jan. 12th, 1872.

2277 At a special term of the supreme court, held in and for the city and county of New York on the 12th day of January, 1872.

Present, the Hon. Albert Cardozo, justice.

Supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
ag'st
SIDNEY W. HOPKINS, FRANK H. COLLINS, AND Robert J. Carpenter.

Upon the pleadings, affidavits, and papers filed in this action, and on reading and filing the order to show cause herein, dated June 28th, 1871, and on filing the stipulation of the defendants not to sue the plaintiffs for false imprisonment, it is ordered that the order of arrest heretofore issued in this action, by which the sheriff of the city and county 2278 of New York was directed to arrest the defendants and hold them to bail in the sum of three hundred thousand dollars be, and the same is hereby, vacated, discharged, and set aside.

Enter.

A. C.
J. S. C.

(Endorsed:) Filed Jan. 12, 1872.

All which we have caused by these presents to be exemplified, and the seal of our said supreme court to be hereunto attached.

Witness Charles Donohue, a presiding justice at the city of New York, the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and third.

HUBERT O. THOMPSON, *Clerk.*

I, Charles Donohue, a presiding justice of the supreme court of the State of New York for the city and county of New York, do hereby certify that Hubert O. Thompson, whose name is subscribed to the preceding exemplification, is the clerk of the said county of New 2279 York, and clerk of said supreme court for said county, duly appointed and sworn, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, April 29th, 1879.

C. DONOHUE, *J.*

STATE OF NEW YORK,
City and County of New York, ss:

I, Hubert O. Thompson, clerk of the supreme court of said State, in and for the city and county of New York, do hereby certify that Charles Donohue, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State, in and for the city and county of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

2280 In testimony whereof I have hereto set my hand and affixed the seal of the said court this 29th day of April, 1879.

[L. S.] HUBERT O. THOMPSON, *Clerk.*

2281 (Indorsed:) N. Y. supreme court. Complaint, answer, reply' affidavits, supplemental complaint, supplemental answer, stipulation, and order. Western Division of the Western North Carolina Railroad Company vs. Sidney W. Hopkins and others. Exemplified copy. Filed May 26th, 1879. P. Walker, clerk.

2282 *Exhibit A, attached to cross-interrogatories by the Florida Central Railroad Company.*

In the U. S. circuit court.

J. FRED. SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

JACKSONVILLE, FLA., *February 8th*, 1871.

Messrs. HOLJE BOISSEVAIN,
Bankers, Amsterdam, Holland:

GENTLEMEN: On December 18th, 1870, Governor Harrison Reed, of Florida, received a telegraphic dispatch from you substantially as follows:

"Being negotiating four million bonds issued by your State, the Jacksonville, Pensacola and Mobile Railroad beg to know by telegraph from you whether provision made for payment interest, whatever result railroad traffic. Financial position of State really sound and bonds undoubted security."

To this dispatch Governor Reed replied as follows:

"Bonds recently recalled by the company; no provision will therefore be made for interest."

2283 It was hoped that Governor Reed's telegram would have the effect of causing the bonds to be returned, as the railroad companies desired they should be. This has not been done, but on the contrary more bonds than were then out have been sent to Europe for negotiation, though no money I infer has yet been realized. I feel it to be my duty, therefore, to make a statement of facts to you which I hope that you will lay before others who may be interested with you in the negotiations.

When the legislature of Florida enacted the laws under which the bonds your telegram inquired about were issued, it was believed by the two railroad companies hereafter named that the proceeds of the State bonds when sold would be honestly and legitimately applied to the extension through the western portion of this State of the lines of railroad already built from the eastern to the middle portion. That extension was so much desired by the two companies owning the completed railroads that they were willing to mortgage, and did mortgage, their roads to the State, in order to secure the issuing of State bonds upon which

to raise money to enable the newly organized company to build said extension. The railroads which so pledged their mortgage bonds to the State were the Florida Central Railroad, sixty miles long, and the Tallahassee Railroad, one hundred and fifty miles long. The former gave its mortgage bonds to the amount of one million dollars; the latter to the amount of three million dollars; and this latter road consolidated its line with that proposed to be built westward from the completed road, and the two companies became one, under the name of the Jacksonville, Pensacola and Mobile Railroad Company. But the Florida Central Railroad, commencing at Jacksonville, and running westward sixty miles, was not included in the consolidation. Subsequently, and after three million of the State bonds had been sent to Europe, it was discovered that the president of the Jacksonville, Pensacola and Mobile Railroad, who had been active in procuring the legislation, and inducing the completed roads to give to the State their bonds in exchange for the State's bonds which were issued to him, had made, even before he got the bonds, secret contracts with some of his creditors, by which the larger portion of the proceeds were to be diverted from the purposes for which the bonds were issued, and were to be applied in payment of individual debts. This produced such dissatisfaction, and caused such investigations by the companies which had mortgaged their roads to the State, as resulted in both of the companies, through their several directories, rescinding the action by which their roads were mortgaged, and recalling the bonds. The million of bonds issued by the State, on the security of a like amount pledged to the State by the Florida Central Railroad, had not then gone into the hands of the president of the Jacksonville, Pensacola and Mobile Railroad, but were held by a party till certain conditions precedent were performed, before delivery to the president of the Jacksonville, Pensacola and Mobile Railroad. That million of bonds then were returned to the State, and the bonds of the company, upon the security of which the others were issued, were withdrawn from deposit with the State, and were in the hands of the party already referred to, to be returned to the company for cancellation, when they were by that party, without the authority or knowledge of the railroad company, or of any
2284 of its officers, and in violation of the company's resolutions of recall and rescission, delivered to an agent of the president of the Jacksonville, Pensacola & Mobile Railroad, who by influences best known to himself effected with the governor of the State their re-exchange for the State bonds, which latter were hurriedly and secretly sent out of the State and to Europe before any legal process could be obtained for their detention This redelivery to the governor of Florida of the Florida Central Railroad Company's million of bonds is a gross fraud on that company, and none who are advised of it, and buy or advance money on the State's bonds, for which they were exchanged, will have any legal or moral right to ask that they receive any benefit or advantage from the security so wrongfully obtained.

The same may be said of the three million of State's bonds issued on the pledge of the same amount of bonds of the Tallahassee or Jacksonville, Pensacola and Mobile Railroad. No one who, having notice of that company's rescission of its action and recall of its bonds, advances money on, or buys the State's bonds for which the others were pledged, will have legally, or morally, any locus standi in curia as against that railroad company. The creditors and stockholders of the railroad companies will assert their right, resist the wrongs that have been perpetrated and attempted, and seek, successfully, redress in the judicial tribunals. You have had the above mentioned action of the railroad companies brought to your notice by the telegram from Governor Reed, who sent it after consulting with the said companies, and at their instance, and you have incurred all the legal disqualifications to urge against the railroad companies any claim based on their supposed suretyship for any bonds of the State.

An examination of the law under which the State's bonds were issued discloses that the governor has caused half a million more of bonds to be issued than the law provides for. The law allows the issue of $16,000 per mile upon so much of said roads as may be completed and in running order; only 210 miles were, when the bonds were issued, completed, and only a mile and a half have been completed since, and no more is being completed. This would allow of an issue at the time it was made of only $3,360,000. Add the liberal allowance of ten miles for side tracks, &c., if such unreasonable construction of the law be claimed, and it legalizes only $3,520,000 of the bonds.

To secure the principal and interest of the Jacksonville, Pensacola and Mobile Railroad Company's bonds, (but not of the bonds of the Florida Central Railroad,) the law gives the State of Florida a statutory lien, valid as a first-mortgage, on that company's road and property, and authorizes the governor, on failure of the company in any payment of principal or interest, to seize and sell the road at auction, and authorizes the State to purchase and to pay for it with any evidence of indebtedness the State may hold against the road, while every other bidder would, in case of purchase, have to pay cash. This summary process is not applicable to the Florida Central Railroad; but to the other road only. What would be the result in case of failure of the Jacksonville, Pensacola and Mobile Railroad to pay principal or interest on its bonds? The State, if no resistance, or if unsuccessful resistance
2285 through the courts were had, might seize, sell, and buy, paying for the purchase with the road's obligations, while the State might not, perhaps could not, or would not, pay her own; nor is there any way known to our system of government by which a State can be compelled to pay its obligations. You will thus perceive the character of the securities offered you, and the taints of fraud that affected them from their first issue, and that still do, and will act advisedly. This communication is made in the interests of the stockholders of the companies whose bonds have, by misrepresentation and bad faith, been obtained and exchanged with the State of Florida for the State's bonds, which you have been, and may still be, negotiating for. The stockholders do not intend to submit to the fraud which has been attempted on them. They seek to have the State's bonds brought back, and a re-exchange effected, and it is to that end that this letter is written. Such a course will prevent litigation. Persistence in the wrong will insure it. Attempts may be made to give credit to the bonds by professional and perhaps by judicial opinions from this State, but the facts that I state are incontestable, and I can give you much more and more detailed information concerning the worthlessness of the securities that you are negotiating for, and I will do so if desired. But I have said enough to make discreet men repudiate the securities and abandon negotiations.

I will say further, that since the mortgage of the railroads to the State, 128 miles of the completed road, being all except twenty-two miles on which the State has any statutory lien, have been sold by the United States under a judicial process in their favor, issued from a United States court; thus divesting the company's title, and vesting it in the individual purchaser. That sale of course relieves that much of the road of the lien created in favor of the State of Florida by the mortgage before mentioned. You are at liberty to show this letter to whom you please, and to give it the widest publicity, and will oblige me by acknowledging its receipt. I will presume on a very slight acquaintance to refer you, touching myself, to Hon. H. S. Sanford (late U. S. minister to Belgium), at Brussels.

Respectfully,

E. M. L'ENGLE,

Of Counsel for the Florida Central Railroad Company.

2286 *Exhibit B, attached to cross-interrogatories by Florida Central Railroad Company.*

In the U. S. circuit court.

J. FRED. SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Florida State bonds.

TALLAHASSEE, FLORIDA, *June*, 1871.

To Chairman States and Corpor'tions Arrears Committee, 193, 194, 195, Gresham House, London:

SIR: It is understood here that General M. S. Littlefield, the president of the Jacksonville, Pensacola and Mobile Railroad Company, a corporation existing under the laws of Florida, Messrs. S. W. Hopkins & Co., financial agents and representatives of the corporation, and perhaps others in the same interest, are endeavoring, with a prospect of success, to negotiate a sale of a very large number of bonds of the State of Florida, issued under the provisions of the act of the legislature of this State, entitled "An act to perfect the public works of the State," and subsequent acts amending the act named.

It is only fair that capitalists who have been induced to think favorably of these State bonds as an investment should be informed as to the character of the securities in which they are about to embark their means, and the purpose of this letter is to place you, and through you others concerned, in possession of such facts connected with the history of these bonds, and the law under which they were issued, as it may be to their interest to know.

2287 The Pensacola and Georgia Railroad Company, and the Tallahassee Railroad Company, were railroad corporations existing under the laws of this State. These corporations having availed themselves of the benefits of the act of the legislature of this State, commonly called the internal improvement act, approved January 6th, 1855, and having failed afterwards to comply with its requirements, by payments of the semi-annual interest and sinking fund due upon the debt contracted on account of the first-mortgage bonds issued by the companies under the provisions of the said act, these road-beds, property, and franchises were, in accordance with the requirements of the said act, taken possession of by the trustees of the internal improvement fund and sold, after due advertisement, to the highest bidder, on the day of , 1869. This sale was, in one essential feature, a fraud.

The law permitted that the trustees sell either for cash or for additional approved security, as they might think of most advantage to the fund and the first-mortgage bondholders, to satisfy whose claim the sale was made. In this case the trustees elected to sell for cash, and so advertised to the world up to the moment of sale. And the sale purported to be a cash sale. In point of fact, however, the purchasers did not pay cash, but only made partial payment by a surrender to the trustees of about $1,000,000 of the first mortgage bonds. The entire first-mortgage debt of the two companies was about $1,473,000, and this payment of $1,000,000 in the bonds left a balance due upon the price bid which was in amount equal to the entire bonded debt, of about $473,000, which amount on payment would have been at once applicable to take up and pay off the balance of bonds outstanding, about $473,000 in amount. The trustees, however, delivered possession of the railroad property to the purchasers upon this partial compliance by them with the terms (cash) of the sale. This indebtedness, which has never been paid except in small part (there being still about $300,000 of first-mortgage bonds outstanding and unsatisfied), has a legal priority, and has been always so recognized by the parties now in possession, through this purchase, as a first lien, anterior to all others now existing, or that may be created upon the property and franchise of the Jacksonville, Pensacola and Mobile Railroad Company (formerly, as will appear hereafter, the Pensacola and Georgia and Tallahassee Railroad Companies). The parties in possession of the property have constantly promised payment, and doubtless have induced persons abroad to believe that they have already paid off this debt. After the sale of the Pensacola and Georgia and Tallahassee Railroads, referred to above, the parties in possession, through this incomplete sale, procured the passage by the legislature of several acts for their benefit, and first among them of the "Act to perfect the public works of the State," approved June 24th, 1869. This act consolidated the Pensacola and Georgia and Tallahassee Railroad Companies, and incorporated the Jacksonville, Pensacola and Mobile Railroad Company, and authorized aid to be given by the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company, by the issue to the company of bonds of the State to the amount of $14,000 per mile. The act, however, provided that the State, as a condition precedent to the issue of its bonds, should be made secure by a lien to be taken by the State upon the property and franchise of the corporation for whose benefit this aid
2288 was to be given. This was a condition fixed by the act, and with this provision it passed the legislature; and when, some time after the act had passed, it appeared that by its fraudulent enrollment the provisions securing the State had been omitted, and that a forged law had been filed in the office of the Secretary of State, and officially published as a law of the State, certain citizens of the State, property-holders and tax-payers, filed their bill on the chancery side of the circuit court of Leon County, second judicial circuit of Florida, praying for an order of injunction against Harrison Reed, governor of Florida, and against S. B. Conover, treasurer of the State, and for an order of the court against these officers, to restrain and enjoin them from signing, countersigning, or delivering the bonds authorized by this fraudulent law, and from doing any acts whatever under the pretended act, upon the ground of the forgery and fraud practiced, in omitting from the enrolled bill the clause which required a security to the State in the issue of its bonds by a mortgage upon the railroad property and franchise. You will readily perceive, in view of the fact that the balance of $473,000

first mortgage debt referred to was unpaid, that the purpose in this fraud was to relieve the railroad company of the necessity of paying off its existing incumbrances before getting the benefit of the funds to be raised on the State bonds.

The court acted favorably and at once upon this application, and granted, without hesitation, the injunction prayed for; and so patent was the fraud that no answer was ever made to the bill, and no effort was ever made to dissolve the injunction. So matters rested until the next convening of that great and good body of law-givers—the Florida legislature. This next legislature, which assembled on the   day of   , 1870, passed an act to alter and amend the aforesaid act, which last act validified and made of force the "Act to perfect the public works of the State," which had been enjoined, except as amended and modified by the last law. Under these two acts Messrs. Littlefield and associates, parties in present possession of the railroad property, are now endeavoring to raise money upon State bonds. These acts authorized the aid to be given to the corporation, but required, as a condition precedent to the granting this aid, and the delivery of the State bonds, that the State be made secure by a lien, to be taken in the manner pointed out by the acts, on the Jacksonville, Pensacola and Mobile Railroad property and franchise, and of course that corporation could not be in a condition to comply with the requirement and give this lien until incumberances, already existing and resting on the property, should be removed by payment of the outstanding first-mortgage bonds of the Pensacola and Georgia and Tallahassee Railroad Companies.

That the statement as to this liability is correct there is not the least doubt, and in order to show you that it is admitted to be correct, I refer you to the annexed copy of a letter addressed by me to Harrison Reed, governor of the State of Florida, to whom it was entrusted under the law to see that the State was protected before the delivery of its bonds, and his reply endorsed. In both the letter and the pledge endorsed in reply, the position is taken that the unpaid first-mortgage bonds of the Pensacola and Georgia Railroad and Tallahassee Railroad Companies, outstanding, constitute a first-lien upon the railroad
2289 property and franchise, and that no issue of the State bonds could or would be made until these lien incumberances, resting upon the property, should be removed by payment and satisfaction of the first-mortgage bonds outstanding, after which the company would acquire the power to mortgage unincumbered property to the State. Notwithstanding these admitted opinions of Governor Reed, this solemn written pledge, and his full knowledge that this first-mortgage bonded indebtedness outstanding against the railroad was unpaid, after quieting the apprehensions of the holders of the unpaid first-mortgage railroad bonds by this pledge, he signed, at a time when he had lulled suspicion, and delivered the State bonds, thus imposing upon the State a security which he knew to be imperfect. Can you suppose that a vast indebtedness, placed upon a people already insolvent under these circumstances, will ever be paid?

The principal security which those who may invest in the bonds of this State will have, must be that security which has been given to the State. The principal security for any investment to be made in railroad securities of this State must be the road-bed and franchise. In the light of the past and present history of this State, you cannot rely either upon its willingness or ability to pay a security of the character of these bonds when all the benefits result to stockholders in the corporation. In this case, the chief security being incumbered by prior mortgages, it is clearly the interest of the purchaser of the State bonds see that such an amount of the money paid as may be necessary be applied to the discharge of this prior indebtedness. The bonds representing this prior incumbrance may be purchased at reasonable rates, but they will not be sacrificed by the holders. In the mean time suit has been instituted, and is now pending in the United States circuit court for the district of Florida, for the purpose of subjecting the railroad property to sale, unless the original first-mortgage debt outstanding be paid up. You may have been advised that the purchaser of the State bonds will have nothing to do with the corporation, and may look entirely to the State; but a very little reflection must show the error into which this view may lead those who may purchase the State bonds. It is true, a bond of this character is a State bond, and imports a State liability; but the law makes no specific provisions by which the holder of the bond can collect either the principal or interest from the State, and in the absence of such a provision any intelligent lawyer will advise you that the bondholder has no remedy in the courts by which principal or interest can be collected by judicial process from the people or out of their property. And even if such provision existed as a part of the law, it could not be enforced in a case where the bonds have been issued by means of a fraud upon that requirement of it which stipulates that the State should have been made secure by a good lien on unincumbered property as a precedent condition.

The sole reliance, then, of a holder of State bonds must be the good faith of the State, and that good faith under all the circumstances connected with the issue of these bonds will not be measured by the letter of the contract, but will be fixed entirely by the value of the security which the corporation has placed in the hands of the State, to indemnify it against loss, and that security should be the road-bed and franchise of the road itself, unsaddled by anterior laws.

I especially direct attention, in connection with this consideration
2290 of the State's security, to the provisions of section 13 of the "Act to perfect the public works of the State," which gives to the railroad company the privilege of paying off and discharging the lien taken by the State, at any time before maturity of the debt, in the State's own paper, now immensely depreciated by reason of the great quantity issued during the past few years beyond its capacity to pay. It is very evident, and ought to be patent to every one who will be at the pains to examine this provision, that it is to the interest of the railroad company to depreciate all the paper of the State—to depreciate the very bonds they are now selling, and the moment the bonds shall be sold, Littl'field and associates will become the enemies of the holders; for their interest will clearly be to buy up the paper of the State—these very bonds will answer as good a purpose as any other, and thus relieve their mortgage to the State, and the result will be that the purchasers will be left looking to the State, when the security of the State is gone. Littlefield to-day can force $500,000 of State bonds upon the market and buy them at 25 cents, and can with them destroy the State security to the extent of a half million. You may rest assured that to that extent the people will think your bonds should be retired also. You must perceive that it would be great folly to make any investment in the State bonds, unless those investing shall secure an application of a sufficient amount of the money paid to a settlement of the incumbrances existing on the railroad property on account of the original first-mortgage bonded debt now outstanding.

But even after this shall have been done, it concerns the interest of capitalists to reflect upon the following facts, additional to those already set forth:

1. The people of Florida have not the ability to pay this debt.

2. The legislature which passed the acts referred to did not, to any extent, represent the tax-payers and property-holders of the State, and the legislature which fixed this indebtedness upon the State was notoriously corrupt, and in the interest of a few railroad speculators, not identified even by citizenship with the people of Florida; and these men manipulated the votes of the legislators by corruption so open and flagrant that there are at this time indictments pending in the circuit court of Leon County against several of the legislators for receiving, and against General Littlefield for paying, bribes to secure the passage of the very acts under the provisions of which these State bonds were issued.

3. The whole series of acts, both in and out of the legislature, including and beginning with the sale of railroads referred to in the first part of this communication, connected with the issue of these State bonds, has been dishonest, flagrantly corrupt, and going solely to aggrandize Littlefield, Hopkins, and a few others, their co-schemers and confederates; and it cannot be matter of surprise that the entire property-holding and tax-paying part of the people of Florida are not only adverse but hostile to the payment of a debt which they know to have been put upon the State by the combined fraud of their governor, their indigent legislators, and a set of sharks and financial free-lances, under the leadership of Milton S. Littlefield, now president of the Jacksonville, Pensacola and Mobile Railroad Company. The people of this State, while they earnestly desire the success of any railroad enterprise
2291 which is legitimate and conducted with honesty, would greatly
regret if foreign capitalists should make so injudicious an investment as a purchase of these State bonds must be. The State bonds, without the road as a security available for the benefit of the bondholders (which now is not the case), amount to nothing. And if there be any truth in a report now current, that certain persons abroad have been already induced to make advances upon the State bonds, they should require such legislation to be had as will enable them to get this security. As a matter of course, they can, by refusing to advance further, force the corporation to make any just contract within its corporate powers, or that the legislature will authorize. If the holders of the State bonds had the simple authority to exchange securities with the State it would be a great advantage to them. It is certainly advisable, at any rate, that they get all the security they can. One hundred and sixty miles of completed road, after being relieved of its existing incumbrances, can certainly be made a good security for the cost of constructing a road of same distance, and this, with a mortgage also upon the newly constructed road, will be safe security. I ask that these suggestions may be considered.

Respectfully,

T. W. BREVARD, JR.,
Counsel for holders of first-mortgage bonds
of P. & G. & T. R. R. Cos.

P. S.—I enclose herewith copies of the acts of the legislature referred to in the above communication, as officially published; also majority report of a committee of the assembly of the legislature of Florida, appointed under resolutions of that body to examine and take evidence concerning the conduct of Harrison Reed, governor, pending proceed-

ings then inaugurated to impeach the governor upon charges of corruption in office, certain portions of which will be of some interest to you in connection with the history of the railroad manipulations to which reference is made in the above.

TALLAHASSEE, *February* 21, 1870.

His Excellency HARRISON REED,
Governor of Florida:

DEAR SIR: On behalf of parties holding original first-mortgage bonds of the (late) Pensacola and Georgia and Tallahassee Railroad Companies, I have been authorized to institute legal proceedings by an application for an injunction to restrain the issue of the State bonds in exchange for first-mortgage bonds upon the railroad property under the provisions of the act of the legislature passed at its late session, entitled "An act to alter and amend an act to perfect the public works of the State," the parties whom I represent apprehending that by such issue of bonds as that proposed by the said law their rights of lien would be imperiled.

I am satisfied, however, that such proceedings will not be necessary if your excellency shall agree with me in the following propositions, viz: (1st) That the original first-mortgage bonds of the 2292 Pensacola and Georgia Railroad and the Tallahassee Railroad Companies, which remain outstanding and unpaid, incumber the said property with a lien prior to all others now existing, or that may be created; and (2d) that there can be properly no issue of first-mortgage bonds upon the said property until the outstanding unpaid first-mortgage bonds of the original issue shall be paid up (at the pro rata valuation fixed by the sale) and cancelled.

I am sure that should your excellency agree with me in these views, no bonds of the State will be signed and delivered to the parties who are the beneficiaries under the said act until after a redemption of the outstanding bonds referred to, in which event the right of the new company to rebond the property cannot be disputed.

Very respectfully, your obedient servant,

T. W. BREVARD, JR.

(Reply endorsed:)

I concur in the view of Colonel Brevard, and shall issue no bonds under the new law until the lien upon the road is satisfied.

(Signed) HARRISON REED,
Governor.

2293 *Exhibit C.—Attached to cross-interrogatories by the Florida Central Railroad Company.*

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Articles of impeachment exhibited by the assembly of the State of Florida, in the name of themselves and of all the people of Florida, against Harrison Reed, governor of Florida, in maintenance and support of their impeachment against him for high crimes and misdemeanors in office, for incompetency and malfeasance, and conduct detrimental to good morals.

ARTICLE I. That said Harrison Reed, governor of Florida, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, unmindful of the high duties of his office, of his oath of office, and of the requirement of the constitution that he shall see that the laws are faithfully executed, did unlawfully, and in violation of the constitution and laws of the State of Florida, cause to be issued, and did himself sign his official signature as governor to, a large number of State bonds to the amount of five hundred and twenty-eight thousand ($528,000) dollars in excess of the amount of bonds authorized to be issued by the act of the legislature of the State of Florida, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State, approved June 24, A. D. 1869,' approved January 28, A. D. 1870, with intent, then and there, to violate the said act, whereby the said Harrison Reed, governor of Florida, did then and there commit and was guilty of a high crime in office, of incompetency, and malfeasance.

Article II. That in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, said Harrison Reed, governor of Florida, unmindful of the high duties of his office, of his oath of office, and in violation of the constitution of the State of Florida, and contrary to the provisions of an act entitled "An act to alter and amend an act entitled 'An act to perfect the public works 2294 of the State,' approved June 24, A. D. 1869," approved January 28, 1870, did then and there, with intent to violate the constitution of the State and the act aforesaid, and without authority of law, fraudulently conspire to issue State bonds to the amount of one million of dollars ($1,000,000) for the purpose of purchasing the stock of the Florida, Atlantic and Gulf Central Railroad Company, for the use and benefit of persons and parties, and with full knowledge of and consent to said purpose, and in collusion with such persons and parties, for his and their pecuniary benefit, whereby said Harrison Reed, governor of Florida, did then and there commit and was guilty of a high crime in office, and of incompetency and malfeasance.

Article III. That said Harrison Reed, governor of Florida, unmindful of the high duties of his office, and of his oath of office, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida did cause to be issued and did himself sign his official signature, as governor, to one million dollars of State bonds, for the purpose of purchasing the stock of the Florida, Atlantic and Gulf Central Railroad Company, for the use and benefit of persons and parties, contrary to and in violation of the constitution of the State of Florida, and of the laws of the State of Florida, and especially in violation of an act of the legislature of the State of Florida, entitled "An act to alter and amend an act to perfect the public works of the State, approved June 24, A. D. 1869," approved January 28, A. D. 1870, and with intent to violate the laws of the State of Florida, and especially said act, whereby the said Harrison Reed, governor of the State of Florida, did then and there commit and was guilty of a high crime in office, and of incompetency and malfeasance.

Article IV. That Harrison Reed, governor of Florida, in the year of our Lord one thousand eight hundred and seventy, in Tallahassee, in the State of Florida, unmindful of the high duties of his office, and of his oath of office, and in violation of the constitution and laws of the State, and especially of an act entitled "An act to alter and amend," &c., did cause to be issued, and did himself sign his official signature, as governor, to four million dollars of State bonds, for the use and benefit of the Jacksonville, Pensacola and Mobile Railroad Company, in the

State of Florida, having full notice of the fraudulent title of said company to the property of the Pensacola and Georgia and Tallahassee Railroads, and with intent to violate the constitution and laws of the State of Florida, and especially of the act of the legislature of the State of Florida, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,' approved June 24, A. D. 1869," approved January 28, 1870, whereby the said Harrison Reed, governor, &c.

2295 In the circuit court of the United States, fifth judicial circuit, northern district of Florida. In equity.

J. FRED. SCHUTTE, JANS PRINS, ADRIANUS Prins, and others, complainants,
against
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Jacksonville, Pensacola & Mobile Railroad Company, The Florida Central Railroad Company, & others, defendants.

The F. C. R. R. Co. objects to the interrogatories filed by the complainants in the above cause to be propounded to John Collinson, of London, England, in behalf of the complainants, and states grounds of objection as follows:

It objects to the second interrogatory because it is irrelevant, immaterial, vague, and uncertain, and seeks to interrogate concerning matters which are res inter alias, seeks hearsay evidence, and is otherwise illegal. Said company especially objects to any statements of witnesses made in any judicial proceedings being filed with his deposition herein.

2296 It objects to third interrogatory on the same grounds.

It objects to the fourth interrogatory on the same grounds.

It objects to the fifth interrogatory on the same grounds.

It objects to the sixth interrogatory on the same grounds.

It objects to the seventh interrogatory on the same grounds.

It objects to the eighth interrogatory on the same grounds.

It objects to the ninth interrogatory on the same grounds.

It objects to the tenth interrogatory on the same grounds.

It objects to the eleventh interrogatory on the same grounds.

Cross-interrogatories to be propounded in behalf of the F. C. R. R. Co. to John Collinson, of London, England, a witness produced on the part of the complainants in the above cause.

1st cross-int'g. If you say in answer to the 9th direct int'g. that you have any knowledge of the matters set forth in the 6th, 7th, 8th, 9th, 10th, & 11th paragraphs of the copy of the bill of complaint filed with the interrogatories upon which you are examined, take said copy 2297 of said bill of complaint in your hand, and reading said paragraphs thereof, state as to each allegation or proposition of each paragraph whether you have any knowledge, and what knowledge thereof, and if you have any knowledge thereof, how you acquired it. For example, in the 6th paragraph it is stated that "the J., P. & M. Co. obtained from the governor of Florida, Harrison Reed, four thousand bonds, one thousand dollars each." If you say that that statement is correct, state how you know that "the J., P. & M. Co. obtained said bonds; how you know that they were obtained from the governor of Florida;" how you know that the number of bonds obtained by the J., P. & M. Co. and obtained by said company from the governor of Florida was four thousand. If you say that said bonds were issued "in accordance with the laws incorporating the J., P. & M. Co.," state how you know it. Take each of said paragraphs and analize it in the manner above shown, and give the source of your information as to each alligation of which you say you have knowledge.

2d cross-int'g. If you say you purchased or received any of said bonds of the State of Florida, state the several times when you purchased or received them, and from whom you purchased or received them
2298 each time, and the date and place of each purchase, and of each
delivery of bonds, and how many bonds you purchased or received each time, and the numbers thereof, and how many bonds were delivered to you at each delivery, and the numbers of the bonds delivered each time and by whom delivered, and the price or other consideration paid for each bond received or purchased by and delivered to you.

3d cross-int'g. If you say that you sold any of said bonds of the State of Florida, state the time, to whom, when and where each sale was made, and the numbers of the bonds sold and delivered each time a sale and delivery was made, and when and to whom the several bonds so sold were delivered, and the prices at which they were sold, and who received the money from the purchasers of the bonds in each instance.

4th cross-int'g. When were the said bonds of the State of Florida first put upon the market at the bourse or stock exchange in Amsterdam, Holland, or elsewhere. When were they first put upon the market, when, where, by whom, to whom, and at what prices were the first sales and deliveries of said bonds or of any of them made; when, where,
2299 by whom, to whom, and at what prices was each subsequent sale
and delivery of said bonds, or of any of them, made, so far as you know or can ascertain and disclose. State the numbers of the bonds sold and delivered each time.

5th cross int'g. State whether in December, 1870, or about that time, Harrison Reed, the governor of Florida, did not send to one Boissevain or to him and others, in Amsterdam, Holland, a telegraphic dispatch in substance as follows: "Bonds recently recalled by the company; no provision will therefore be made for interest." State whether said telegraphic dispatch was not an answer to a telegraphic dispatch in substance as follows: "Being negotiating four millions dollars of bonds issued by your State to the Jacksonville, Pensacola and Mobile Railroad Company, beg to know by telegraph from you whether provision will be made for payment of interest whatever the result of railroad traf'c may be; is the financial position of the State really sound, and have the bonds undoubtedly security?" which was sent at about that time to the said Harrison Reed, governor of the State of Florida, by the said
2300 Boissevain, or by him and others, from Amsterdam, in Holland.
State all that you know about said telegraphic correspondence. State who the persons were who sent the said dispatch to Governor Reed, and to whom he sent the reply; where did they live; what was their occupation; were they or any of them connected in any way with the sale of the said bonds; if so, what connection had they or any of them therewith; what degree of publicity was given to the said telegraphic correspondence; was it made known to the members or directors or other officers of the bourse or stock exchange of Amsterdam, or to any and which of them; was it known to the persons engaged

in selling the said bonds, and to which of them; had any of said bonds been sold and delivered at that time.

6th cross-int'g. Read the printed paper attached hereto marked exhibit A, being a copy of a communication dated at Jacksonville, Florida, February 8th, 1871, purporting to have been addressed by E. M. L'Engle to Holji Boissevain, bankers, Amsterdam, Holland, and state when and where you first saw the original or what purported to
2301 be the original or a copy of the said communication and who had it; where, when, and from whom did you first hear of it; where, when, and from whom did you subsequently hear of it as often as you did hear of it. State whether or not the said communication was received by the person or persons to whom it was addressed and whether such person or persons were members or directors or other officers of the bourse or stock exchange of Amsterdam, in Holland; where did he or they live, and what was his or their occupations. State whether such person or persons were connected in any manner with the sale of the bonds referred to in the telegraphic correspondence mentioned in the said communication, and if so, how they were connected therewith. State what degree of publicity was given to the said communication; was it made known to the members or directors or other officers of the bourse or stock exchange of Amsterdam, or to any and which of them; was it known to the persons or any and which of them engaged in selling the said bonds; when, as nearly as you can state, was the said communication received or known in Amsterdam; what action
2302 was taken thereupon. State all you know on the subject.

7th cross int'g. Read the printed paper annexed hereto marked Exhibit B, being a copy of a communication dated at Tallahassee, Florida, June, 1871, purporting to have been addressed by T. W. Brevard, jr., to the chairman of states and corporations arrears committee, 193, 194, 195, Gresham House, London, England, and state when and where you first saw the original, or what purported to be the original or a copy of the said communication, and who had it; where and when and from whom did you first hear of it. State whether or not the said communication was received by the person or persons to whom it was addressed and whether such person or persons were members of the bourse or stock exchange of Amsterdam, in Holland; where did he or they live and what was his or their occupation. State whether such person or persons were connected in any manner, and what manner, with the sale of the bonds issued by the State of Florida in aid of the Jacksonville, Pensacola & Mobile Railroad. State what degree of publicity
2302½ was given to the said communication; was it known to the members or directors or other officers of the bourse or stock exchange of Amsterdam, or to any and which of them; was it known to the persons or any and which of them engaged in selling the said bonds of the State of Florida; was it known to you; when, as nearly as you can state, was the said communication or a copy of it received or known in Amsterdam or received by or known to the persons or any of them who were selling said bonds of the State of Florida; what action was taken upon it. State all that you know on the subject.

8th. cross-int'g. Read the printed paper annexed hereto marked Ex hibit C, being a copy of the articles numbered one, two, three, and fou of impeachment exhibited by the assembly of the State of Florid against Harrison Reed, governor of Florida, and state when & wher you first saw the said articles of impeachment; state when and wher you first became informed that articles of impeachment had been exhib ited by the assembly of the State of Florida against Harrison Reed

governor of Florida, for the causes stated in the said articles or
2303 for any of the said causes; were the said impeachment, and the cause or causes thereof, as set forth in said articles, known to the members or directors or other officers of the bourse or stock exchange of Amsterdam, or to any and which of them, and when did they become known; were they known to you or to the persons, or any and to which of them, engaged in selling the said bonds of the State of Florida issued in aid of the Jacksonville, Pensacola and Mobile Railroad, and when did they become so known, as nearly as you can state.

9th cross-int'g. State whether or not any member or members, officer or officers, of the bourse or stock exchange of Amsterdam, in Holland, have ever been expelled, deposed, suspended, required to resign or withdraw therefrom, fined, censured, or otherwise punished or reflected upon by the said bourse or stock exchange, government, guild, or association, for improper practices or conduct, whether of commission or omission, in connection with the negotiation or sale, or putting upon the market, of said bonds, or any of them, of the State of Florida issued in
2304 aid of the Jacksonville, Pensacola and Mobile Railroad Company. If yea, state who such member or members, officer or officers, were; whether he or they were expelled, deposed, suspended, required to resign or withdraw, fined, or censured, or how otherwise punished or reflected upon; what was the improper practice or practices or conduct; state all that you know on the subject.

10th cross-int'g. If, in answer to the 5th direct interrogatory, you say that any organization or association was created by you or by any one else to buy and pay for said bonds, state by what name said organization or association was called or known, if it had a name; state the names, residences, and occupations of the persons who composed said organization or association; state whether it still exists, and if not, how long it existed; state when it was found or created, and all the purposes for which it existed. Did said organization sell said bonds or cause them to be sold? Did it deal in said bonds—buying and selling them? Where, that is to say, in what city or cities & countries, did said organization or association have its home and place or places of business?

JNO. T. WALKER,
Solicitor and of Counsel for Fla. Cent'l Railroad Company.

Filed Feb'y 5th, 1879.

P. WALTER, *Clerk.*

(Indorsed:) U. S. circuit court, northern district of Florida. J.
2305 Fred Schutte et al. vs. The Florida Central R. R. Co. et al. Cross-interrogatories by the Florida Cent. R. R. for John Collinson. Filed Feb'y 5th, 1879.

P. WALTER, *Clerk.*

2306 In the circuit court of the United States, fifth judicial circuit, northern district of Florida. In equity.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS Prins, and others, complainants,
against
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Jacksonville, Pensacola and Mobile Railroad Company, The Florida Central Railroad Company, and others, defendants.

Interrogatories to be propounded to John Collinson, of London, England, a material witness for complainants, who is to be examined under a commission issued in said cause in the city of New York.

Interrogatory first. What is your name and residence; where did you reside in the year 1870, 1871, 1872 and 1873; what was your occupation at such times?

2307 Interrogatory second. Had you during the years before designated in the first interrogatory, any dealings with the firm of S. W. Hopkins and Company? If you say you did, please state what were the dealings so had; relate fully and at large all that was done by and between said S. W. Hopkins and Co. and yourself; whether you purchased any bonds from said firm which were issued by the governor of the State of Florida, to the Jacksonville, Pensacola and Mobile Railroad Company. If you have ever made any statements as to the matters herein enquired of in any judicial proceedings, please file in answer to this interrogatory a written or printed copy of such statements and state whether or not you are now ready to repeat, on this examination, the contents of such documents, and say whether the contents thereof are true.

Interrogatory third. At what place or places were the bonds purchased by you from S. W. Hopkins and Co. (if you testify to
2308 the making of any such purchases) put on the market and sold,
by whom such transaction was conducted, what representation was made and published in Holland or elsewhere by such persons when they offered and sold said bonds? Relate fully all that was said and done by yourself alone or by said persons to induce purchasers in Holland or elsewhere to purchase or deal in said bonds.

Interrogatory fourth. When you purchased the said bonds from S. W. Hopkins and Co. (if any you did purchase) were there any persons concerned with you in making such purchase? If yea, state their names and residences; what share, if any, they had therein, and when their interest commenced.

Interrogatory fifth. From whom, how, and when did you procure the money to buy and pay for the said bonds if any were bought and payed for by you from S. W. Hopkins and Co.? Did you furnish the whole purchase money or did others; if others, who were such contrib-
2309 utors? Answer fully, and state what organization or association
was created by you to buy and pay for said bonds.

Interrogatory sixth. If you answer and say that you obtained money from others to pay said S. W. Hopkins & Co. for said bonds, state what representations were made by you to such persons as to the character and validity of said bonds, the security provided for the payment thereof, the length of completed railroad owned by the Jacksonville, Pensacola and Mobile Railroad Company, the place at which such railroad commenced on the waters of the Atlantic Ocean; the western terminus and the line of such railroad; and state on what authority you made such representations; from whom you derived your knowledge of such matters, and at what time you acquired it.

Interrogatory seventh. What representations were made to you by S. W. Hopkins & Co. as to the matters stated in the foregoing in-
2310 terrogatory if any were made to you by them. When and on what
occasion were such representations made?

Interrogatory eighth. Did you, in the years 1870, 1871, 1872, and 1873, sell any of the bonds specified in the second interrogatory, directly or indirectly, to any persons in Holland or elsewhere? If so, state how many you sold, at what price, and relate fully how and by whom such sales were conducted, and what representation' were made by you, or by others by your authority, to the persons who purchased said bonds, if any you sold; relate fully all that was done by you, or by others acting with you, to market said bonds, and all that was represented as to their nature and character, and as to the security provided for their redemption, and the character of such security.

Interrogatory ninth. Read the 6th, 7th, 8th, 9th, 10th, and 11th paragraphs of the copy of the bill of complaint filed in the suit in
2311 which you are now examined, which copy is herewith exhibited to you; say whether you have any knowledge or information as to the correctness or incorrectness of statements made therein, and state how you acquired your knowledge. Do you you or not know whether the statements so made are true or otherwise? If otherwise, say how otherwise; answer fully all that you know as to the matters stated in such paragraphs of said bill.

Interrogatory tenth. Did you or not receive from Calvin L. Chase, or by his authority, any bonds such as are designated in the second interrogatory? If you say you did, state what were the numbers of said bonds, under what circumstances, and for what purposes you received them, at what time and place did you receive them, how you disposed of them, and if you sold them, say to whom, and when and at what price; say what you did with the purchase-money, whether you
2312 paid the same to any account, and, if any, to what account.

Interrogatory eleventh. Did you or not pay any money for the interest on any of the bonds specified in the second interrogatory? If yea, say at what time, from what fund, and how you paid such interest, on what number of bonds you made such payments, and to whom and through whom the money was paid? If you say you advanced such money, say whether such advance was reimbursed to you, and how and from what source such reimbursement was made.

Interrogatory twelfth. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. G. M. DAVIS,
Solicitor for Complainants.

2313 In the United States circuit court, northern district of Florida, fifth judicial circuit. In equity.

J. FRED. SCHUTTE, JAN PRINS, ET AL.,
against
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

Please take notice that I have filed in the office of the clerk of this court interrogatories, copy herewith, for John Collinson, a witness for complainants, and that in ten days from this date I will apply for a commission to examine said Collinson on said interrogatories and such cross-intetrogatories as may be filed by you.

Jacksonville, Fla., January 10th, 1879.

W. G. M. DAVIS,
Solicitor for Complainants.

To JOSEPH B. STEWART, Esq.,
Solicitor for the Defendant the Western Division of the Western North Carolina Railroad Company.

2314 The within copy of the interrogatories addressed to John Collinson were this day handed me by C. D. Willard, of counsel for complainants, who said the defendants need not cross the same as he did not intend to read the deposition of the said Collinson in the hearing of the cause.

Dated Feb'y 27, 1879.

JOS. B. STEWART,
Sol. for Defendants.

Witness:
LEVI PHILLIPS.

Filed March 3, 1879.

P. WALTER, *Clerk.*

To J. B. STEWART, Esq.:
Not found.

S. CONANT,
U. S. Marshall.

2315 In United States circuit court for the northern district of Florida in the fifth judicial circuit. In equity.

J. FRED SCHUTTE, JAN PRINS, ADRIANUS Prins, and others,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company & others.

On motion of solicitors for complainants, it is ordered that John A. Shields, who is a commissioner appointed by the circuit court of the United States for the southern district of New York, under the laws of the United States, and who resides in the city of New York and has his office in the post-office building in said city, be and he is hereby appointed a commissioner to take the testimony of such witnesses as may be produced before him for examination as witnesses in said cause, upon
2316 interrogatories and cross-interrogatories now or which may be filed therein, and that proper commission empowering said John A. Shields so to act be issued.

THOMAS SETTLE, *Judge.*

JANUARY 22, 1879.

UNITED STATES OF AMERICA,
Northern District of Florida:

I, Philip Walter, clerk of the United States circuit court, in and for said northern district of Florida, do hereby certify that the foregoing is a true copy of the original order on file and of record in my office.

Witness my hand and the seal of said circuit court at Jacksonville in said district this thirtieth day of January, A. D. 1879.

[SEAL OF COURT.] PHILIP WALTER, *Clerk.*

2317 UNITED STATES CIRCUIT COURT,
Northern District of Florida:

The President of the United States of America, to John A. Shields, esq., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you full power and authority diligently to examine upon their corporal oaths or affirmations, before you to be taken, and upon the interrogatories and cross-interrogatories hereunto annexed, Sidney W. Hopkins, Frank H. Collins, Thomas B. Coddington, and John Collinson, as witnesses on the part of the complainants in a certain cause now pending and undetermined in the circuit court of the United States of America for the fifth circuit and northern district of Florida, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others are complainants, and the 2318 Western Division of the Western North Carolina Railroad Company and others are defendants.

And we do further empower you to examine on the same behalf, and in like manner, any other person or persons who may be produced as witnesses before you; and we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, and directed to the clerk of the circuit court of the United States for the fifth circuit and northern district of Florida, at the city of Jacksonville, as soon as may be convenient after the execution of this commission; and that you return the same when executed as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in 2319 said circuit and district, this thirtieth day of January, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and third year.

{ SEAL NORTHERN DISTRICT OF FLORIDA. }

PHILIP WALTER,
Clerk of the Circuit Court of the United States for the fifth circuit and northern district of Florida.

The execution of the within commission appears by certain schedules hereunto annexed.

JOHN A. SHIELDS,
Commissioner.

NEW YORK, *May* 3d, 1879.

2320 In the United States circuit court, northern district of Florida, fifth judicial circuit. In equity.

J. FRED SCHUTTE, JAN PRINS, ADRIANUS Prins, and others,
against
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company and others.

To the solicitors for the defendants:

Please take notice that we have this day filed in the office of the clerk of said court interrogatories to be exhibited and propounded to certain witnesses, whose names are in said interrogatories stated, a copy of which are hereto annexed, to be examined by commission to be issued in the above stated cause, to take the depositions of said witnesses; after the expiration of ten days from the date of this service we will apply to the said circuit court, if in session, and if not in session, to 2321 the clerk thereof, for the issuance of such commission; and we will nominate, as the person to be appointed to execute the said commission, John A. Shields, of New York City, in the State of New York; of all which please take notice.

W. G. M. DAVIS,
C. D. WILLARD,
Solicitors for Complainants.

Dated this 24th day December, 1878.

2322 In the United States circuit court, northern district of Florida, fifth judicial circuit. In equity.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS Prins, Henrich Ulrici, Elias Fulds, and others,
against
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company and others.

Interrogatories to be propounded to Sidney W. Hopkins and Frank H. Collins, witnesses to be examined in behalf of the complainants in the above-entitled cause, who reside in the city of New York, State of New York.

Interrogatory first. What is your name, age, and residence?

Interrogatory second. Do you know the parties, complainants
2323 and defendants, or either of them?

Interrogatory third. Were you or not a member of the firm of S. W. Hopkins and Co.? State who were members of said firm, what was its business, and where was it conducted.

Interrogatory fourth. Did or not the firm of S. W. Hopkins & Co. become the agents of the defendants, the Jacksonville, Pensacola and Mobile Railroad Company, at any time? If they did, state what authority they received, and annex to your answer a copy thereof.

Interrogatory fifth. State what induced S. W. Hopkins and Co. to undertake to act as agents of said company to effect the sale of the
2324 bonds specified in the power of attorney given to you by said
railroad company; what led your said firm, to believe that such bonds could be sold, either in the United States or in Europe?

Interrogatory six. If you answer the foregoing interrogatory and say you undertook such agency by reason of any representations being made to your firm by any officer of said company, say who was the person and what authority did he produce to your firm authorizing him to act for said company, and annex the original or a copy of such authority to your answer.

Interrogatory seventh. What was represented to you by the officer of the said company who employed you and gave you information,
2325 or made statements to you, as to the locality of the railroad of
said company, the number of completed miles, its eastern terminus, and projected route and western terminus? What documents, maps, papers, or laws of the State of Florida, if any, were produced to you by such officer of said company? What reliance did you place on such statements, and how was your firm affected by them or by any documents, maps, and laws of Florida?

Interrogatory eighth. Did or not your firm receive from the governor of Florida any bonds issued to the said company? If you answer yea, please state how and when you received them, and how many.

Interrogatory nine. To whom, where, and when did you sell any
2326 of said bonds, how many did you sell and deliver, and how many
did you contract to sell and deliver of said bonds, either in England or elsewhere in Europe?

Interrogatory ten. How did you succeed in procuring a purchaser for said bonds? What did you represent to such purchaser as to the nature and character of the railroad of said company, its eastern and western termini, the number of miles of completed road owned by it, the existing railroad or other connections, and as to its being a local or through route? Relate fully all the representations your firm made to the purchaser of said bonds, and say whether or not such purchaser acted thereon, or was influenced thereby; and if so, how, and why. Answer
fully, and state all that passed at the time of the sale of the
2327 bonds, or when they were delivered.

Interrogatory eleven. Did you or not, at the time when you agreed to sell said bonds for said company, know that any portion of the line of completed railroad from Jacksonville to Quincy was owned, or claimed to be owned, by a corporation styled the Florida Central Railroad Company? Had you knowledge or information at such time that the last named corporation claimed to own any portion of said railroad? State fully all that you know as to such matter.

Interrogatory twelve. If the Jacksonville, Pensacola and Mobile Railroad Company's railroad had been stated by its authority to commence
at Lake City, and not at Jacksonville, would your firm have
2328 undertaken to sell its bonds? Do you or not believe that under
such a condition of the said company's property that your firm could have sold said bonds in Europe or elsewhere? Answer fully, and state on what reasoning and knowledge you base your answer, and state your opinion.

Interrogatory thirteen. Did you advance any money to said company before you sold any of said bonds, or did you accept drafts for any money drawn by said company in advance of said sales, or did you agree to supply said company with iron or other material, and did you make any contracts therefor before selling any of said bonds? State fully and
specially what you did in respect to the matters herein enquired
2329 of, and say whether or not you would have made such transac-
tions and entered into such obligations had you had any reason to doubt whether the whole line of completed railroad from Jacksonville to Lake City was owned by the Jacksonville, Pensacola and Mobile Railroad Company.

Interrogatory fourteen. If you state that you sold bonds received by you as agent of said company to John Collinson, of London, England, state whether or not you knew at the time whether he made such purchase in connection with other persons, their residence and business, and state all that you know as to in what way and how said Collinson dealt with said bonds, and at what place he dealt with them, and through and with what persons? What, if any, representations
were made by said Collinson as to said bonds, their validity,
2330 and as to what security for their payment existed, or was by law
provided, and what property was by law pledged for the redemption of said bonds? State how you acquired your knowledge of the acts of said Collinson.

Interrogatory fifteen. Did you or either of you, in any way, aid or assist said Collinson to dispose of any of said bonds to any persons in Europe? If you answer in the affirmative, state how you gave such aid or assistance; and whether or not you acted therein as the agents of said company, and why you did so.

Interrogatory sixteen. Did the governor of Florida, who was in office in the years 1870 and 1871, do any official act, or issue any
2331 official paper, which in any way gave credence to the bonds which
you received from him as agent of the Jacksonville, Pensacola and Mobile Railroad Company? If you answer in the affirmative, state fully what he did, and append to your answer copies of any written or printed papers signed by him, which you received from said governor, and such official papers produced and how they influenced the mind of said John Collinson, or that of others who dealt in said bonds, and how such acts and writings influenced your said firm in selling said bonds.

Interrogatory seventeen. Did your firm make any payments out of the money which you received from the said John Collinson on
2332 sale or delivery of said bonds to any individuals or to any corpo-
ration? If you did, state to whom your firm made such payments, and by what authority your firm did so, and the amounts which you paid, and the date of such payments.

Interrogatory eighteen. State all that you know as to the reason why the payment by order of Milton S. Littlefield, as president of the said Jacksonville, Pensacola and Mobile Railroad Company, was made to Nicholas W. Woodfin, as chairman of the Western Division of the Western North Carolina Railroad Company; relate fully all that you know as to such matter, and how you obtained your information.

2333 Interrogatory nineteen. Was Milton S. Littlefield in England in the fall and winter of the years 1870 and 1871 or the spring of the year 1871? If yea, what was his business? Did he or not assist your firm in the efforts made by your firm to sell the said bonds? What did he do in that direction? What representations did he make as to the said bonds as to the railroad of said company, its location, extent, and as to the security provided to pay said bonds? To whom did he make such representations, and at what place or places?

Interrogatory twenty. If you say that your firm paid out of the proceeds of the sale of said bonds any sums of money to Edward Houston, Mariana D. Papy, James D. Westcott, John P. Sanderson, and Edward M. L'Engle, say whether you had any conversation with said persons or either of them, relative to the grounds on which said
2334 persons based their claims to receive such sums of money, and what
induced the said Jacksonville, Pensacola and Mobile Railroad Company or its president, Milton S. Littlefield, to authorize you to make such payments; relate fully all you know or recollect of such matters, and say out of the sale of which of said bonds your firm made such payments.

Interrogatory twenty-one. Do you know Edward M. L'Engle, of Jacksonville, Florida? Did he visit you at the office of your company in the year 1871? Did he do anything, or in any way take part in any negotiation or arrangement, if any there was, between your firm and John P. Sanderson in respect of or which resulted in the payment by your firm to said Sanderson of any money which you held for account of the Jacksonville, Pensacola and Mobile Railroad Company as to which you have been before interrogated? State all that said L'Engle did and said in relation to such matter and as to his acquaintance
2335 with the consideration on which such payment by your firm to
said Sanderson was based. Relate fully.

Interrogatory twenty-two. Was Nicholas W. Woodfin in London, England, in the year 1870 or 1871? Did he have any business intercourse with your firm? If yea, what was the nature of such business? Who did he represent? In what official character did he claim to act? What claim, if any, did he make as to the bonds which you held as agent of the said Jacksonville, Pensacola and Mobile Railroad Company? What did he demand, and in what way was his demand adjusted; on what conditions?

Interrogatory twenty-three. What did said Nicholas W. Woodfin, in his official character, do, if anything he did, in aiding or assisting your firm to sell said bonds held by your firm for the Jacksonville, 2336 Pensacola and Mobile Railroad Company? What directions or authority did he give to your firm as to such bonds; and what claim did he make in relation to said bonds at the time he was so in England, or afterwards, as to the monies which you received for the sale of them?

Interrogatory twenty-four. When said Nicholas W. Woodfin was in England engaged in business with your firm and claiming title to said bonds, or afterwards to any sum of money derived from the sale thereof, did he assert to you or any of you, or in any way make known to your firm, that the corporation which he represented, The Western Division of the Western North Carolina Railroad Company, denied the title of the said Jacksonville, Pensacola and Mobile Railroad Company to the railroad which begins at Jacksonville and runs or was then built to Lake City, or beyond that point in the State of Florida, or 2337 that the corporation which the said N. W. Woodfin represented claimed any right at law or equity to any stock in the said The Florida Central Railroad Company, and that such corporation claimed to own any such part of railroad, or that the said corporation represented by said N. W. Woodfin in any way disputed the legality of the issue by the said governor of Florida of the four million of bonds to the said Jacksonville, Pensacola and Mobile Railroad Company? Answer fully all that said N. W. Woodfin, as the representative of said Western Division of the Western North Carolina Railroad Company, did and said as to the matter.

Final interrogatory. Do you know, or can you set forth, any other matter or thing which may be a benefit or an advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in 2338 this cause? If yea, set forth the same fully and at large in your answer.

W. G. M. DAVIS,
C. D. WILLARD,
Solicitors for Complainants.

U. S. MARSHAL'S OFFICE,
NORTHERN DIST. OF FLORIDA,
Jacksonville, Fla., Jan'y 15, 1879.

I certify that I have served a true copy of the within notice and of the interrogatories thereto attached, upon E. M. L'Engle, esq., James M. Baker, esq., att'y of the Florida Central R. R. Co., at Jacksonville, Florida, on the 26th day of Dec., 1878, and upon J. B. Stephens, esq., att'y of the J., P. & M. R. R. Co., at Quincey, Florida, on the 27th day of Dec.. A. D. 1878, and upon Geo. P. Rainey, esq., att'y of the trustees of the internal-improvement fund of Florida, at Tallahassee, on the 28th day of Dec., 1878.

S. CONANT,
U. S. Marshal.

Service 4 notices and 4 interrogatories, 16.00; 166 miles to Tallahassee, 9.96; 187 miles to Quincy, 11.22, 21.18—$37.18.

Jas. B. Stewart, esq., att'y of the W. D. W. N. C. R. R. Co., cannot be found within the northern dist. of Florida.

S. CONANT,
U. S. Marshall.

JAN'Y 15, 1879.

2339 (Indorsed:) U. S. circuit court, northern dist. of Florida. J. Fred. Schutte et al. vs. The Western Division of the Western North Carolina R. R. Co. et al. Interrogatories to be propounded to Sidney W. Hopkins & Frank H. Collins in behalf of complainants, with notice, &c. Filed Dec. 24, 1878. P. Walter, clerk. W. G. M. Davis, sol. for compl'ts.

2340 *Exhibit A attached to cross-interrogatories by the Florida Central Railroad Company.*

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

JACKSONVILLE, FLA., *February 8th*, 1871.

Messrs. HOLJE BOISSEVAIN, *Bankers,*
Amsterdam, Holland:

GENTLEMEN: On December 18th, 1870, Governor Harrison Reed, of Florida, received a telegraphic dispatch from you, substantially as follows:

"Being negotiating four million bonds issued by your State, the Jacksonville, Pensacola and Mobile Railroad, beg to know by telegraph from you whether provision made for payment interest, whatever result railroad traffic. Financial position of State really sound, and bonds undoubted security?"

To this dispatch Governor Reed replied as follows:

"Bonds recently recalled by the company; no provision will therefore be made for interest."

2341 It was hoped that Governor Reed's telegram would have the effect of causing the bonds to be returned, as the railroad companies desired they should be. This has not been done, but on the contrary more bonds than were then out have been sent to Europe for negotiation, though no money I infer has yet been realized. I feel it to be my duty, therefore, to make a statement of facts to you, which I hope that you will lay before others who may be interested with you in the negotiations.

When the legislature of Florida enacted the laws under which the bonds your telegram inquired about were issued, it was believed by the two railroad companies, hereafter named, that the proceeds of the State bonds when sold would be honestly and legitimately applied to the extension through the western portion of this State of the lines of railroad already built from the eastern to the middle portion. That extension was so much desired by the two companies owning the completed railroads that they were willing to mortgage, and did mortgage, their roads to the State, in order to secure the issuing of State bonds upon which to raise money to enable the newly organized company to build said extension. The railroads which so pledged their mortgage bonds to the State were the Florida Central Railroad, sixty miles long, and the Tallahassee Railroad, one hundred and fifty miles long. The former gave its mortgage bonds to the amount of one million dollars; the latter to the amount of three million dollars; and this latter road consolidated its line with that proposed to be built westward from the completed road, and the two companies became one, under the name of the Jacksonville, Pensacola and Mobile Railroad Company. But the Florida Central Railroad, commencing at Jacksonville and running westward sixty miles, was not included in the consolidation. Subsequently, and after three million of the State bonds had been sent to Europe, it was discovered that the president of the Jacksonville, Pensacola and Mobile Railroad, who had been active in procuring the legislation and inducing the completed roads to give to the State their bonds in exchange for the State's bonds which were issued to him, had made, even before he got the bonds, secret contracts with some of his creditors, by which the larger portion of the proceeds were to be diverted from the purposes for which the bonds were issued, and were to be applied in payment of individual debts. This produced such dissatisfaction and caused such investigations by the companies which had mortgaged their roads to the State, as resulted in both of the companies, through their several directories, rescinding the action by which their roads were mortgaged, and recalling the bonds. The million of bonds issued by the State, on the security of a like amount pledged to the State by the Florida Central Railroad, had not then gone into the hands of the president of the Jacksonville, Pensacola and Mobile Railroad, but were held by a party till certain conditions precedent were performed, before delivery to the president of the Jacksonville, Pensacola and Mobile Railroad. That million of bonds then were returned to the State, and the bonds of the company upon the security of which the others were issued were withdrawn from deposit with the State, and were in the hands of the party already referred to, to be returned to the company for cancellation, when they were by that party without the authority or knowledge of the railroad company, or of any 2342 of its officers, and in violation of the company's resolutions of recall and rescission, delivered to an agent of the president of the Jacksonville, Pensacola and Mobile Railroad, who by influences best known to himself effected with the governor of the State their re-exchange for the State bonds, which latter were hurriedly and secretly sent out of the State and to Europe before any legal process could be obtained for their detention. This redelivery to the governor of Florida of the Florida Central Railroad Company's million of bonds is a gross fraud on that company, and none who are advised of it, and buy or advance money on the State's bonds, for which they were exchanged, will have any legal or moral right to ask that they receive any benefit or advantage from the security so wrongfully obtained.

The same may be said of the three million of State's bonds issued on the pledge of the same amount of bonds of the Tallahassee or Jacksonville, Pensacola and Mobile Railroad. No one who, having notice of that company's rescission of its action and recall of its bonds, advances money on or buys the State's bonds for which the others were pledged will have, legally or morally, any locus standi in curia as against that railroad company. The creditors and stockholders of the railroad companies will assert their right, resist the wrongs that have been perpetrated and attempted, and seek, successfully, redress in the judicial tribunals. You have had the above-mentioned action of the railroad companies brought to your notice by the telegram from Governor Reed, who sent it after consulting with the said companies, and at their instance, and you have incurred all the legal disqualifications to urge against the railroad companies any claim based on their supposed suretyship for any bonds of the State.

An examination of the law under which the State's bonds were issued discloses that the governor has caused half a million more of bonds to be issued than the law provides for. The law allows the issue of $16,000 per mile upon so much of said roads as may be completed and in running order; only 210 miles were, when the bonds were issued, completed, and only a mile and a half have been completed since, and no more is being completed. This would allow of an issue at the time it was made of only $3,360,000. Add the liberal allowance of ten miles for side tracks, &c., if such unreasonable construction of the law be claimed, and it legalizes only $3,520,000 of the bonds.

To secure the principal and interest of the Jacksonville, Pensacola and Mobile Railroad Company's bonds (but not of the bonds of the Florida Central Railroad), the law gives the State of Florida a statutory lien, valid as a first mortgage, on that company's road and property, and authorizes the governor, on failure of the company in any payment of principal or interest, to seize and sell the road at auction, and authorizes the State to purchase and to pay for it with any evidence of indebtedness the State may hold against the road, while every other bidder would, in case of purchase, have to pay cash. This summary process is not applicable to the Florida Central Railroad; but to the other road only. What would be the result in case of failure of the Jacksonville, Pensacola and Mobile Railroad to pay principal or interest on its bonds? The State, if no resistance, or if unsuccessful
2343 resistance through the courts were had, might seize, sell, and buy,
paying for the purchase with the road's obligations, while the State might not, perhaps could not, or would not, pay her own; nor is there any way known to our system of government by which a State can be compelled to pay its obligations. You will thus perceive the character of the securities offered you, and the taints of fraud that affected them from their first issue, and that still do, and will act advisedly. This communciation is made in the interest of the stockholders of the companies whose bonds have, by misrepresentation and bad faith, been obtained and exchanged with the State of Florida for the State's bonds, which you have been, and may still be, negotiating for. The stockholders do not intend to submit to the fraud which has been attempted on them. They seek to have the State's bonds brought back, and a re-exchange effected, and it is to that end that this letter is written. Such a course will prevent litigation. Persistence in the wrong will insure it. Attempts may be made to give credit to the bonds by professional and perhaps by judicial opinions from this State, but the facts that I state are incontestable, and I can give you much more and more detailed information concerning the worthlessness of the securities that you are negotiating for, and I will do so if desired. But I have said enough to make discreet men repudiate the securities and abandon negotiations.

I will say further, that since the mortgage of the railroads to the State, 128 miles of the completed road, being all except twenty-two miles on which the State has any statutory lien, have been sold by the United States under a judicial process in their favor, issued from a United States court; thus divesting the company's title, and vesting it in the individual purchaser. That sale of course relieves that much of the road of the lien created in favor of the State of Florida by the mortgage before mentioned. You are at liberty to show this letter to whom you please, and to give it the widest publicity, and will oblige me by acknowledging its receipt. I will presume on a very slight acquaintance to refer you, touching myself, to Hon. H. S. Sanford (late U. S. minister to Belgium), at Brussels.

Respectfully,

E. M. L'ENGLE,
Of counsel for the Florida Central Railroad Company.

2344 *Exhibit B.—Attached to cross-interrogatories by the Florida Central Railroad Company.*

In the U. S. circuit court.

J. FRED SHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

FLORIDA STATE BONDS.

TALLAHASSEE, FLORIDA, *June*, 1871.

To chairman States and corpor'tions arrears committee, 193, 194, 195, Gresham House, London:

SIR: It is understood here that General M. S. Littlefield, the president of the Jacksonville, Pensacola and Mobile Railroad Company, a corporation existing under the laws of Florida, Messrs. S. W. Hopkins & Co., financial agents and representatives of the corporation, and perhaps others in the same interest, are endeavoring, with a prospect of success, to negotiate a sale of a very large number of bonds of the State of Florida, issued under the provisions of the act of the legislature of this State, entitled "An act to perfect the public works of the State," and subsequent acts amending the act named.

It is only fair that capitalists who have been induced to think favorably of these State bonds as an investment should be informed as to the character of the securities in which they are about to embark their means, and the purpose of this letter is to place you, and through you others concerned, in possession of such facts connected with the history of these bonds, and the law under which they were issued, as it may be to their interest to know.

2345 The Pensacola and Georgia Railroad Company, and the Tallahassee Railroad Company, were railroad corporations existing under the laws of this State. These corporations having availed themselves of the benefits of the act of the legislature of this State, commonly called the internal improvement act, approved January 6th, 1855, and having failed afterwards to comply with its requirements, by payments of the semi-annual interest and sinking fund due upon the debt contracted on account of the first mortgage bonds issued by the companies under the provisions of the said act, these road-beds, property, and franchises were, in accordance with the requirements of the said act, taken possession of by the trustees of the internal improvement fund and sold, after due advertisement, to the highest bidder, on the

day of , 1869. This sale was, in one essential feature, a fraud. The law permitted that the trustees sell either for cash or for additional approved security, as they might think of most advantage to the fund and the first mortgage bondholders, to satisfy whose claim the sale was made. In this case the trustees elected to sell for cash, and so advertised to the world up to the moment of sale. And the sale purported to be a cash sale. In point of fact, however, the purchasers did not pay cash, but only made partial payment by a surrender to the trustees of about $1,000,000 of the first mortgage bonds. The entire first-mortgage debt of the two companies was about $1,473,000, and this payment of $1,000,000 in the bonds left a balance due upon the price bid which was in amount equal to the entire bonded debt, of about $473,000, which amount on payment would have been at once applicable to take up and pay off the balance of bonds outstanding, about $473,000 in amount. The trustees, however, delivered possession of the railroad property to the purchasers upon this partial compliance by them with the terms (cash) of the sale. This indebtedness, which has never been paid except in small part (there being still about $300,000 of first mortgage bonds outstanding and unsatisfied), has a legal priority, and has been always so recognized by the parties now in possession, through this purchase, as a first lien, anterior to all others now existing, or that may be created upon the property and franchise of the Jacksonville, Pensacola and Mobile Railroad Company (formerly, as will appear hereafter, the Pensacola and Georgia and Tallahassee Railroad Companies). The parties in possession of the property have constantly promised payment, and doubtless have induced persons abroad to believe that they have already paid off this debt. After the sale of the Pensacola and Georgia and Tallahassee Railroads, referred to above, the parties in possession, through this incomplete sale, procured the passage by the legislature of several acts for their benefit, and first among them, of the "Act to perfect the public works of the State," approved June 24th, 1869. This act consolidated the Pensacola and Georgia and Tallahassee Railroad Companies, and incorporated the Jacksonville, Pensacola and Mobile Railroad Company, and authorized aid to be given by the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company, by the issue to the company of bonds of the State to the amount of $14,000 per mile. The act, however, provided that the State, as a condition precedent to the issue of its bonds, should be made secure by a lien to be taken by the State upon the property and franchise of the corporation for whose benefit this aid
2346 was to be given. This was a condition fixed by the act, and with this provision it passed the legislature; and when, some time after the act had passed, it appeared that by its fraudulent enrollment the provisions securing the State had been omitted, and that a forged law had been filed in the office of the secretary of state, and officially published as a law of the State, certain citizens of the State, property-holders and tax payers, filed their bill on the chancery side of the circuit court of Leon County, second judicial circuit of Florida, praying for an order of injunction against Harrison Reed, governor of Florida, and against S. B. Conover, treasurer of the State, and for an order of the court against these officers, to restrain and enjoin them from signing, countersigning, or delivering the bonds authorized by this fraudulent law, and from doing any acts whatever under the pretended act, upon the ground of the forgery and fraud practiced, in omitting from the enrolled bill the clause which required a security to the State, in the issue of its bonds by a mortgage upon the railroad property and franchise.

You will readily perceive, in view of the fact that the balance of $473,000 first-mortgage debt referred to was unpaid, that the purpose in this fraud was to relieve the railroad company of the necessity of paying off its existing incumbrances before getting the benefit of the funds to be raised on the State bonds.

The court acted favorably and at once upon this application, and granted without hesitation the injunction prayed for; and so patent was the fraud that no answer was ever made to the bill, and no effort was ever made to dissolve the injunction. So matters rested until the next convening of that great and good body of law-givers—the Florida legislature. This next legislature, which assembled on the day of , 1870, passed an act to alter and amend the aforesaid act, which last act validified and made of force the "act to perfect the public works of the State," which had been enjoined, except as amended and modified by the last law. Under these two acts Messrs. Littlefield and associates, parties in present possession of the railroad property, are now endeavoring to raise money upon State bonds. These acts authorized the aid to be given to the corporation, but required, as a condition precedent to the granting this aid, and the delivery of the State bonds, that the State be made secure by a lien, to be taken in the manner pointed out by the acts, on the Jacksonville, Pensacola and Mobile Railroad property and franchise, and of course that corporation could not be in a condition to comply with the requirement and give this lien until incumberances, already existing and resting on the property, should be removed, by payment of the outstanding first mortgage bonds of the Pensacola and Georgia and Tallahassee Railroad Companies.

That the statement as to this liability is correct there is not the least doubt, and in order to show you that it is admitted to be correct I refer you to the annexed copy of a letter addressed by me to Harrison Reed, governor of the State of Florida, to whom it was entrusted under the law to see that the State was protected before the delivery of its bonds, and his reply endorsed. In both the letter and the pledge endorsed in reply, the position is taken that the unpaid first-mortgage bonds of the Pensacola and Georgia Railroad and Tallahassee Railroad Companies, outstanding, constitute a first lien upon the railroad property
2347 and franchise, and that no issue of the State bonds could or would be made until these lien-incumberances resting upon the property should be removed, by payment and satisfaction of the first-mortgage bonds outstanding, after which the company would acquire the power to mortgage unincumbered property to the State. Notwithstanding these admitted opinions of Governor Reed, this solemn, written pledge, and his full knowledge that this first-mortgage bonded indebtedness, outstanding against the railroad, was unpaid, after quieting the apprehensions of the holders of the unpaid first-mortgage railroad bonds by this pledge, he signed, at a time when he had lulled suspicion, and delivered the State bonds, thus imposing upon the State a security which he knew to be imperfect. Can you suppose that a vast indebtedness, placed upon a people already insolvent, under these circumstances, will ever be paid?

The principal security, which those who may invest in the bonds of this State will have, must be that security which has been given to the State. The principal security for any investment to be made in railroad securities of this State must be the road-bed and franchise. In the light of the past and present history of this State, you cannot rely either upon its willingness or ability to pay a security of the character of these bonds when all the benefits result to stockholders in the corporation. In this case, the chief security being incumbered by prior mortgages, it is clearly the interest of the purchaser of the State bonds to see that such an amount of the money paid as may be necessary be applied to the discharge of this prior indebtedness. The bonds representing this prior incumbrance may be purchased at reasonable rates, but they will not be sacrificed by the holders. In the mean time suit has been instituted, and is now pending in the United States circuit court for the district of Florida, for the purpose of subjecting the railroad property to sale, unless the original first-mortgage debt outstanding be paid up. You may have been advised that the purchaser of the State bonds will have nothing to do with the corporation, and may look entirely to the State; but a very little reflection must show the error into which this view may lead those who may purchase the State bonds. It is true a bond of this character is a State bond, and imports a State liability; but the law makes no specific provisions by which the holder of the bond can collect either the principal or interest from the State, and in the absence of such a provision any intelligent lawyer will advise you that the bondholder has no remedy in the courts by which principal or interest can be collected by judicial process from the people or out of their property. And even if such provision existed as a part of the law, it could not be enforced in a case where the bonds have been issued by means of a fraud upon that requirement of it which stipulates that the State should have been made secure by a good lien on unincumbered property as a precedent condition.

The sole reliance, then, of a holder of State bonds must be the good faith of the State, and that good faith under all the circumstances connected with the issue of these bonds will not be measured by the letter of the contract, but will be fixed entirely by the value of the security which the corporation has placed in the hands of the State, to indemnify it against loss, and that security should be the road-bed and franchise of the road itself, unsaddled by anterior laws.

I especially direct attention, in connection with this considera-
2348 tion of the State's security, to the provisions of section 13 of the "act
to perfect the public works of the State," which gives to the railroad company the privilege of paying off and discharging the lien taken by the State at any time before maturity of the debt, in the State's own paper, now immensely depreciated by reason of the great quantity issued during the past few years beyond its capacity to pay. It is very evident and ought to be patent to every one who will be at the pains to examine this provision, that it is to the interest of the railroad company to depreciate all the paper of the State—to depreciate the very bonds they are now selling, and the moment the bonds shall be sold Littlefield and associates will become the enemies of the holders, for their interest will clearly be to buy up the paper of the State—these very bonds will answer as good a purpose as any other and thus relieve their mortgage to the State, and the result will be that the purchasers will be left looking to the State when the security of the State is gone. Littlefield today can force $500,000 of State bonds upon the market and buy them at 25 cents, and can with them destroy the State security to the extent of a half million. You may rest assured that to that extent the people will think your bonds should be retired also. You must perceive that it would be great folly to make any investment in the State bonds, unless those investing shall secure an application of a sufficient amount of the money paid to a settlement of the incumbrances existing on the railroad property on account of the original first-mortgage bonded debt now outstanding.

But even after this shall have been done, it concerns the interest of capitalists to reflect upon the following facts additional to those already set forth.

1. The people of Florida have not the ability to pay this debt.

2. The legislature which passed the act referred to did not, to any extent, represent the taxpayers and property-holders of the State, and the legislature which fixed this indebtedness upon the State was notoriously corrupt and in the interest of a few railroad speculators, not identified even by citizenship with the people of Florida; and these men manipulated the votes of the legislators by corruption so open and flagrant that there are at this time indictments pending in the circuit court of Leon County against several of the legislators for receiving and against General Littlefield for paying bribes to secure the passage of the very acts under the provisions of which these State bonds were issued.

3. The whole series of acts both in and out of the legislature, including and beginning with the sale of railroads referred to in the first part of this communication, connected with the issue of these State bonds, has been dishonest, flagrantly corrupt, and going solely to aggrandize Littlefield, Hopkins, and a few others, their co-schemers and confederates; and it cannot be matter of surprise that the entire property-holding and taxpaying part of the people of Florida are not only adverse but hostile to the payment of a debt which they know to have been put upon the State by the combined fraud of their governor, their indigent legislators, and a set of sharks and financial free-lances under the leadership of Milton S. Littlefield, now president of the Jacksonville, Pensacola and Mobile Railroad Company. The people of this State, while
they earnestly desire the success of any railroad enterprise
2349 which is legitimate and conducted with honesty, would greatly
regret if foreign capitalists should make so injudicious an investment as a purchase of these State bonds must be. The State bonds, without the road as a security available for the benefit of the bondholders (which now is not the case), amount to nothing. And if there be any truth in a report now current that certain persons abroad have been already induced to make advances upon the State bonds, they should require such legislation to be had as will enable them to get this security. As a matter of course they can, by refusing to advance further, force the corporation to make any just contract within its corporate powers or that the legislature will authorize. If the holders of the State bonds had the simple authority to exchange securities with the State it would be a great advantage to them. It is certainly advisable, at any rate, that they get all the security they can. One hundred and sixty miles of completed road, after being relieved of its existing incumbrances, can certainly be made a good security for the cost of constructing a road of same distance, and this, with a mortgage also upon the newly constructed road, will be safe security. I ask that these suggestions may be considered.

Respectfully,

T. W. BREVARD, Jr.,
Counsel for Holders of First Mortgage Bonds
of P. & G. & T. R. R. Cos.

P. S.--I enclose herewith copies of the acts of the legislature referred to in the above communication, as officially published; also majority report of a committee of the assembly of the legislature of Florida, appointed under resolutions of that body to examine and take evidence concerning the conduct of Harrison Reed, governor, pending proceedings then inaugurated to impeach the governor upon charges of corruption in office, certain portions of which will be of some interest to you in connection with the history of the railroad manipulations to which reference is made in the above.

TALLAHASSEE, *February* 21, 1870.

His Excellency HARRISON REED,
Governor of Florida:

DEAR SIR: On behalf of parties holding original first-mortgage bonds of the (late) Pensacola and Georgia and Tallahassee Railroad Companies, I have been authorized to institute legal proceedings by an application for an injunction to restrain the issue of the State bonds in exchange for first-mortgage bonds upon the railroad property under the provisions of the act of the legislature passed at its late session, entitled "An act to alter and amend an act to perfect the public works of the State," the parties whom I represent, apprehending that by such issue of bonds as that proposed by the said law, their rights of lien would be imperiled.

I am satisfied, however, that such proceedings will not be necessary if your excellency shall agree with me in the following proposi-
2350 tions, viz: (1st) That the original first-mortgage bonds of the Pensacola and Georgia Railroad and the Tallahassee Railroad Companies, which remain outstanding and unpaid, incumber the said property with a lien prior to all others now existing, or that may be created; and (2d) that there can be properly no issue of first-mortgage bonds upon the said property until the outstanding unpaid first-mortgage bonds of the original issue shall be paid up (at the pro rata valuation fixed by the sale) and cancelled.

I am sure that should your excellency agree with me in these views, no bonds of the State will be signed and delivered to the parties who are the beneficiaries under the said act until after a redemption of the outstanding bonds referred to, in which event the right of the new company to rebond the property cannot be disputed.

Very respectfully, your obedient servant,

T. W. BREVARD, JR.

(Reply endorsed:)

I concur in the view of Colonel Brevard, and shall issue no bonds under the new law until the lien upon the road is satisfied.

(Signed) HARRISON REED,
Governor.

2351 *Exhibit C, attached to the cross interrogatories by the Florida Central Railroad Company.*

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY et al.

Articles of impeachment exhibited by the assembly of the State of Florida, in the name of themselves and of all the people of Florida, against Harrison Reed, governor of Florida, in maintenance and support of their impeachment against him for high crimes and misdemeanors in office, for incompetency and malfeasance, and conduct detrimental to good morals:

ARTICLE I. That said Harrison Reed, governor of Florida, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, unmindful of the high duties of his office, of his oath of office, and of the requirement of the constitution that he shall see that the laws are faithfully executed, did unlawfully and in violation of the constitution and laws of the State of Florida, cause to be issued, and did himself sign his official signature, as governor, to a large number of State bonds to the amount of five hundred and twenty-eight thousand ($528,000) dollars in excess of the amount of bonds authorized to be issued by the act of the legislature of the State of Florida, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,' ' approved June 24, A. D. 1869; approved January 28, A. D. 1870, with intent, then and there, to violate the said act, whereby the said Harrison Reed, governor of Florida, did, then and there, commit and was guilty of a high crime in office, of incompetency and malfeasance.

ARTICLE II. That in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, said Harrison Reed, governor of Florida, unmindful of the high duties of his office, of his oath of office, and in violation of the constitution of the State of Florida, and contrary to the provisions of an act entitled "An act to alter and amend an act entitled 'An act to perfect the public
2352 works of the State,'" approved June 24, A. D. 1869; approved
January 28, 1870, did, then and there, with intent to violate the constitution of the State and the act aforesaid, and without authority of law, fraudulently conspire to issue State bonds to the amount of one million of dollars ($1,000,000) for the purpose of purchasing the stock of the Florida, Atlantic and Gulf Central Railroad Company, for the use and benefit of persons and parties, and with full knowledge of and consent to said purpose, and in collusion with such persons and parties, for his and their pecuniary benefit, whereby said Harrison Reed, governor of Florida, did, then and there, commit and was guilty of a high crime in office, and of incompetency and malfeasance.

ARTICLE III. That said Harrison Reed, governor of Florida, unmindful of the high duties of his office, and of his oath of office, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, did cause to be issued and did, himself, sign his official signature, as governor, to one million dollars of State bonds, for the purpose of purchasing the stock of the Florida, Atlantic and Gulf Central Railroad Company, for the use and benefit of persons and parties, contrary to and in violation of the constitution of the State of Florida, and of the laws of the State of Florida, and especially in violation of an act of the legislature of the State of Florida, entitled "An act to alter and amend an act to perfect the public works of the State," approved June 24, A. D. 1869; approved January 28, A. D. 1870, and with intent to violate the laws of the State of Florida, and especially said act, whereby the said Harrison Reed, governor of the State of Florida, did, then and there, commit and was guilty of a high crime in office, and of incompetency and malfeasance.

ARTICLE IV. That Harrison Reed, governor of Florida, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, unmindful of the high duties of his office, and of his oath of office, and in violation of the constitution and laws of the State, and especially of an act entitled "An act to alter and amend," &c., did cause to be issued, and did, himself, sign his official signature, as governor, to four million dollars of State bonds, for the use and benefit of the Jacksonville, Pensacola and Mobile Railroad Company, in the

State of Florida, having full notice of the fraudulent title of said company to the property of the Pensacola and Georgia and Tallahassee Railroads, and with intent to violate the constitution and laws of the State of Florida, and especially of the act of the legislature of the State of Florida entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24, A. D. 1869, approved January 28, 1870, whereby the said Harrison Reed, governor, &c.

2353 In the United States circuit court, northern district of Florida, fifth judicial circuit. In equity.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS Prins, and others,
against
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, the Florida Central Railroad Company, and others.

The Florida Central Railroad Company objects to the interrogatories filed by the complainants in the above cause to be propounded to Sidney W. Hopkins and Frank H. Collins, in behalf of the complainants, and states grounds of objection, as follows:

It objects to the fifth interrogatory, because it is irrelevant and immaterial.

It objects to the sixth interrogatory on the same grounds.

2354 It objects to the seventh interrogatory on the same grounds, and because the matters about which the said interrogatory is propounded are res inter alias actae.

It objects to the ninth interrogatory in so far as it seeks to interrogate concerning contracts for the sale and delivery of bonds, because it is irrelevant and immaterial.

It objects to the 10th interrogatory because it is irrelevant and immaterial, and seeks to interrogate concerning matters which are res inter alias.

It objects to the 11th interrogatory because it is irrelevant and immaterial.

It objects to the 12th interrogatory on the same grounds.

It objects to the 13th interrogatory on the same grounds.

It objects to the 14th interrogatory on the same grounds, and because the matters inquired about, or some of them, are res inter alias, and because the testimony sought is hearsay, and not the best that the case admits of.

It objects to the 15th interrogatory because it is irrelevant and immaterial.

2355 It objects to the 16th interrogatory on the same grounds, and because it inquires about matters which are res inter alias, and because it seeks testimony which is hearsay, and not the best evidence the case admits of.

It objects to the 17th interrogatory because it is irrelevant and immaterial.

It objects to the 18th interrogatory on the same grounds, and because it seeks hearsay evidence, and not the best the case admits of.

It objects to the 19th interrogatory on the same grounds, and because it inquires about matters which are res inter alias.

It objects to the 20th interrogatory because it is irrelevant and immaterial.

It objects to the 21st interrogatory on the same grounds, and because it interrogates concerning matters which are res inter alias, if they have any existence at all.

It objects to the 22nd interrogatory on the same grounds.

2356 It objects to the 23rd interrogatory on the same grounds.

It objects to the 24th interrogatory on the same grounds.

Cross-interrogatories to be propounded by the Florida Central Railroad Company to Sidney W. Hopkins and Frank H. Collins, witnesses produced on the part of the complainants in the above entitled cause.

1st cross-interrogatory. If you say, in response to the 8th interrogatory, that your firm received from the governor of Florida any bonds, state the several times when you received such bonds, giving dates and places of their reception, and how many of such bonds were received each time, and the numbers of the bonds received each time.

2nd cross-interrogatory. If you say, in response to the 9th direct-interrogatory, that you sold any of said bonds, state the time, to
2357 whom, when, and where each sale was made, and the numbers of
the bonds sold each time a sale was made, and when, and to whom the several bonds so sold were delivered, and the prices at which they were sold, and who received the money from the purchasers of the bonds in each instance.

3rd cross-interrogatory. State whether, in December, 1870, or about that time, Harrison Reed, the governor of Florida, did not send to one Boissevain, or to him and others, in Amsterdam, Holland, a telegraphic dispatch in substance as follows: "Bonds recently recalled by the company. No provision will therefore be made for interest." State whether said telegraphic dispatch was not an answer to a telegraphic dispatch in substance as follows: "Being negotiating four million dollars
2358 of bonds issued by your State to the Jacksonville, Pensacola and
Mobile Railroad Company, beg to know by telegraph from you whether provision will be made for payment of interest, whatever the result of railroad tra'fic may be. Is the financial possition of the State really sound, and have the bonds undoubted security?" which was sent at or about that time to the said Harrison Reed, governor of the State of Florida, by the said Boissevain, or by him and others, from Amsterdam, in Holland. State all that you know about said telegraphic correspondence; state who the persons were who sent the said dispatch to Governor Reed, and to whom he sent the reply; where did they live; what was their occupation; were they or any of them members or officers of the bourse or stock exchange of Amsterdam, or connected in any manner with the sale of the said bonds; if so, what connection
2359 had they or any of them therewith; what degree of publicity was
given to the said telegraphic correspondence; was it made known to the members or directors or other officers of the bourse or stock exchange of Amsterdam, or to any, and which of them; was it known to the persons engaged in selling the said bonds, and to which of them; had any of said bonds been sold and delivered at that time?

4th cross-interrogatory. State the date and amount of each payment, and to whom made, and by what authority, or for what consideration made, if you say, in response to the 20th direct interrogatory, that you made any such payments as you mentioned in the said 20th interrogatory.

5th cross-interrogatory. Read the printed paper attached hereto marked Exhibit A, being a copy of a communication dated at Jacksonville, Florida, February 8th, 1871, purporting to have been
2360 addressed by E. M. L'Engle to Hoje Boissevain, bankers, Amster-
dam, Holland, and state when and where you first saw the original, or what purported to be the original, or a copy of the said communication, and who had it; where, when, and from whom did you first hear of it; where, when, and from whom did you subsequently hear of it, as often as you did hear of it. State whether or not the said communication was received by the person to whom it was addressed, and whether such person or persons were members or directors or other officers of the bourse or stock exchange of Amsterdam, Holland; where did he or they live, and what was his or their occupations; state whether such person or persons were connected in any manner with the sale of the bonds referred to in the telegraphic correspondence mentioned in
2361 the said communication, and, if so, how they were connected
therewith. State what degree of publicity was given to said communication; was it made known to the members or directors or other officers of the bourse or stock exchange of Amsterdam, or to any, and which, of them; was it known to the persons, or to any, and which of them, engaged in selling the said bonds; was it known to John Collinson, of London, in England; when, as nearly as you can state, was the said communication received or known in Amsterdam? State all you know upon the subject. What action was taken thereupon?

6th cross interrogatory. Read the paper annexed hereto marked Exhibit B, being a copy of a communication dated at Tallahassee, Florida, June, 1871, purporting to have been addressed by T. W. Brevard, jr., to the chairman of the States and Corporations Arrears Committee, 193, 194, 195, Gresham House, London, England, and state where and
2362 when you first saw the original, or what purported to be the
original, or a copy, of the said communication, and who had it; where and when and from whom did you first hear of it. State whether or not the said communication was received by the person or persons to whom it was addressed, and whether such persons or persons were members of the bourse or stock exchange at Amsterdam, in Holland; where did he or they live, and what were his or their occupations. State whether such person or persons were connected in any manner, and in what manner, with the sale of the bonds issued by the State of Florida in aid of the Jacksonville, Pensacola and Mobile Railroad. State what degree of publicity was given to the said communication; was it known to the members or directors or other officer of the bourse or stock exchange of Amsterdam, or to any and
2363 which of them; was it known to the persons, or to any and which
of them, engaged in selling the said bonds of the State of Florida; was it known to John Collinson, of London, England. When, as nearly as you can state, was the said communication, or a copy of it, received or known in Amsterdam, or received by or known to the persons, or any of them, who were selling said bonds of the State of Florida; what action was taken upon it. State all that you know on the subject.

7th cross-interrogatory. Read the printed paper annexed hereto, marked Exhibit C, being a copy of articles numbered one, two, three, and four of impeachment exhibited by the assembly of the State of Florida against Harrison Reed, governor of Florida, and state when & where you first saw the said articles of impeachment; state
2364 when and where you first became informed that articles of im-
peachment had been exhibited by the assembly of the State of

Florida against Harrison Reed, governor of Florida, for the causes stated in the said articles, or for any of the said causes; were the said impeachment and the cause or causes thereof, as set forth in said articles or otherwise, known to the members or directors or other officer of the bourse or stock exchange of Amsterdam, or to any and which of them, and when did they become so known; were they known to John Collinson, of London, England, or to the persons, or to any and which of them, engaged in selling the said bonds of the State of Florida issued in aid of the Jacksonville, Pensacola and Mobile Railroad, and when did they become so known, as nearly as you can state.

2365 8th cross-interrogatory. State whether or not any member or members, officer or officers, of the bourse or stock exchange of Amsterdam, in Holland, have ever been expelled, deposed, suspended, required to resign or withdraw therefrom, fined, censured, or otherwise punished or reflected upon by the said bourse's or stock exchange's government guild or association for improper practices or conduct, whether of commission or omission, in connection with the negotiation or sale or putting upon the market of said bonds (or any of them) of the State of Florida, issued in aid of the Jacksonville, Pensacola & Mobile Railroad Company; if yea, state who such member or members, officer or officers, were; whether he or they were expelled, deposed, suspended, required to resign or withdraw, fined or censured, or how otherwise punished or reflected upon; what was the improper practice or practices or conduct. State all that you know on the subject.

JAMES M. BAKER,
Sol. for Fla. Cen. R. R. Co.

Filed Jan'y 15th, 1879.

P. WALTER, *Clerk.*

2366 In the United States circuit court, northern district of Florida, 5th judicial circuit. In equity.

J. FRED SCHUTTE, JAN PRINS, ADRIANUS Prins, et al.,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et als.

Cross interrogatories to be propounded to Sidney W. Hopkins and Frank H. Collins, witnesses to be examined in behalf of the complainants in the above-entitled cause, and residents of the city of New York. Also objections to interrogatories; such cross-interrogatories and objections being proposed by the trustees of the internal improvement fund of Florida, defendants:

First (1). Defendants object to the fifth (5th) direct interrogatory because it is immaterial and irrelevant.

2367 Second (2). Defendants object to the sixth direct interrogatory because it is immaterial and irrelevant.

Third (3). Defendants object to the seventh direct interrogatory because it is immaterial and irrelevant.

Fourth (4th). Defendants object to the 8th, 9th, 10th, 11th, 12th, & 13th direct interrogatories because the same are immaterial and irrelevant.

Fifth (5th). State fully how you acquired the knowledge or information enabling you to make your answer to the fourteenth direct interrogatory, or to make the statements set up therein.

Sixth (6th). Defendants object to the interrogatories of complainant numbered from 15 to 24 inclusive, because they are immaterial and irrelevant.

GEO. P. RAINEY,
Sols. for Trustees Int. Imp. Fund.
D. S. WALKER,
Att'y for Trustees I. I. Fund.

Filed Jan'y 6, 1878.

P. WALTER, *Clerk.*

2368 In the United States circuit court, fifth circuit, northern district of Florida.

J. FRED. SCHULTE, JAN PRINS, ADRIANUS Prins, and others,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et als.

Additional cross interrogatories to be propounded to Sidney W. Hopkins and Frank H. Collins, of New York, witnesses for complainants.

First. If, in response to the thirteenth (13th) direct interrogatory, you say that you accepted any drafts for any money drawn by said company, please state what those drafts were, by whom drawn, and give the amount. Be good enough also to state whether any other drafts were drawn upon you for money to result from the sale of bonds which had been placed in the possession of T. B. Coddington. By whom
2369 were such drafts drawn? For what amounts? On what account? Were those drafts paid by you at maturity? If not paid, why did you fail to pay them?

D. S. WALKER,
GEO. P. RAINEY,
Sols. for Trustees I. I. Fund.

2370 In the United States circuit court, fifth circuit, northern district of Florida.

J. FRED. SCHULTE, JAN PRINS, ADRIANUS Prins, and others,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et als.

Additional cross-interrogatories to be propounded to Thomas B. Coddington, of New York, a witness in behalf of complainants.

First. If, in response to the ninth (9th) direct interrogatory, you say that you presented a draft drawn by the J., P. & M. R. R. Co., by its president, Milton S. Littlefield, to S. W. Hopkins & Co., and that acceptance of said draft was refused, or that the draft was accepted and not paid, please say why it was not paid. Was it not to be paid by
2371 understanding between the drawer, payee, the acceptors of the draft from the proceeds of the sale to be made by S. W. Hopkins & Co. of the thousand State bonds delivered by you to them? Did not S. W. Hopkins & Co. fail, by themselves or their agents, to effect sales

of the said last mentioned bonds? Was not the sale of these bonds enjoined by an English court?

D. S. WALKER,
GEO. P. RAINEY,
Sols. for Trustees I. I. Fund.

Filed Jan'y 9, 1879.

P. WALTER, *Clerk.*

2372 *Exhibit A.—Interrogatories to be propounded to T. B. Coddington, a witness to be examined for complainant.*

In the U. S. circuit court, fifth judicial district, northern district of Florida.

WESTERN DIVISION OF THE WESTERN N. C. R. R. Co..
vs.
GEORGE F. DREW, THE FLORIDA CENTRAL R. R. Company, et al.

Answer of T. B. Coddington.

2373 Circuit court of the United States, northern district of Florida, at Jacksonville.

To the judges of the circuit court of the United States for the 5th circuit and northern district of Florida:

The separate answer of Thomas B. Coddington, to the bill of complaint exhibited against him by the Western Division of the Western North Carolina Railroad Company, in which suit George F. Drew, governor of the State of Florida, The Florida Central Railroad Company, and others, together with him, the said Coddington, are made parties defendant.

This defendant, saving and reserving unto himself all and all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's bill of complaint contained, and insisting upon the several special matters in this answer set forth, as if he had plead the same, or had demurred to said bill, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, answering, saith:

2374 I. That the bill should be dismissed as to him; because he says that it does not allege that this defendant is a citizen of the State of New York, but avers that he is a citizen of New York, and this defendant alleges that this allegation of citizenship is not sufficient to give the court jurisdiction of this defendant. Wherefore he prays that the bill be dismissed as to this defendant, and subject to the foregoing objection to the jurisdiction of this court, and claiming the benefit thereof as if he had specially demurred to said bill.

This defendant saith: First. That he absolutely denies all, each, and every charge of fraud or of fraudulent intent alleged against him by the complainants, and avers that the whole of the transaction, and each and every act (relative to the bonds which are the subject of this suit), were, so far as they were done by this defendant, or so far as he had any knowledge of them, and so far as this defendant was connected with

them, good, honest, fair, legitimate, and lawful acts, legally and morally; and that this defendant's whole connection with these bonds was had for a good and lawful purpose, and as this defendant then believed, for the benefit of the parties in interest; and the result this defendant believed, would eventually be, that the line of railroad would be built, to the great benefit of the people and the State of Florida; this defendant was also informed, and he believed it, and he acted upon that belief, that the State of Florida had by law authorized the governor to exchange State bonds for the bonds of the railroad companies, and that S. W. Hopkins & Co. had sold in England State bonds that were then authorized to be issued, and had agreed to deliver to the purchaser four millions of said State bonds at a given time; and further, that it was essential for the consummation of the contract that the bonds should
2375 be delivered as stipulated, and that Edward Houston would, it
was supposed, deliver one million of said bonds to this defendant in trust for him, if this defendant would accept the trust, and that the receipt and delivery of this million of bonds held by Houston was the obstacle in the way of realizing the money from the sale of the bonds, and that if this million of bonds could be delivered in time to complete the contract of sale in London, that the whole enterprise would be a success, and the railroad would be speedily constructed westward as designed by the legislative authority.

This defendant supposed that he was undertaking a matter that would be a great public and corporate benefit. This defendant had full faith in these representations, and acted upon them, and was most anxious that this Florida line of railroad should be completed westward through the State of Florida. This defendant had been the good business friend of the Florida railroads; that when the Pensacola & Georgia Railroad Company was building its road, this defendant sold that company (Edward Houston being its president) large quantaties of railroad iron, amounting to more than two hundred thousand dollars, on credit, and took the notes of the company therefor, and when that company failed to pay its notes, he compromised with them, and took the mortgage bonds of the company in payment at sixty cents on the dollar, and years afterwards this defendant's partner sold them at the solicitation of Edward Houston to George W. Swepson, while this defendant was in Europe, at fifty cents on the dollar. After the war this defendant again credited the company, and used all his best endeavors to assist the company and advance its credit, and gave up his coupons (and induced his friends to give up their coupons) past due for alleged preferred stock, to the amount of over sixty thousand dollars, so as to save that railroad from bankruptcy and sale to its stockholders and to the people of Florida. And that this defendant did this because he
2376 had entire faith in the character, honor, and integrity of Edward
Houston, its president, and gave these past due coupons, and obtained those of his friends, relying on the representations and statements of Edward Houston, the president of the company, not supposing for one moment that Houston was deceiving this defendant, which afterwards proved to be the case. This defendant, after hearing that the Pensacola & Georgia Railroad had been sold, as the other Florida railroads were, by the trustees of the internal improvement fund, and that new companies were organized, and that Houston and Milton S. Littlefield were the owners of more than two-thirds of the whole line of railroads, from Jacksonville westward, and that an exchange of bonds, of the State, for railroad bonds, had been authorized by law, and that ese State bonds had been contracted to be sold and delivered to par-

ties in London, and that there was no doubt of the success of the new company in being able to speedily build the Florida railroads through to Mobile, Alabama. That the obstacle in the way was the delivery of the bonds in London in time, to the purchasers, according to the contract. And this defendant agreed to assist in taking this million of dollars of State bonds to London for this purpose, believing, as aforesaid, that it was a good and great public and corporate enterprise, and one to which he wished every success. That with this intent and purpose this defendant went to Florida in January, 1871, and then obtained the bonds, and afterwards, delivered them to S. W. Hopkins & Co., in London, in April, 1871, by the positive and peremptory order of Edward Houston, for whose account, and in trust for whom, this defendant received the bonds, and also by the order and direction of Milton S. Littlefield, the president of the Jacksonville, Pensacola & Mobile Railroad Company, and also by the order and direction of Harrison Reed, the governor of Florida, all of which will more fully appear in this his answer, hereafter in detail.

2377 II. This defendant says that he has had to pay many thousands of dollars of his own money because he obeyed the orders of the said Houston.

III. This defendant says that he never heard of these complaints, or that such a corporation existed, until long after he had delivered the bonds to Hoppkins & Co., in London. This defendant charges that if these complainants had any charge or complaint against him they ought to have brought it before this time, and not wait for more than six years to bring suit against him, and then instead of suing him at his domicile at the city of New York, bring this suit against him in Florida.

IV. This defendant says that if their bill be true, of which he knows nothing, and if Littlefield and Swepson embezzled the moneys of these complainants prior to the passage of the acts of 1869 and 1870 authorizing the bonds to be issued, as the complainants allege in their bill, that these complainants committed a gross fraud on the State of Florida and its people and on this defendant in not letting the embezzlement be known so as to advise the authorities of Florida and the public and this defendant not to deal with the aforesaid parties. This defendant, so far from believing that these gentlemen were the criminals that the complainants in this their bill, allege them to be, says that George W. Swepson and Milton S. Littlefield were, prior to his receiving these bonds, represented to him to be men of capital and of good character, or this defendant would not have had any connection with 2378 them. That he did not know Swepson at all in any part of this transaction, and has never seen him, and his only knowledge of him was that he had been introduced to defendant's partner by a banker, and, at Houston's solicitation, this defendant's partner had sold Swepson the aforementioned Pensacola and Georgia first-mortgage bonds prior to the sale of that road in 1869, and while this defendant was a resident of London.

That if what these complainants say about these gentlemen in their bill is true (of which this defendant has no knowledge and does not assert), this defendant says, that it was the duty of these complainants to have prevented them from obtaining the passage of the statutes of Florida, of 1869 and 1870, by which they obtained these public securities; that they, the complainants, should have published and declared the acts of embezzlement, now in their bill of complaint alleged, instead of waiting till the securities were issued, and innocent parties, and this defendant, and the public of Florida had dealing with these securities, to their great injury, as this litigation shows.

V. This defendant absolutely denies that he had any knowledge of any of the illegal acts charged by these complainants against Littlefield, Swepson, or Houston, or either of them, relating to the embezzlement or fraudulent use by them, or either of them, of the moneys, securities, or other property of these complainants as in their bill alleged. This defendant says that he did not know that there ever was such a company as these complainants, or such a corporation in existence, and never knew that either Littlefield or Swepson ever were agents or officers, or in any way connected with such corporation, until long after he had delivered said bonds in April, 1871, and then only by hearsay, and in years afterwards by pleadings in certain suits, this one among the number.

2379 VI. This defendant further says that he delivered in London one thousand State bonds, numbered 3001 to 4000, inclusive, on the eighteenth of April, A. D. 1871, to S. W. Hopkins & Co. (as will hereafter more fully appear in this answer), and that he is informed and believes that after this defendant had delivered up the whole thousand bonds, that 800 of these identical bonds, numbered 3201 to 4000, both inclusive, were afterwards, and in the year 1872, in the hands of a receiver of the supreme court of the city and of the State o New York, tied up by order of that court, in two actions then pending, in each of which this complainant, The Western Division of the Western North Carolina Railroad Company, was a party defendant.

And this defendant is informed and states, as will more fully appear by reference to Schedule I of complainant's exhibits, attached to this bill, that these complainants assisted to procure, and did consent to, and did thereby obtain an order on the 6th day of December, 1872, by which John Collinson did receive 800 of these identical bonds, being numbered 3201 to 4000, inclusive, and carried the same to England to sell according to the understanding and agreement between the said North Carolina Railroad Company and the other parties to that suit; and that if Collinson should buy the bonds, the proceeds were to be divided amongst certain parties. And these complainants were, of the proceeds of these identical bonds, to receive the sum of two hundred thousand dollars, according to a consent decree obtained in said court on the day of December, A. D. 1872, which will more fully appear by reference to the consent and stipulation made by complainants, and a copy of this order filed with this answer, and marked Nos. 1 and 2.

This defendant avers the facts to be, that these complainants caused
eight hundred (800) of these bonds, after this defendant had de-
2380 livered them in London to S. W. Hopkins & Co., to be taken from
a receiver of a court in New York, where they then were, in De-
cember, 1872, and sent to England for sale. And this defendant says that these complainants are estopped from denying that they aided and assisted and attempted to have these bonds sold long after this defendant had parted with the said bonds; and that it is a gross wrong on this defendant to have such charges brought against him by these complainants relative to these bonds.

VII. This defendant prays that the copies of the stipulations and consents of these complainants, filed herewith, marked Nos. 1 and 2, may be taken as a part of this his answer, and he says that when these orders were obtained he was not a party, and had no knowledge thereof, but subsequently, on hearing thereof, in the year 1877, he applied to said court, and was made a party thereto, and filed his answer in 1877, and in his answer insisted that the lien of this defendant therein admitted by these complainants and the Jacksonville, Pensacola & Mobile Railroad Company had priority and was superior to all other liens for the payment of the debt therein admitted to be due; and this defendant says that the said suit is still pending and undecided in said court in the said City and State of New York.

VIII. This defendant further says, that he has been informed and believes, and so charges, that these complainants, on or about the 10th of April, A. D. 1870, and prior to the amendatory statute of 1870 (by the authority of which these bonds were issued), entered 2381 into a written agreement with the said Milton S. Littlefield and George W. Swepson, by which it was agreed that the said Littlefield should procure bonds of the State of Florida by legislation, substantially as was afterwards done by the passage of the amendatory act of 1870; and that he, Littlefield, should thus obtain bonds of the State of Florida in exchange for railroad bonds; and that the said State of Florida bonds, thus obtained, should be sold and the proceeds applied to the following purposes, to wit: one-half was to be paid to these complainants for the debts due by Littlefield and Swepson to these complainants, and the residue should be retained by the Jacksonville, Pensacola & Mobile Railroad Company. And that under and in accordance with this unlawful and fraudulent contract on the people of Florida, and the minority stockholders of the Florida railroad companies, and this secret agreement, the said Littlefield subsequently caused and procured the passage of the act of 1870, which authorized the issue and exchange of these bonds, all of which was then unknown to this defendant, and was kept secret among the parties to the said agreement. And the defendant says that these complainants, by the said agreement, made the said Littlefield their agent, and that these complainants are now estopped from denying the legality of the issue and exchange of these bonds; and this defendant asks that he may have the benefit of the decision of Mr. Justice Bradley, heretofore made in this case, and the judgment of this court, that for and on account of this agreement these complainants are estopped, as in the said judge's opinion then declared.

IX. This defendant further says, that he is informed and believes that, in accordance with a settlement made between these complainants 2382 and the said M. S. Littlefield, these complainants received of the proceeds of the sale of State of Florida bonds, issued, under the act of 1870, to the Jacksonville, Pensacola & Mobile Railroad Company, the sum of fifty thousand dollars at one time, from S. W. Hopkins & Co., the fiscal agents of the said Jacksonville, Pensacola & Mobile Railroad Company. And this defendant avers that he believes that these complainants are justly chargeable with the injuries that resulted from the alleged improper use of those bonds and their proceeds, and the failure to build the railroad westward; and this defendant says that there can be no doubt that if the stockholders or the people of Florida, or the legislature, had known that when the legislature passed the acts of 1869 and 1870, that the bonds thus authorized to be issued were to be sold, and the proceeds applied to repaying the embezzlement of the moneys and securities of this North Carolina corporation by Littlefield, Swepson, or by any other person, that the legislature would have refused to pass said acts, and, if passed, that no business man would have had anything to do with either the said persons or the bonds. And this defendant charges that the complainants have in their bill shown that, for and on account of their concealment of the alleged acts and defalcations of Littlefield and Swepson (if what these complainants say be true), they have debarred themselves of the relief prayed for in their said bill, and have committed a gross wrong on this defendant and the public, and especially the people of Florida, by concealing the same until long after the legislation was had, and the bonds issued, and dealt with by this defendant and other innocent parties.

X. This defendant further says that the Jacksonville,
2383 Pensacola and Mobile Railroad Company is indebted to him in the sum
of forty thousand dollars, with interest thereon, which is still due and unpaid, and that this defendant has a lien on 568 of these bonds for the payment of said sum of money; that these complainants and the said railroad company are estopped of record from denying the aforesaid claim and lien of this defendant, because he says that in the said suit in the supreme court of the State of New York, at a special term thereof, held in the city of New York, in said State, on the 18th day of January, A. D. 1873, these complainants and the said railroad company appeared before the Hon. George C. Barrett, justice, then presiding in said court, and then hearing the said suit of John Collinson, plaintiff, against S. W. Hopkins &. Co., the Jacksonville, Pensacola and Mobile Railroad Company, the Western Division of the Western North Carolina Railroad Company, and others, being defendants; that these complainants and said railroad company, with others, did then and there of record in said suit, among other things, admit, and in said cause did in writing declare that this defendant, "Thomas B. Coddington, had on" the said 29th day of August, A. D. 1872, a claim and "lien, to the amount of forty thousand dollars and" interest from the 29th day of August, 1872, on one "thousand of the said twelve hundred bonds so delivered" to the said John Collinson upon the footing of "the said agreement with him, and the said decree of" the said court of chancery, and such lien of said "Thomas B. Coddington attached and still attaches to" the proceeds, or so much thereof as may be necessary," of the said one thousand bonds, and he is entitled to "be paid out of such proceeds of said sum of forty" thousand dollars United States currency and interest "as aforesaid."

And this defendant says that these complainants are of record forever estopped from denying the lien and claims of this defendant as is
above set forth, and on the 13th day of January, 1873, by them
2384 admitted to be a lien on said bonds from the 29th day of August,
A. D. 1872.

XI. This defendant says that on the 12th day of January, A. D. 1871, he gave Edward Houston the written instrument marked Schedule F; that, although by the said instrument it appears that Houston delivered and that this defendant received one thousand Florida Central Railroad Company first-mortgage bonds, payable to the State of Florida, for one thousand dollars each, yet this defendant alleges and says that the following are the actual facts:

That on the 11th day of January Houston, taking a servant with him and accompanied by this defendant, went to the office of Col. Robert H. Gamble, and received from Gamble the one thousand railroad bonds described in Schedule F.

That thereupon Houston and this defendant, and Houston's servant carrying the bonds, went immediately to the governor's office in the capitol, and the said one thousand railroad bonds were then and there given to Harrison Reed, governor of Florida, in the said executive chamber, and the said Governor Reed then delivered therefor one thousand State of Florida bonds of the face value of one thousand dollars each, and numbered from 3001 to 4000, inclusive, which said bonds this defendant understood were issued under the statutes of 1869 and 1870, described in complainant's bill.

That Houston directed his servant to take the package of State bonds and carry them to this defendant's room in the hotel; that Houston and this defendant, together with the said servant then carrying the bonds, went to the hotel, where the State bonds were by Houston left with this defendant.

2385 That this defendant, the next morning, at Houston's request, delivered to Houston the paper marked Schedule F, and the said Littlefield, as president of the said Jacksonville, Pensacola and Mobile Railroad Company, gave his full authority and assent thereto, and signed the same in his official capacity.

And this defendant says that, in the manner aforesaid, he did receive the said one thousand State of Florida bonds, numbered 3001 to 4000, and that the same were received by the authority, assent, and approval of the said president of the said Jacksonville, Pensacola and Mobile Railroad Company, and in trust and for account of said Edward Houston.

And this defendant says that the disposition he was to make of the said bonds and their proceeds, if any were received by him, is set out in said Schedule F.

That the governor told this defendant, in Houston's presence, in the executive chamber, at the time of the delivery of the said State bonds, for this defendant not to take the bonds out of the State until the governor had made arrangements for the payment of certain moneys to the State of Florida with the said President Littlefield.

That, in accordance with this direction of the governor as aforesaid, this defendant remained with the bonds in Tallahassee until he received the following written instructions, which are in the words and figures following, to wit:

PRESIDENT'S OFFICE, JACKSONVILLE, PENSACOLA
AND MOBILE RAILROAD COMPANY,
Tallahassee, Fla., Jan. 12, 1871.

T. B. CODDINGTON, Esq.,
Tallahassee, Florida:

MY DEAR SIR: I have the honor to give you the following instructions in relation to the bonds, or the proceeds thereof, which you have received from the governor in exchange for railroad bonds;

2386 1st. The bonds will be delivered to the parties in London, England, who have purchased the four thousand bonds issued in aid of the Jacksonville, Pensacola and Mobile Railroad, and collect the pay therefor.

2d. You will pay the following-named parties, viz: Edward Houston, $163,000; M. D. Papy, $16,000; Judge Wescott, $5,000; Gamble, $15,000; Col. J. P. Sanderson, $57,000. I state the amounts not exactly, but about the sums, as you have them exact, upon each party delivering to me, or to my order, all stocks, bonds, coupons, notes, drafts, acceptances, or whatever the said is to pay for; but should any of the parties whose names are mentioned above refuse to receive the said amounts after it had been offered to them, and after Colonel Houston has been paid, then the said amounts shall be paid to me or to my order.

3d. The balance of the money will be placed to the order of his excellency Harrison Reed, governor of Florida, to pay indebtedness to the State.

Truly yours,

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

P. S.—This letter is so far modified as to conform to the letter or receipt given by me to Edward Houston, and approved by me.

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

T. B. CODDINGTON, Esq.:

You will please place to my credit, in the National Trust Company of New York City, the amount called for in the above arrangement either by wire or letter, and oblige,

HARRISON REED,
Governor of Florida.

2387 And this defendant having received the above instructions from the said President Littlefield, and the governor of Florida and the said Houstoun being fully advised thereof and assenting thereto, this defendant having first, personally, bade good-bye to all the parties, was making his arrangements to return to New York by the railroad from Tallahassee, and so informed the president of the road; thereupon, President Littlefield directed this defendant to go by the way of Thomasville and Charleston; and the said Littlefield informed this defendant that he (President Littlefield) had provided a carriage, and that for the safety of the bonds, he, Littlefield, would send him by his carriage (accompanied by his secretary) to Thomasville, Georgia, where this defendant could take the rail, and that his secretary, for safety to the bonds, would accompany this defendant as far as Charleston. That, as directed by the said Littlefield, this defendant went in the said carriage to Thomasville, and thence by rail to New York; and that the secretary of the said Littlefield did accompany this defendant as far as Charleston from Tallahassee.

And that after the arrival of this defendant in New York, he proceeded by the first steamer to Europe, and reached the city of London with the bonds as speedily as practicable and without delay.

That this defendant, having thus received the said State bonds on the 11th day of January, A. D. 1871, retained and kept them in London, England, until the (18) eighteenth day of April, A. D. 1871, because he could not get the money for them, when this defendant, having been peremptorily ordered by the said Edward Houston, did, on said eighteenth day of April, A. D. 1871, deliver the said one thousand State bonds, numbered 3001 to 4000, inclusive, to S. W. Hopkins & Co., London, England.

And this defendant says that, as aforesaid, he received said one thousand bonds, Nos. 3001 to 4000, on the 11th of January, A. D. 1871,
2388 and delivered them as ordered on the 18th day of April, A. D. 1871, in Lon-don, to S. W. Hopkins & Co. And this defendant says the orders and directions to him to deliver the said one thousand bonds are as follows:

That he received in London the following message by cable from Edward Houston:

Atlantic cable message. Station from Savannah.

From E. Houston to Coddington, care Hopkins, London.

Deliver bonds to Hopkins. Everybody protected.

And this defendant also received the following from Edward Houston:

SAVANNAH, GA., *April 11th*, 1871.

T. B. CODDINGTON, Esq., *London :*

DEAR SIR : I hereby authorize and request you to deliver to Messrs. S. W. Hopkins & Co., of London, the one thousand Florida State bonds, of one thousand dollars each, received by you from the State of Florida, in exchange for a like number and amount of the bonds of the Florida Central Railroad Company, the same having been delivered to you by me, to be held in trust, as per your receipt, dated January 11, 1871, which I now surrender herewith, I having no further lien on or against either of the above mentioned bonds.

Yours respectfully,

E. HOUSTON.

Also the following :

TALLAHASSEE, FLA., *April 6th*, 1871.

SIR : I hereby recall my letter of instructions to you, dated January 12, 1871, and also all instructions subsequently given ; and now direct
2389 you to deliver to Messrs. S. W. Hopkins & Co., of 58 Old Broad street, London, the one thousand bonds of one thousand dollars each, to wit, one million dollars of the State of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, now held by you, as trustee, whenever Edward Houston, esq., shall authorize and direct you so to do ; imposing upon you the single duty of procuring from Messrs. S. W. Hopkins & Co. their signature to the written agreement entered into with you, which is intended to fix upon them the responsibility of carrying out my original orders, and relieving you therefrom.

M. S. LITTLEFIELD,
Pres. J., P. and M. R. R. Co.

To T. B. CODDINGTON, Esq.

And on the face of this instrument and across the writing was the following :

I hereby approve of and ratify this order.

HARRISON REED,
Governor of Florida.

I do hereby authorize and request T. B. Coddington, esq., to deliver the within mentioned bonds to S. W. Hopkins & Co., of London, as I have no further lien against them.

E. HOUSTON.

Which was communicated to me by my firm in New York, prior to the cable from Houston, ordering me to deliver the bonds.

XII. This defendant further says that the said S. W. Hopkins & Co. had also a house in New York as well as in the city of London, and
2390 were the same firm and composed of the said parties ; and that the said S. W. Hopkins & Co. were then the fiscal agents of the State of Florida, and of the said Jacksonville, Pensacola and Mobile Railroad Company ; and that, as aforesaid, this defendant, as thus directed, did deliver said one thousand bonds, numbered 3001 to 4000, inclusive, to said S. W. Hopkins & Co., in London, and obtained their signature, as in said instructions directed ; that having delivered the said bonds of the 18th of April, as directed by cable from Houston, that afterwards the said S. W. Hopkins & Co. sent a message by cable to their New York house, notifying them of the receipt of the bonds—and thereupon the New York house of S. W. Hopkins & Co. sent the following letter to the partner of this defendant, and also sent Mr. Nichols the original

receipt (Schedule F of complainant's bill), which this defendant had given to Houston, as aforesaid, dated April 11th, to deliver the bonds, all of which the defendant was advised of by his said partner, as aforesaid.

That acknowledgment and letter is as follows:

S. W. HOPKINS & CO.,
71 BROADWAY, NEAR WALL STREET,
New York, *April* 19, 1871.

GEO. L. NICHOLS, Esq.:

DEAR SIR: A cablegram received this morning from our London house, announces that Mr. Coddington has delivered the bonds. Enclosed please find Mr. Coddington's original receipt to Mr. Houston, dated Tallahassee, January 11th, 1871; also Col. Houston's authority for the delivery; please acknowledge receipt of these documents; we should be glad to know if you have anything from Mr. Coddington, confirming our despatch.

Very truly yours,

S. W. HOPKINS & CO.,
Per L. L. SPRING.

2391 XIII. This defendant further says that these bonds were delivered by the order of the Florida Central Railroad Company, and that the exchange of the railroad bonds for the State bonds was made by the authority of the said Florida Central Railroad Company.

And that at a stockholders' meeting of the Florida Central Railroad Company, duly assembled in accordance with law, and after this defendant had received the said State bonds, as above stated, the following resolution was offered at said stockholders' meeting, to wit:

"Resolved, That Edward Houston do place the bonds referred to in the preamble and resolutions of the stockholders, adopted June 20th, 1870, in the hands of S. W. Hopkins & Co., for the purpose mentioned in said resolutions, subject to the same exceptions as therein expressed with respect to the proportion thereof applicable to the stock owned by other parties, and according to the same terms therein mentioned."

And this defendant has been informed and believes that said resolution was passed by a large majority of said capital stock, and was and is of lawful and binding force on said railroad company, and on all and every of its stockholders, and this resolution authorized the exchange and delivery aforesaid.

XIV. This defendant further says that the complainants are estopped from denying the legality of the said exchange of bonds, or of their delivery to said S. W. Hopkins & Co., because he says that, as will appear by an examination of the case in the supreme court of the State of Florida, wherein the Florida Central Railroad Company and
2392 others were appellants, and the State of Florida and others were respondents, and in which case the legality and validity of the issue of the said railroad bonds and the exchange of the State bonds therefor, and the obligation of the said railroad company therefor was involved, the said supreme court of Florida did decide that after this defendant had received the said bonds that the foregoing resolution was adopted at a stockholders' meeting, and the supreme court did further, in said case, declare and decide that the resolution was adopted.

"The bonds here referred to are the bonds now held by the State. So far as the exchange of these bonds by the company is concerned, here is its express authority given for it, and that must be the end of the matter."

This defendant says that the same will be found in the XV volume of Florida Reports, at pages 709 and 710, and that the same is a public record, and published by authority of the State of Florida, to which this defendant begs leave to refer.

And this defendant says, as advised by counsel, that these complainants to this bill have had all their rights adjudicated in the aforesaid case, as to the exchange, issue and delivery of these bonds, and that they are estopped from denying the same, if the complainants are held to be the legal or equitable stockholders of the Florida Central Railroad Company.

This defendant therefore alleges, from the facts as before stated as to his receiving these bonds, and as to his delivering them, that as soon as he did, in accordance with the aforesaid instructions, deliver them to the said S. W. Hopkins & Co., of London, there was no further obligation or liability resting upon this defendant, as he obeyed the instructions of all the parties interested, as heretofore shown.

XV. This defendant further says that he never paid any
2392½ moneys to John P. Sanderson, nor to Flagg, nor to M. D. Papy,
but that he understood and was informed that they were paid the said sums specified in Schedule F by S. W. Hopkins & Co. And that this defendant never paid any money to Governor Reed, nor to any other person except to Houston and, as hereinafter mentioned, to Judge Wescott.

XVI. That Judge Wescott insisted on selling his stock, and that this defendant gave the said Wescott his draft on T. B. Coddington & Co., of New York, before this defendant left Florida, for the price agreed upon, and that the firm of this defendant paid the said draft, but that this sum which defendant paid Judge Wescott for his stock, $3,845.23, was refunded to defendant's firm by S. W. Hopkins & Co. And this defendant was subsequently informed that Hopkins & Co., by order of M. S. Littlefield, turned over the certificate of Judge Wescott's stock to said Littlefield.

XVII. That this defendant, in New York, on 17th January, 1871, received from S. W. Hopkins & Co., $5,000 for Edward Houston, and this defendant paid out the said $5,000 by Houston's order; and that in 1871 this defendant received for the said Edward Houston from S. W. Hopkins & Co., of London, $48,955, which this defendant sent to Earle & Perkins, for the said Houston, and was duly received by the said Houston, making, in all, the sums of $53,955 which this defendant received from S. W. Hopkins & Co., and paid to Edward Houston, prior to this defendant delivering up said one thousand bonds. This defendant turned over and delivered up said one thousand bonds to
2392¾ said S. W. Hopkins & Co., on the said 18th day of April, A. D.,
1871. That the aforesaid sums of money were not derived from the proceeds of said bonds, Nos. 3001 to 4000 inclusive.

XVIII. This defendant further says that he received no benefit whatever from the said transaction relating to these bonds; but, on the contrary, that he has had to pay out in cash many thousands of dollars, by reason of his turning over the said bonds to S. W. Hopkins & Co., by order of the said Edward Houston, whose trustee and agent this defendant was, and that the said Houston received the benefit, and this defendant was thereby injured, as will more fully appear.

That Robert H. Gamble brought suit against this defendant in the court of common pleas for the city and county of New York, for the injury resulting to him, Gamble, by this defendant delivering said one thousand bonds to S. W. Hopkins & Co., of London, as aforesaid, without this defendant having first paid the said Gamble the moneys as set forth in Schedule F. This defendant employed able and skillful counsellors and attorneys to defend said suit, and did defend the same with all lawful measures. That the suit was tried by the court and a jury, and a verdict was rendered against this defendant in due form of law in favor of the said Gamble, on the 27th day of April, A. D. 1876, for the sum of $21,553.33 and costs, and 250 allowance for counsel fee. That on the 19th of May, A. D. 1876, this defendant settled and fully satisfied the said verdict, upon an agreement between the said Gamble and himself, in full satisfaction, for the sum of $15,750, cash in hand paid by this defendant of this defendant's own moneys; and that this defendant has had to expend of his own moneys the further sum of about three thousand dollars.

2393 XIX. That Houston and Littlefield were the owners of about two-thirds of the capital stock of the Florida Central Railroad Company, and that Littlefield was also the owner of about two thirds of the stock of the Jacksonville, Pensacola & Mobile Railroad Company.

XX. This defendant further says that in this whole transaction relating to these one thousand State of Florida bonds, No. 3001 to 4000, inclusive, this defendant was acting as the agent and trustee of Edward Houston, and not of any other party, State, corporation or individual. And that Edward Houston procured an order from the stockholders of the Florida Central Railroad Company, in due and legal form, directing him, Houston, to deliver said State bonds, No. 3001 to 4000, inclusive, to S. W. Hopkins & Co., of London, and that the delivery of said State bonds by this defendant to the said S. W. Hopkins & Co., of London, was in accordance with the aforesaid resolution, this said defendant then acting as the agent of the said Houston, and delivering said State bonds by Houston's express direction, as aforesaid.

XXI. This defendant denies that the complainants were or are authorized by their charter to acquire or own any stock in any railroad company in the State of Florida, or to acquire any capital stock of any corporation, or any other property in the State of Florida.

2394 XXII. And this defendant having now fully answered, prays to be hence dismissed, with his costs in this behalf most wrongfully sustained.

D. P. HOLLAND,
Of counsel.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Before me, John A. Shields, commisioner of the circuit court of the United States for the southern district of New York, personally appeared Thomas B. Coddington, one of the defendants in the above suit, who, being duly sworn on oath, says that the facts stated as of his own knowledge in the above answer are true, and those stated on information he believes to be true.

T. B. CODDINGTON.

Sworn to and subscribed before me this 18th day of Oct., A. D. 1877.

SEAL.] JOHN A. SHIELDS,
Commissioner of the circuit court of the United States for the southern district of New York.

2395 In the United States circuit court, northern district of Florida, fifth judicial circuit. In equity.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS Prins, and others,
against
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company and others.

To the solicitors for the defendants:

Please take notice that we have this day filed in the office of the clerk of said court interrogatories to be exhibited and propounded to a certain witness, whose name is in said interrogatories stated, a copy of which are hereby annexed, to be examined by commission to be issued in the above stated cause to take deposition of said witness. After the expiration of ten days from the date of this service, we will apply to the said circuit court, if in session, and if not in session to the clerk
2396 thereof, for the issuance of such commission, and we will nominate as the person to be appointed to execute the said commission, John A. Shields, in the post-office building of New York City, in the State of New York, of all of which please take notice.

W. G. M. DAVIS,
C. D. WILLARD,
Solicitors for Complainants.

Filed Dec. 24th, 1878.

P. WALTER, *Clerk.*

U. S. MARSHALL'S OFFICE,
NORTHERN DIS. OF FLORIDA,
Jacksonville, Jan. 15, 1879.

I certify that I have served a true copy of the within notice, and of the interrogatories thereto attached, upon E. M. L'Engle, esqr., and James M. Baker, esq., att'y of the Fla. Central Railroad, at Jacksonville, Fla., on the 26th day of Dec. 1878, and upon S. B. Stephens, esq., att'y J., P. & M. R. R. Co., at Quincey, Florida, on the 27th day of Dec. 1878, and upon Geo. P. Rainey, esq., att'y of the trustees of the internal improvement fund of Fla., at Tallahassee, on the 28th Dec., 1878.

S. CONANT,
U. S. Marshall.

JOS. B. STEWART, Esq.,
Att'y W. D. W. N. C. R. R. Co.

Cannot be found within the northern district of Fl.

S. CONANT,
U. S. Marshall.

JAN. 15th, 1879.

Service 4 notices and 4 interrogatories	$16 00
166 miles to Tallahassee, 6 c	9 96
187 miles to Quincy, 6 c	11 22
	37 18

2397 In the United States circuit court, northern district of Florida, fifth judicial circuit. In equity.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS PRINS,
Heinrich Ulrici, Elias Fuld, and others,
against
THE WESTERN DIVISION OF THE WESTERN
North Carolina Railroad Company and others.

Interrogatories to be propounded to Thomas B. Coddington, a witness to be examined on behalf of the complainant in the above entitled caus' who reside, in the city of New York and State of New York.

Interrogatory one. What is your name, age, occupation and residence?

Interrogatory second. Do you know the parties, plaintiffs or defendants, or either of them?

2398 Interrogatory third. Have you at any time had in your possession bonds issued by the governor of the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company? If yea, state fully at large how you came possessed of said bonds, and what you did with them, for what purpose they were placed in your possession, and what undertaking you gave to any one on receiving said bonds, and please append a sworn copy thereof to your answer to this interrogatory.

Interrogatory fourth. Did you or not make and swear to and caused to be filed an answer to a bill in equity filed by the Western Division of the Western North Carolina Railroad Company in the circuit court of the United States for the northern district of Florida against George F. Drew, governor of Florida; yourself, and others.

2399 Interrogatory fifth. If you say you filed such answer, please examine the printed paper hereto annexed marked Exhibit A, and state whether or not the same is a true and correct copy of such answer so sworn to and filed by you; and also say whether you are now willing to testify in respect to the said bonds and your dealings therewith and the acts of others as the said answer sets forth and states, and if you are now ready and willing to depose on this examination in like manner as was done by you in said answer.

Interrogatory sixth. If you say that the said answer contains a full, true, and complete statement of all your acts and dealings with said bonds and of the acts of others so far as came to your knowledge, please
so state in your answer to this interrogatory and make such
2400 answer, in equity, a reply to the question now again herein repeated. Relate fully all that you did with respect to the bonds mentioned in the third interrogatory, and what was done by others in connection with yourself in respect to such bonds.

Interrogatory seventh. Were you in London, England, in the winter of 1870 and 1871, and in that of December, 1872–'73 and spring of the latter year? Were you informed of any sales of any of said bonds in London, England, or elsewhere in 1872 or 1873, and especially answer as to any sale of any of the bonds of which you once had possession, to whom and by whom any were sold, and say how you acquired your information?

Interrogatory eighth. Do you or not know and can you state
2401 anything as to the sale in London, England, or elsewhere of any
of the first three thousand bonds issued by the governor of Florida to the said Jacksonville, Pensacola & Mobile Railroad Company? If you say you have any such knowledge or information, please state what you know, and how and at what time you acquired your information.

Interrogatory ninth. Did you or not present to S. W. Hopkins and Company, in London, England, a draft drawn by the said Jacksonville Pensacola and Mobile Railroad Company by its president, Milton S. Littlefield, in favor of Harrison Reed, governor, for the sum of two hundred and twenty-three thousand seven hundred and fifty dollars? If you say you did, please state whether the said S. W. Hopkins and Company accepted or refused to accept said draft, and whether they paid it and what became of such draft.

2402 Interrogatory tenth. Have you or not authorized Daniel P. Holland or any other solicitor to make application to the United States circuit court for the northern district of Florida to admit you to become a party defendant in the suit in which you are now examined as a witness; have you been admitted as a defendant therein?

Final interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in you answer.

W. G. M. DAVIS,
C. D. WILLARD,
Solicitors for Complainant.

2403 In the United States circuit court, fifth circuit, northern district of Florida. In equity.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS Prins, et al.,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina R. R. Company et als.

Cross-interrogatories to be propounded to Thomas B. Coddington, a witness proposed to be examined on behalf of the complainants in the above entitled cause, and a resident of the city of New York, such cross-interrogatories to be propounded in behalf of the trustees of the internal improvement fund of Florida, defendants in the above action; objections to interrogatories also.

First. (1) Defendants object to the (5th) fifth and (6th) sixth interrogatories, because the same are leading and suggest to the witness and furnish him through or by means of the copy of the answer filed 2404 by him in the case of the Western Division of the Western North Carolina Railroad Company, with the answer desired of him or called for by the complainants.

Subject to the above objection, witness will please state precisely what parts of the answers made to the said 5th and 6th direct interrogatories are made of his own knowledge, and what parts are derived from information conveyed to him by others.

Second. (2) If you have answered the eighth direct interrogatory affirmatively, please state precisely what parts of your answer are made upon your own knowledge and what parts upon information derived from others.

Third. (3) These defendants object to the ninth direct interrogatory, because it is irrelevant and immaterial.

GEO. P. RAINEY,
Att'y for Trustees I. I. Fund.

Filed Jan'y 6th, 1879.

P. WALTER, *Clerk.*

2405 In United States circuit court, northern district of Florida.

J. FRED. SCHUTTE, JAN PRINS, ET AL.,
vs.
THE WESTERN DIVISION OF THE WESTERN
North Carolina Railroad Company et als.

Please take notice that I have filed in the office of the clerk of this court interrogatories, copy herewith, for John Collinson, a witness for complainants, and that in ten days from this date I will apply for a commission to examine said Collinson on said interrogatories and such cross-interrogatories as may be filed by you.

Jacksonville, Fla., Jan. 10th, 1879.

W. G. M. DAVIS,
C. D. WILLARD,
Solicitors for Complainant.

2406 In the circuit court of the United States, fifth judicial circuit, northern district of Florida. In equity.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS
Prins, and others, complainants,
against
THE WESTERN DIVISION OF THE WESTERN
North Carolina Railroad Company, The
Jacksonville, Pensacola & Mobile Railroad
Company, The Florida Central Railroad
Company, and others, defendants.

Interrogatories to be propounded to John Collinson, of London, England, a material witness for complainants, who is to be examined under a commission issued in said cause in the city of New York.

Interrogatory first. What is your name and residence? Where did you reside in the years 1870, 1871, 1872, and 1873? What was your occupation at such times?

2407 Interrogatory second. Had you during the years before designated in the first interrogatory, any dealings with the firm of S. W. Hopkins and Company? If you say you did, please state what were the dealings so had. Relate fully, and at large, all that was done by and between said S. W. Hopkins and yourself. Whether you purchased any bonds from said firm, which were issued by the governor of the State of Florida to the Jacksonville, Pensacola & Mobile Railroad Company. If you have ever made any statement as to the matters herein enquired of in any judicial proceedings, please file in answer to this interrogatory a written or printed copy of such statement, and state whether or not you are now ready to repeat in this examination the contents of such document, and say whether the contents thereof are true.

2408 Interrogatory third. At what place or places were the bonds purchased by you from S. W. Hopkins & Co. (if you testify to the making of any such purchases) put on the market and sold, by whom such transaction was conducted; what representation was made and published in Holland or elsewhere by such persons; where they offered and sold said bonds; relate fully all that was said and done by yourself alone or by said persons to induce purchasers in Holland or elsewhere to purchase or deal in said bonds.

Interrogatory fourth. When you purchased the said bonds from S. W.

Hopkins & Co. (if any you did purchase), were there any persons concerned with you in making such purchase? if yea, state their
2409 names and residences; what share, if any, they had therein and when their interest commenced?

Interrogatory fifth. From whom, how, and where did you procure the money to buy or pay for the said bonds, if any were bought and paid for by you, from S. W. Hopkins & Co.? Did you furnish the whole purchase-money, or did others? If others, who were such contributors? Answer fully and state what organization or association was created by you to buy and pay for said bonds.

Interrogatory sixth. If you answer and say that you obtained money from others to pay said S. W. Hopkins & Co. for said bonds, state what representations were made by you to such persons as to the character and validity of said bonds, the security provided for the payment thereof, the length of completed railroad owned by the Jackson-
2410 ville, Pensacola and Mobile Railroad Company, the place at which such railroad commenced, on the waters of the Atlantic Ocean, the then western terminus and the line of such railroad, and state on what authority you made such representations, from whom you derived your knowledge of such matters, and at what time you acquired it.

Interrogatory seventh. What representations were made to you by S. W. Hopkins & Co., as to the matters stated in the foregoing interrogatory? If any were made to you by them, when and on what occasion were such representations made?

Interrogatory eighth. Did you in the years 1870, 1871, 1872 and 1873, sell any of the bonds specified in the second interrogatory, directly or indirectly, to any persons in Holland or elsewhere? If so, state
2411 how many you sold, at what price, and relate fully how, and by whom, such sales were conducted, and what representations were made by you or by others by your authority to the persons who purchased said bonds, if any you sold; relate fully all that was done by you or by others acting with you to market said bonds, and all that was represented as to their nature and character, and as to the security provided for their redemption and the character of such security.

Interrogatory ninth. Read the 6th, 7th, 8th, 9th, 10th and 11th paragraphs of the copy of the bill of complaint filed in the suit in which you are now examined, which copy is herewith exhibited to you. Say whether you have any knowledge or information as to the correctness or incorrectness of statements made therein, and state how you
2412 acquired your knowledge. Do you or not know whether the statements so made are true or otherwise? If otherwise, say how otherwise. Answer fully all that you know as to the matters stated in such paragraphs of said bill.

Interrogatory tenth. Did you or not receive from Calvin L. Chase, or by his authority, any bonds such as are designated in the second interrogatory? If you say you did, state what were the numbers of said bonds, under what circumstances, and for what purpose, you received them; at what time and place did you receive them, how you disposed of them; and if you sold them, say to whom, and where, and at what price; say what you did with the purchase money, whether you paid the same to any account, and, if any, to what account.

2413 Interrogatory eleventh. Did you or not pay any money for interest on any of the bonds specified in the 2nd interrogatory? If yea, say at what time, from what fund, and how you paid such interest; on what number of bonds you made such payment, and to whom, and through whom, the money was paid. If you say you advanced such money, say whether such advance was reimbursed to you, and how, and from what source such reimbursement was made.

Interrogatory twelfth & final. Do you know, or can you set forth any
other matter or thing which may be a benefit or advantage to the par-
ties at issue in this cause, or either of them, or that may be material to
the subject of this your examination, or the matters in question
2414 in this cause? If yea, set forth the same fully and at large in
your answer.

W. G. M. DAVIS,
Solicitor for Complainant.

2415 Circuit court of the United States, northern district of Florida.
In equity.

To the honorable the judges of the circuit court of the United States for the northern district of Florida.

J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, J. H. Brunnekruff, J. H. Grem, Willenmier Van Tyer Van Taer, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaar, jr., Jacobus Wertheim, P. Van Reysen, May de Beneditby Beer, Gerard A. Heineken, T. Colom, Charles Gosewinkel, Boon Hartsink Van Tyen, N. J. Franket, Johannes Willem Donk, Vander Stoop & Berg, who are aliens and subjects of the King of the Netherlands, bring this their bill of complaint in their own behalf, and in behalf of such other persons, having like claims, who may come in and be made parties plaintiffs herein and contribute to the expenses thereof,

against

The Western Division of the Western North Carolina Railroad Company, a corporation created by and existing under the laws of said State, and a citizen thereof, the Jacksonville, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company, corporations created by and existing under the laws of the State of Florida, and citizens thereof, Edward Lewis, Patrick Houstoun, Robert H. Gamble, Charles E. Dyke, sr., Edward M. L'Engle, Robert Walker, Clayton A. Cowgill, George W. Betton, directors in said last mentioned corporation, and who are citizens of the State of Florida; James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, who are citizens of the State of Florida, and Joseph B. Stew-
art, who is a citizen of the State of New
2416 York, claiming to be directors in said
Florida Central Railroad Company;

Francis Vose, who is a citizen of the State of New York, M. K. Jessup & Co., who are citizens of the same State; Chandler H. Smith, S. A. Smith, sr., Smith Simkins, B. C. Lewis, D. Griffith Ambler, W. J. Hines, trustee; Mrs. A. F. Finlayson, James G. Gibbes, who are citizens of the State of Florida; Edward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Falligant, Lewis F. Nicoll, George Robertson, J. A. Hunnicutt, who are citizens of the State of Georgia; The People's Bank, a corporation created by and existing under the laws of the State of South Carolina, and a citizen of said State; William McBurney, Winthrop B. Williams, who are citizens of the State of South Carolina; George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer of the State of Florida; Hugh A. Corley, commissioner of lands and immigration of the State of Florida; George P. Raney, attorney-general; Walter Gwynn, treasurer; Columbus Drew, comptroller; George F. Drew, governor; which officers are trustees of the internal improvement fund and herein sued as such; Milton S. Littlefield, in his own right; Robert J. Washington, who is a citizen of the State of Virginia.

And thereupon your orators complain and say:

I. That on the 20th of March, 1869, the trustees of the internal improvement fund, acting under the powers conferred upon them by "An act of the general assembly of the State of Florida entitled 'An act to provide for and encourage a liberal system of internal improvement in this State,'" approved January 6th, 1855, took possession of and sold at public auction the railroads and property which belonged to and were used by the Pensacola and Georgia, and Tallahassee Railroad Companies, which railroads extended from Lake City to Quincy, with a branch at Monticello, and from Tallahassee to St. Mark's. Said sale was made because of non-compliance with the third section of said law.

2417 II. That said sale was fairly conducted and made in strict compliance with the provisions of said law; that the aggregate amounts for which said roads were sold was the sum of one million four hundred and fifteen thousand dollars, which sum exceeded the total amount of the principal of all the bonds then outstanding, which were issued by said corporations under the said law.

III. That F. Dibble and associates purchased said roads at said sale, and paid the purchase money, and the said trustees made deeds under their seals, by which they conveyed said property to said purchasers, reciting therein the payment of the purchase moneys, which deeds they delivered to said Dibble, and immediately placed him in possession of said railroads and property.

IV. That complainants have been informed within a short period that part of said purchase money was accepted by said trustees in said bonds issued by the said corporations, which they immediately cancelled, and the balance was placed by said trustees in the hands of Geo. W. Swepson, as agent of said trustees, with directions to purchase and deliver to them for cancellation the outstanding of said bonds of said companies, which were entitled to payment out of said fund; that said Swepson was a man in good credit, reputed to be worth at least a half million of dollars, and had that amount in Florida; that the said trustees acted in the premises within the scope of their authority and in good faith, and to carry into execution the powers with which they were vested by law.

V. That said Dibble and associates afterward became incorporated by an act of the legislature of Florida, under the name and style of Tallahassee Railroad Company, for the purpose of operating the said railroads to which they had so acquired title. Afterwards the said Tallahassee Railroad Company, and said Dibble and associates, conveyed the said railroads to the Jacksonville, Pensacola and Mobile Railroad Company, of which Geo. W. Swepson and Milton S. Littlefield owned nearly the entire stock.

2418 VI. That in the year 1870, the last named company, which will hereafter be spoken of as the J., P. & M. Co., obtained from the governor of Florida, Harrison Reed, four thousand bonds of one thousand dollars each, which were issued by said governor in accordance with the laws incorporating said J., P. & M. Co., and which bonds purported to obligate the State of Florida to pay to the bearer thereof one thousand dollars on each bond, with interest at the rate of eight per cent. per annum, a copy of one of which bonds is hereto annexed, marked A, and prayed to be referred to.

VII. The said J., P. & M. Co. delivered to the governor of said State, in exchange for said four thousand bonds, which he received from him, a like amount of bonds, three thousand of which were executed by the said J., P. & M. Co., and one thousand by the Florida Central Railroad Company. Said bonds were for the sum of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable to the State of Florida. Copies of each description of said bonds are filed herewith, marked B and C, and prayed to be referred to. The execution and delivery of said bonds was done by said companies in order to comply with the terms of the laws incorporating the said J., P. & M. Co.

VIII. That when the said bonds were executed by the Florida Central Company, Milton S. Littlefield owned a large majority of its stock, and he had contracted to buy from Edward Houstoun, J. P. Sanderson, and others, stock owned by them, which, added to his own, constituted all the shares of said company, except about four hundred. The whole number was 5,500. That such purchases were made by said Littlefield for the purpose of making a consolidation of the Florida Central with the J., P. & M. Co., which object was known to the parties from whom Littlefield purchased said stock, and they sold to aid therein; that the one thousand bonds issued as bonds of the Florida Central Railroad Company, and delivered to the governor, were caused to be executed and delivered by the joint action of said Houstoun and said other stockholders, in order to enable the said J., P. & M. Co. to obtain from the governor the Florida State bonds (so-called), and with the understanding and agreement
2419 that said bonds should be sold, and said Littlefield should make payment for the stock purchased from said Houstoun and said other stockholders out of the proceeds, which he in fact did, with the exception of the stock which he purchased from said Gamble, for which he paid in part only; that the holders of some shares of stock in said Florida Central Company, other than those before mentioned, although they had notice of the acts and intentions of said Littlefield.

Houstoun, and said other stockholders in the foregoing paragraph set forth, took no steps to prevent the execution thereof, and remained inactive and acquiescent until long after the sale which was made of the Florida State bonds (so called), as is hereinafter set forth; that the said Littlefield, and the others who were connected with him in the management of the J., P. & M. Co., immediately after the issuance of the Florida State bonds (so called), took possession of and operated the line of railroads which formerly belonged to the Florida Central, which lies between Jacksonville and Lake City, and treated it as constituting, with the roads formerly belonging to the Pensacola & Georgia and Tallahassee Railroad Company, and which had become the property of the J., P. & M. Co., in the manner before stated, as the line of railroads of the said J., P. & M. Co., and took and disposed of the earnings of the whole. In the year 1871 said J., P. & M. Co. conveyed the whole of said roads, by deed, to trustees to pay debts due by the J., P. & M. Co., in which deed the line of railroad from Jacksonville to Lake City was treated and conveyed as the property of the J., P. & M. Co. The said trustees took possession of and operated the said road conveyed to them for a considerable space of time, and without any interference on the part of any bona fide stockholders of the said Florida Central Company.

IX. That the said J., P. & M. Co. sent the bonds which they obtained from the governor of Florida to England, and sold nearly all through an agent in the city of London. Such sale was made to a banker in said city, at the price of about one hundred and thirty-eight pounds sterling per bond. The said buyer afterwards resold the said bonds through bankers in the city of Amsterdam, Holland, by whom they were offered 2420 for sale to the public in said city and in other parts of the Netherlands, and which said bonds were dealt in on the stock exchange of Amsterdam as other public securities were, in full reliance by all purchasers upon the representations which were made in respect to such bonds, which are hereinafter set forth and stated; that said bonds bore a good price so long as the interest was paid thereon, bringing at one time as high as eighty-one per cent. gold in United States coin.

X. The said J., P. & M. Co., through its agents in London, represented to the public in England, Holland, Germany, and France, that the said bonds were veritable and lawful obligations of the State of Florida; that the interest thereon would be punctually paid by said State; that there was provided by law of said State as a security for the payment of said bonds a lien on the whole line of railroad from Jacksonville west; which line was represented to be owned by the J., P. & M. Co. alone. That the banker by whom they were purchased in London repeated the same representation to the bankers in Amsterdam, and they to the public in the Netherlands, and to complainants, as well as to others who purchased, sold, and dealt in said bonds.

XI. That complainants are the owners of a large number of the said bonds issued by Governor Harrison Reed to the said J., P. & M. Co., and sold by its agents as before set forth, which bonds are numbered between number one and number three thousand two hundred; the numbers belonging to each of complainants are stated in affidavits made by them before the American consul in Amsterdam, which affidavits are filed herewith and are prayed to be referred to as a part of this bill. Complainants are ready to produce said bonds when required, and will be able to produce them upon their arrival in the United States, they being on the way from Amsterdam to New York, to which latter place they have been sent by complainants to Adolphe Engler, as agent of complainants, entrusted by them to deal with said bonds as may be de-

termined to be for the interest of complainants by their agent, Charles D. Willard, and their counsel. That interest from the 1st day of
2421 January, 1873, is due and unpaid on said bonds, and they have applied to the governor of the State of Florida to enter upon and seize and take possession of the line of railroads and property thereto pertaining, before described as belonging to the said J., P. & M. Co., including an extension of said railroad, which has been constructed by the said company, from Quincy to the Apalachicola River since the year 1870; and complainants say they have a right to have said railroads seized and sold for the payment of the principal and interest of the bonds held by them; and in case they should desire to become purchasers at said sale they should be permitted to make payment with their said bonds as far as they may be sufficient therefor.

That interest was paid on said bonds after they were sold up to January 1st, 1873, semi-annually, by a trust company in the city of New York, which was appointed by the governor of Florida as the fiscal agent of the State to pay such interest; that the said governor gave notice to the holders of such bonds of such appointment; that it was represented to the persons who dealt in said bonds, including complainants, that the money for the payment of such interest was provided by the State; that owing to such an occurrence and such information, the belief that such bonds were lawfully issued by the governor of Florida was greatly strengthened, and full faith was also given to all that had been represented by said J., P. & M. Co. as to the extent of its own line of railroads.

XII. Complainants are informed that defendants, Francis Vose, M. K. Jessup & Co., Chandler H. Smith, S. A. Smith, sr., Smith Simpkins, B. C. Lewis, D. Griffith Ambler, W. J. Hines, trustee, Mrs. A. F. Finlayson, James G. Gibbs, Edward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Falligant, Louis F. Nicoll, George Robertson, The People's Bank, William McBurney and Winthrop B. Williams, together with other persons whose names and citizenship are to complainants unknown, allege that they are the holders of the outstanding and unpaid bonds which were issued by the Pensacola and Georgia and Tallahassee Railroad Companies under the provision of the 3d section of the internal improvement act of 1855, and that there is a subsisting lien on the railroads which were sold by said trustees
2422 to F. Dibble and associates, for the payment of said bonds, and said defendants at times assert that the original lien and power of sale given by the act aforesaid is still in force; and other times they assert that the said F. Dibble and associates did not pay to said trustees the full amount of said purchase money, and that there remains due on such account the sum of $472,065, and interest. And that said trustees, as vendors, have in equity a lien on said railroad and property for such sum of money, and they have demanded of said trustees that they proceed to enforce such lien irrespective of the paramount lien which complainants herein assert to exist for payment of their bonds. All of which pretenses and claims, made by the holders of said Pensacola and Georgia and Tallahassee bonds, complainants allege to be without support, in fact, and they are advised that they are not well founded in law. Complainants insist that the holders of said bonds are bound by the acts of said trustees; that such acts were done in the exercise of powers conferred upon them by the law of 1855, and that even if they acted in bad faith and corruptly when they executed and delivered the said deed of said property to said F. Dibble, and entrusted said Swepson with said money and accepted his obligation to purchase for them said

outstanding bonds, complainants, as bona fide purchasers, as they allege themselves to be, without actual notice of any wrong or fraud on the part of said trustees or of said Dibble and associates, or of said Swepson, and claiming as they do under the title created by the contract made between the said Dibble and associates and the J., P. & M. Co., and the subsequent contract and trust created by the acts of the legislature which incorporated the said J., P. & M. Co., are not affected thereby, nor liable to be postponed to any vendor's lien in favor of said trustees, such as is asserted to exist by said P. & G. and Talla. bondholders; that the complainants' right to subject said railroad to payment of their bonds arises out of conveyances of the legal title made by the purchasers from the said trustees and those to whom they conveyed, and that there is no privity of contract between complainants and the said trustees. Complainants claim under the legal title, and therefore have a higher and better equity to payment out of said railroad and property than any which can be set up by the holders of said
2423 unpaid P. & G. and Talla. bonds, and complainants insist that
the P. & G. and Talla. bondholders have failed to cause the said trustees to sue the said Swepson to recover the amount due by him, and for which said trustees hold his written obligation, and complainants insist that until such proceeding has been taken and has proved to be ineffectual, and until it appears that said trustees have not lost their remedy against said Swepson by reason of any laches on their part, the said bondholders who assert that they are entitled to a lien on said railroad superior to the equities which are by complainants stated herein to exist in their favor, should be enjoined from maintaining or asserting any such lien.

Complainants insist that no such claim as is attempted to be set up by said bondholders should be entertained in a court of equity, because of the time which has elapsed since the happening of the events and the doing of the acts by said trustees and said Dibble and associates and said Swepson, upon which the said bondholders rely to sustain their claim, all of which transactions took place in the year 1869, and as to which the persons by whom the outstanding bonds of the P. & G. and Talla. Co's were owned at the time had full notice, and that said Vose and many of said defendants, having like securities, have purchased within a short time for purposes of speculation and litigation, with full notice. That the persons who held said bonds in March, 1869, had notice of the transactions herein stated in relation to said railroads, which were done by said Dibble and associates, and also of the passage of the laws disposing of and transferring the said railroads, the creation of said Tallahassee and of said J., P. & M. Co's, and the authority given by law to the latter company to create a lien on said railroads and under which lien it is that complainants seek payment of their bonds. That as such persons had such knowledge and information and did not take any proceedings, such as they might have taken, to prevent the J., P. & M. Co. from doing what they were authorized to do by their charter, they, the said holders of P. & G. and Talla. bonds, have no right now to object to any of the acts that were done by said corporation under such authority of law, but that they are estopped to deny the legal consequences which arise out of such acts. Complainants
2424 state that they are advised that the said P. & G. and Talla. bonds
never constituted a lien on the roads owned by said companies for the sum of money other than the principal of such bonds; that the interest thereof was secured by the land trust fund created by the act of 1855, and complainants are informed, and therefore allege, that said

fund is ample security for such interest, and they insist that the holders of said bonds, whatever claim they may have, should be required to exhaust such fund before resorting to a security such as the railroad, which is not common to them and to complainants. Complainants are advised that the said bondholders had the right to have the sinking fund, which was provided by the act of 1855, collected and invested in the manner specified in said act, and in case of any loss of any part thereof by the acts of trustees, that they had a remedy against them and also a right to have the loss made good to them out of the proceeds of the sale of the land conveyed to the trustees by the State, and complainants insist that said bondholders should be restricted to such sinking fund and to such remedies for the collection and restoration thereof as are herein stated to exist and open to be pursued by them.

XIII. That the defendants, the Western Division of the Western North Carolina Railroad Company, Milton S. Littlefield, James M. Baker, Charles B. Fenwick, Edward M. L'Engle, falsely pretending that they were bona fide holders of stock in the Florida Central Railroad Company, and claiming that they were legally authorized to elect a president and directors of said company, held an illegal meeting and chose Edward M. L'Engle president, and James M. Baker, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Joseph B. Stewart, Charles B. Fenwick, and George R. Foster, directors, none of whom were stockholders in said corporation; and they appointed Charles B. Fenwick secretary, and George R. Foster treasurer thereof; that immediately after they issued a large number of certificates of stock, represented to be stock of Florida Central Railroad Company, in favor of themselves and sundry other persons who have combined with them to defraud the State and the public at large, and especially to vex, harrass, and
2425 injure complainants; that they have formed a plan and are about
to make and issue bonds in the name of the Florida Central Railroad Company, and to execute a mortgage of the railroad and property which was formerly owned by said corporation, and intend sharing such bonds among themselves with the intention to dispose of them for money; that said George W. Swepson has some interest in said scheme, and is to receive a large number of said bonds.

That said defendants Littlefield, L'Engles, Sawyer, Stewart, Baker, Lawton and others pretend that they formed such organization and held such election under a judgment rendered by the judge of the fourth judicial circuit court of the State of Florida. Complainants are informed, and so allege, that the judgment of said court was procured by fraud. That the Western Division of the Western North Carolina Railroad Company, an insolvent corporation, acting by one Jos. B. Stewart, filed a petition for mandamus in said court, and by collusion with Milton S. Littlefield and said last named defendants, and others to complainants unknown, alleged said North Carolina corporation to be a stockholder in said Florida Central Railroad Company; and that said Littlefield and others were made defendants in such mandamus proceeding, and who owned no stock in said Florida Central Railroad Company, and they made no resistance to the prayer of the petition, but falsely answered that they were such stockholders; that no persons who were bona fide stockholders in said Florida Central Railroad Company were parties to such proceedings; that the persons who participated were not holders of bona fide certificates of shares of stock in said corporation, as will fully appear by the entries on the transfer book and stock ledger of said company up to the tenth day of April, 1872. And complainants insist that said judgment of said State court should be adjudged and held to be void because of the fraud in procuring the same. And the said defendants Milton S. Littlefield, Joseph B. Stewart, N. K. Sawyer, James M. Baker, W. J. Lawton, J. C. L'Engle, Edward M. L'Engle, and the Western Division of the Western North Carolina Railroad Company should be enjoined from asserting themselves to be stockholders in or officers of said company, and that they be ordered to refrain from issuing any of the bonds, and 2426 from the execution of the mortgage before alleged to be in course of preparation, and if any such papers have been executed that they should be directed to deliver them to an officer of this court to be designated herein; that the said defendants should be also required to deliver to said officer any seal in their possession which has been used by them or by any one under their authority as the seal of the Florida Central Railroad Company.

XIV. That the governor of the State of Florida has seized the whole line of railroad, and the property thereto pertaining, which was formerly owned by the Florida Central Railroad Company, as well as that from Lake City to the Apalachicola River, with the branches to Monticello and St. Mark's, and has advertised the same for sale; but he has described in the advertisement the railroad from Jacksonville to Lake City as the property of the Florida Central Railroad Company, and has stated that said road is seized and that he will sell the same for default made by said company on bonds delivered by it to the governor of the State. Complainants are satisfied that the now governor of the State deems such proceedings proper; but complainants are advised that so far as they are concerned they have the right to demand that the said railroad between Jacksonville and Lake City should be seized by the governor and sold as forming with the railrood west of Lake City an entire line and as the property of said J., P. & M. Co.

XV. That the governor of Florida declares in the advertisement made by him, in which he gives notice of the intended sale of the railroad from Lake City to Quincy and the branch to Monticello, and that from Tallahassee to St. Marks, that such sale will be made subject to a prior lien thereon for unpaid purchase money claimed to be due by the holders of the said bonds issued by the Pensacola and Georgia and Tallahassee Railroad Companies, and which they claim are secured as is hereinbefore set forth. Complainants insist that the governor has erred in declaring that such lien exists, and that it was his duty to make sale of said railroads and property clear of all lien or claim of any kind, and as being bound solely to pay the said bonds which complainants 2427 own and which they seek in this proceeding to obtain payment of, and that the governor should be instructed by this honorable court so to proceed in the exercise of the power of sale vested in him by the acts which incorporated the J., P. & M. Co. Complainants are satisfied that the governor is ready and willing so to do when directed by the decree of this honorable court.

XVI. That the complainants, being averse to litigation and fearing that if driven to assert what they are advised are their full rights in a court of equity they would be subjected to great cost and delay, and being informed that said railroads and property thereto pertaining were greatly dilapidated and in bad condition to carry freight and passengers, and that no means of placing said property in proper condition by suitable construction and repair existed, sought, by making concessions to the persons by whom the said bonds issued by the Pensacola and Georgia and Tallahassee Railroad Companies are owned, to have a speedy sale of said last mentioned railroads, and to that end they authorized an agent to act for them in the United Stttes and to join in a plan, a copy of which is hereto annexed, marked D. And that a majority of the holders of said bonds have assented to said plan of settlement, but the said defendant, Francis Vose, combined with a minority of said bondholders and took such legal proceedings as prevents such compromise settlement from being carried into execution. Complainants are willing to consent that a decree be made and entered in this cause, making provision for the sale of the said railroads and property upon the basis in said plan contained, provided that the said trustees of the internal improvement fund, and the holders of the said bonds issued by the said Pensacola and Georgia and Tallahassee Railroad Companies, agree that such decree be made.

XVII. Complainants are informed that some time in the year eighteen hundred and seventy-five, the persons who held a majority of the shares of the stock in the Florida Central Railroad Company at the time when said transactions took place, whereby the railroad from Jacksonville to
Lake City became consolidated with that owned by said J., P. &
2428 M. Co., and by which means such railroad became pledged for
the payment of complainants' bonds, met in Tallahassee and elected certain persons, viz, said Edward Lewis, B. Williams, (now deceased), Patrick Houstoun, R. H. Gamble, C. E. Dyke, sr., E. M. L'Engle, R. Walker, C. A. Cowgill, and G. W. Betton, as directors of the said Florida Central Railroad Company; that such persons took upon themselves such offices and acted therein; that no president of said corporation was attempted to be elected, but that Robert Walker was authorized to act in lieu of such president. Complainants are advised that it is not material to them whether said corporation was dissolved by the proceedings which are hereinbefore set forth as to the consolidation of said railroads, and they do not, therefore, ask in this their bill that such dissolution be declared to have taken place, unless the same be necessary to enable the said complainants to obtain payment of their bonds; and complainants allege that if such Florida Central Railroad Company is still in existence as a corporation, that the persons before mentioned are the only persons who can, by law, represent said company, because, as complainants are informed, there has been no meeting of the persons who held said stock in said company since that last before stated.

XVIII. That said persons acting in said capacities were parties in a certain suit commenced in the State circuit court, and finally determined in the supreme court of the State, wherein the State of Florida and trustees of the internal improvement fund were complainants in the first court, in which suit questions of law and fact were presented for adjudication and which were determined by said supreme court, touching the liability of the line of railroad and property between Jacksonville and Lake City for the payment of the bonds delivered by the governor of the State to the J., P. & M. Co., before mentioned, and as to whether the said Florida Central Railroad Company was or not, by the acts done by his stockholders and directors, estopped from denying such liability as against the claim which complainants have hereinbefore alleged in respect to such line of railroad for payment of said bonds.

The said supreme court, by its judgment rendered in said cause,
2429 determined such questions of law and fact in favor of the claim
so made by complainants, and they are advised and insist that they are entitled to rely upon, and they do herein claim and rely upon, said judgment of said supreme court as a conclusive judgment in their favor as to such matters, and as binding on the Florida Central Railroad Company, if there be such corporation, and upon all persons who claim to be owners of stock therein.

XIX. That Daniel P. Holland, who was likewise a defendant in the said case in the State circuit court, prosecuted an appeal to the Supreme Court from a judgment rendered by said circuit court in said cause, adverse to said Holland, which appeal was finally heard and determined by the said Supreme Court; that among other questions of law and fact therein made and decided, the said supreme court by its judgment determined that the acts incorporating the said J., P. & M. Co., the issuance of said bonds by Governor Reed to it, the sale thereof by said company to the complainants and others, created a trust in fovor of the bona fide holders of said bonds; that a lien on the railroad and property for the payment of said bonds existed, and that a power of sale by acts of incorporation conferred on the governor of the State must be executed by him for the purpose and in the manner in said acts specified; and complainants are advised and insist that they are entitled to, and do plead, and rely on such judgment in support of the claim which they herein allege to exist as to such lien, to the existence of such trusts, and as to their right to have the line of railroad, which formerly belonged to the Pensacola and Georgia and Tallahassee Railroad Company, sold by the governor in the manner and for the purposes which they have hereinbefore alleged in respect thereof. And complainants produce herewith the judgments of the said supreme court in said several cases, and pray leave to refer thereto as a part of their bill of complaint.

XX. That the said J., P. & M. Co. was a party to said suit, so brought by the State and the trustees aforesaid, and that they appear therein, and answered the complaints filed in said suit, and admitted the issuance of said bonds by the governor of the State, and did
2430 not deny its liability to pay said bonds, nor that there was a lien existing thereof, such as was determined to exist by said supreme court; said answer was sworn to by said Milton S. Littlefield, as the president of said company; that complainant produces herewith a true copy of said answer and prays leave to refer thereto when necessary.

XXI. Complainants have procured the whole of said line of railroad, its workshops, depots, and rolling stock, to be examined by a competent and skillful railroad engineer, who reports that the said property is not fit for the safe transportation of passengers and freight, and cannot be profitably operated therefor; that the iron rails are badly worn, the cross ties decayed; that the rolling stock is insufficient and old, and inadequate; that it will cost a large sum to put such property in proper condition, more than the net earnings of said railroad will furnish, and that if said road is put in good working order a large increase of such net earnings may be reasonably expected. Complainants are assured that money and material to put such road and property in good working order can be obtained, provided that such means when advanced by any persons can be secured to be paid out of the money arising from the sale of said road, and the same made a lien as costs in this cause by an order of this honorable court directing the doing of such work, and authorizing the procurement of the necessary material and money therefor. Complainants are advised that the governor of the State has not the power to make any contract for such purposes, and that in consequence he cannot procure the necessary material and money; and complainants submit to this honorable court whether or not the governor of the State should be invested by an order made in this cause with the powers of a receiver to this court, and with authority and power to obtain money and purchase material for the purposes before stated, and provision made in said order providing for the needful security for pay-

ment of the liabilities to be incurred in such behalf. Complainants are informed that there is now in the hands of the treasurer of the State of Florida a sum of money amounting to about thirty thousand dollars, paid to him by Robert Walker, receiver, by order and direction of the
Supreme Court of the United States, made in the cause decided
2431 in said court, in which E. C. Anderson et al. were defendants
and the State of Florida plaintiff; such money is the balance of the earnings of the line of road from Lake City west, which came to the hands of said receiver, and which money the said court directed should be held by the said treasurer subject to the order of a court of competent jurisdiction; and complainants are advised that said sum of money is a proper fund to be applied to the repair of said railroad and property, and they insist that they have the right to have the same so applied by order of this court.

XXII. Complainants are informed, and upon such information allege and state, that the defendant, the Western Division of the Western North Carolina Railroad Company, united with said Littlefield, said Swepson, and said S. W. Hopkins & Co. in procuring the governor, Harrison Reed, to issue and deliver to said J., P. & M. Co. the said State bonds (so called) and in all the acts and representations done and made by said J., P. & M. Co., its officers and agents, and in the sale which said S. W. Hopkins & Co. made of said bonds, and that said North Carolina corporation received a portion of the proceeds of such sale, and contracted with said Swepson and said Litfield and with authorized agents of said J., P. & M. Co. for the payment to said North Carolina corporation, by the parties to said contract, of the sum of six hundred thousand dollars and upwards, such payment to be made out of the money to be received by said S. W. Hopkins & Co. from the sale of said bonds, to enforce which payment said North Carolina corporation brought suit, in a court of the State of New York, against said Hopkins & Co. and said J., P. & M. Co. Complainants are informed that said North Carolina corporation now alleges that the bonds held by complainants and others, which said corporation in part contributed to induce the present holders thereof, or those from whom they purchased, to take and pay for, as the bonds of the State of Florida, are not legal and valid obligations, and that the holders thereof are not entitled to the payment of the same in the manner and from the source which complainants herein assert themselves to be entitled to, and are seeking to
obtain in this their bill of complaint, all of which pretences set up
2432 by said North Carolina corporation are made by them in bad
faith, and in violation of equity and against good conscience; the said corporation is, and should be, by the decree of this court, declared to be estopped from making the same by reason of the acts done by it in respect to the sale of said bonds, which are hereinbefore set forth, and that said corporation ought to be enjoined from making any interference with complainants' proceedings to subject said railroad and property to payment of their bonds, or from instituting any suit at law or equity against complainants or against the governor of the State for such purpose.

XXIII. That defendant, Edward M. L'Engle, has illegally possessed himself of the shares of stock which were sold by John P. Sanderson to Milton S. Littlefield; that payment therefor was made from funds received by S. W. Hopkins & Co. from the London banker to whom they sold said Florida State bonds (so called), which fact was well known to said Sanderson and to said L'Engle, who were, at time of such transaction, and afterwards, the attorneys of said Littlefield and of said railroad corporations which he controlled. Said Sanderson was also an officer of said Florida Central Railroad Company, and assisted said Littlefield in the transactions before stated, which resulted in the consolidation of said railroads, and the issuance and sale of said bonds. Said L'Engle has, since the said Florida State bonds (so called) were sold, purchased from certain persons who formerly held stock in said Florida Central Railroad Company, their rights as such, whatever they may be; that he has, by use of such means, brought several suits in the State courts against sundry persons concerning the property which formerly belonged to said Florida Central Railroad Company, which suits he has dismissed after causing great damage and loss to said property thereby; and complainants are informed and believe that said L'Engle intends to institute further suits, founded on the title he has so acquired, or claims to have, with a view to compel complainants to pay him a large sum of money to buy their peace, and to hinder them from obtaining the relief herein sought.

2433 XXIV. The said L'Engle has instituted a suit in this court in the name of Robert J. Washington, in which it is sought to obtain a decree declaring said Washington to be the lawful owner of all the shares of stock which said Littlefield purchased from said Swepson, said Houstoun and others. The title set up in said suit is derived from said L'Engle and one J. H. Miller, and is based solely on notes given to said L'Engle by said Littlefield without valid consideration, on the pretence of a payment by Littlefield to L'Engle for services pretended to have been rendered by said L'Engle to said Littlefield and the said Florida Central and Jacksonville, Pensacola and Mobile Railroad Companies. Complainants are informed and believe that said Robert J. Washington has no real interest in the subject-matter of said suit, and that his name is being used by said L'Engle in fraud of the jurisdiction of this court, the said L'Engle making use of the name of said Washington because he, being a citizen of Florida, is disqualified to sue in the courts of the United States.

XXV. Complainants are informed and believe that said defendant, Milton S. Littlefield, made some agreement with said George W. Swepson to perform the obligations which the latter undertook with said trustees to do, viz, to purchase said unpaid Pensacola & Georgia and Tallahassee Railroad Companies' bonds; that said Littlefield did, in fact, purchase of said Edward Houstoun one hundred and three of said bonds in performance of such contract, which bonds are now deposited in the registry of this court to the credit of a cause therein pending, in which Edward C. Anderson et al. are plaintiffs and the J., P. & M. Co. et al. are defendants; that said bonds are claimed by divers persons under some contract with said Littlefield, which persons had full knowledge that said bonds were paid for out of the money for which the bonds issued by Governor Reed to the said J., P. & M. Co. were sold, as before set forth; said one hundred and three bonds have never been in the actual possession of said Littlefield. Complainants are advised that they should be delivered to said trustees of the internal improvement fund, and they should take such proceedings as may be necessary to procure the same to be done.

2434 XXVI. That of the capital stock of the Florida Central Railroad Company, which consisted of five thousand five hundred shares, four thousand three hundred and seventy were held by Edward Houstoun at the time of his decease, which took place about two years since, as appears from the stock ledger of the Florida Central Railroad Company; that certificates of such stock were issued to said Houstoun by said company, which certificates are now in the hands of a receiver appointed by the superior court of Chatham County, in the State of Georgia, in a cause therein pending between the executors of said Houstoun and sundry other persons, in which suit the title to said stock is involved, and the right thereto sought to have determined. That said Milton S. Littlefield has made a conveyance to the Western Division of the Western North Carolina Railroad Company, by which he pretends to convey to said corporation a legal title to said stock, which title he falsely pretends he held at the date of such conveyance, and which false pretense was well known to the officers of said corporation, who took from him such invalid conveyance; that the same was made and accepted to aid the said corporation to sustain the before-mentioned claim of such corporation of interest in said railroad and property, and complainants insist that said corporation ought not to be allowed to make any claim under such conveyance, nor to derive any benefit or advantages therefrom.

In consideration of the premises, complainants pray that writs of subpœna may be issued out of this honorable court, directed to said defendants severally, viz:

The Western Division of the Western North Carolina Railroad Company, the Jacksonville, Pensacola & Mobile Railroad Company, the Florida Central Railroad Company, Edward Lewis, Patrick Houstoun, Robert H. Gamble, Charles E. Dyke, sr., Edward M. L'Engle, Robert Walker, Clayton A. Cowgill, George W. Betton, James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, Joseph B. Stewart, Francis Vose, M. K. Jessup & Co., Chandler H. Smith, S. A. 2435 Smith, sr., Smith Simkins, B. C. Lewis, D. Griffith Ambler, W. J. Hines, trustee, Mrs. A. F. Finlayson, James G. Gibbs, Edward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Falligant, Lewis F. Nicoll, George Robertson, J. A. Hunnicutt, The People's Bank, William McBurney, Winthrop B. Williams, George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer of the State of Florida; Hugh A. Corley, commissioner of lands and immigration; George P. Raney, attorney-general; Walter Gwynn, treasurer; Columbus Drew, comptroller; George F. Drew, governor, as trustees of the internal improvement fund, and Robert J. Washington, commanding them to be and appear before this honorable court on a day certain to be named therein, to answer the allegations of this bill.

1. And may it please your honors to decree that complainants are entitled to be taken and held as bona-fide holders of the bonds of the Florida Central Railroad Company.

2. That the entire line of railroad from Jacksonville to the Apalachicola River, with the branches to Monticello and St. Marks, and all property, real and personal, thereto pertaining, may be decreed to be subect to a lien for the payment of complainants' bonds superior to the claims of any and all persons whatever, and especially said defendants.

3. That it may be declared by the decree of this court that the sale of the said bonds by the said Jacksonville, Pensacola & Mobile Railroad Company, issued by Harrison Reed, governor, to said company, and the representations made by said company and its agents to the purchasers thereof, and the actings and doings of the officers and stockholders of said company, and of the said Florida Central Railroad Company, herein stated and alleged, created a trust in favor of complainants, and entitles them to have the whole of said line of railroad made subject to the

payment of complainants' said bonds and that such entire line of railroad be proceeded against for such purpose, and treated as belonging to the Jacksonville, Pensacola & Mobile Railroad Company; and that the stockholders of the Florida Central Railroad Company, and such corporation, be declared to be bound by the representations which were
made by the said Jacksonville, Pensacola and Mobile Railroad
2436 Company to the purchasers of said bonds before alleged herein
to have been made; that the line of railroad from Jacksonville west constituted one entire line of road, was the property of said last-named corporation; and that the same was subject to a lien for the payment of the principal and interest of said bonds by the provisions of the acts incorporating said last named corporation.

4. May it please your honors to decree that complainants are entitled to the benefit of the provisions of the said acts of incorporation which created a lien on said railroad and property for payment of the bonds held by complainants; and that they are entitled to demand that the governor of Florida execute the power of sale vested in him by said acts, and that he be decreed to proceed therein in the manner and for the purposes which complainants have herein stated should be done.

5. That the defendants, the trustees of the internal improvement fund, and those who hold the Pensacola & Georgia and Tallahassee Railroad bonds, be decreed to have no longer any lien of any kind upon that portion of the said line of railroad which lies between Lake City and Quincy, with the branch to Monticello and the road from Tallahassee to St. Marks; and that complainants have a superior equity as to such property for payment of their bonds over and above the vendor's lien claimed by said trustees and said last mentioned bondholders to exist in their favor.

6. That the Western Division of the Western North Carolina Railroad Company be decreed not to have any other right, title, or claim in respect of the line of railroad from Jacksonville to Lake City than that which the said Florida Central Railroad Company and its stockholders shall be decreed to possess, and to be subject in like manner to the right of complainants to have said portion of said line of railroad sold for payment of complainants' bonds.

7. That the pretended organization of said board of directors, claimed to have been made under the authority of said judgment of Duval circuit court, in the suit instituted by said Western Division of the Western North Carolina Railroad Company, be declared fraudulent and void; that the said judgments be declared to be void because of the
fraud committed by the parties thereto; and that the said defend-
2437 ants, claiming to be president, directors, and officers of said
Florida Central Railroad Company be declared to have no lawful title to such offices; that said defendants, Robert Walker, Robert H. Gamble, and the other defendants who were chosen directors of said Florida Central Railroad Company, as herein alleged by complainants, be declared to be the only proper representative of said Florida Central Railroad Company, or entitled as such to appear in this suit or otherwise act in respect of the interests of the stockholders of such company.

8. That defendants, Edward M. L'Engle and Robert J. Washington, be declared not to have any valid title to any stock in said Florida Central Railroad Company, and that as to any such stock which may have been acquired by said L'Engle that he be decreed to hold the same subject to the claim herein alleged to exist in favor of complainants, and that he be held to have acquired the same with full notice of all the rights which are herein asserted by complainants.

9. That the bonds issued by the said defendants, E. M. L'Engle, as president, and said Foster, Fenwick, Stewart, Sawyer, and others, as directors of said Florida Central Railroad Company, be decreed to be null and void.

And may it please your honors to grant unto your orators writs of injunction, to be directed to said Western Division of the Western North Carolina Railroad Company, said Florida Central Railroad Company, and its stockholders, to said Edward M. L'Engie, said Robert J. Washington, enjoining them from instituting any proceedings at law or in equity in relation to said line of railroad from Jacksonville to Lake City and its property, and from seeking to interfere with the possession thereof acquired by the said George F. Drew, governor, or from intermeddling therewith.

May it please your honors to make an order herein constituting and appointing George F. Drew, governor of the State of Florida, receiver of this court, with special power and authority to make purchases of railroad iron, material and equipments suitable for use of said railroad, and to put said line of railroad in suitable condition for the carriage of freight and passengers, and to preserve the same from dilapidation and destruction, for such purpose to apply the net earnings 2438 of said railroad thereto, and, if necessary, to make purchases on credit, to be reimbursed and paid by order of this court, and to constitute a charge on said property in like manner as the costs of the cause are by law provided; and that the said governor, as such special receiver, be authorized to demand and receive from said defendant, Walter Gwynn, treasurer, the said sum of money herein stated to be in his hands, under said order of said Supreme Court of the United States; and that the said treasurer deliver such money to said governor, which money the said George F. Drew, governor, as such special receiver, be directed to use for the repair and preservation of said line of railroad; and that such fund be regarded in the hands of said receiver as a separate and distinct fund, to be disposed of by the decree of this court to be made herein, and subject to all proper claims, if any there be, against the same; and that the said George F. Drew, as such special receiver, be directed to render to this court an account of his actings under this order at such specified times as may be prescribed therein.

And may it please your honors to grant unto your orators such other and further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

W. G. M. DAVIS,
Solicitor for Complainants.

UNITED STATES OF AMERICA,
Northern District of Florida:

Charles D. Willard, sworn, says that he is the authorized agent and attorney of each and every of the complainants in the foregoing bill mentioned; that he has received from them, and each of them, power in writing properly authenticated, giving him authority to institute this suit, and to act for them generally in the prosecution of the rights which said complainants in said bill have set up; that he has for a long time been in correspondence with Jacobus Wertheim, a counsellor at law, residing at Amsterdam, in Holland, and who is employed, as deponent is informed and believes, by complainants to advise them 2439 in respect to their rights as such bondholders; that the correspondence between deponent and said Wertheim was wholly upon such subject, and deponent was thereby informed as to the circumstances under which said bonds were purchased by complainants, and that they held the same.

Deponent further says that he has read the proceedings, or the greater part of them, which were instituted by divers plaintiffs in the courts of the United States, and those of the State of Florida, as well as in the suits instituted in New York by the Western Division of the Western North Carolina Railroad Company; that he has seen and read proceedings of the stockholders and directors of the Florida Central Railroad Company, the sworn statements of S. W. Hopkins & Co., of Edward Houstoun, and has generally received information as to the matters in said bill set forth from various persons, attorneys as well as others, who were familiar with such matters, and that from such means of knowledge he is able to swear and does depose that the facts in the foregoing bill of complaint set forth he believes to be true; that as to the ownership by complainants of the bonds in the bill mentioned, deponent says he believes that they are owned and held by said complainants, and that they purchased the same in good faith, believing them to be what they purported on their face to be; and such belief, deponent says, he asserts by reason of the statements made by said complainants, sworn to by them in Amsterdam, before the American consul, transmitted to deponent as such agent.

Deponent further says that the bonds of said complainants will shortly be received in the United States, and will be produced in this cause, of which fact deponent has been informed by a telegraphic dispatch, sent by the Bank of Amsterdam to Mr. Adolphe Engler, of New York.

CHARLES D. WILLARD.

Sworn to and subscribed before me this 23d day of May, A. D. 1877.

FRED. T. MYERS,
Deputy Clerk United States Circuit Court, Northern District of Florida.

2440

SCHEDULE B.

No. 501.] UNITED STATES OF AMERICA. [$1,000.

STATE OF [Florida coat of arms] FLORIDA.

Bond of the Florida Central Railroad Company.

Cut of train of cars.] [Cut of steamship

Know all men by these presents that the Florida Central Railroad Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars, for value received, which sum the said Florida Central Railroad Company promises and agrees to pay to the State of Florida on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon at the rate of eight per centum per annum, payable semi-annually on the first days of July and January in each year, on the presentation and delivery of the proper coupons hereto attached.

This bond is one of a series of like tenor, limited to sixteen thousand dollars per mile, issued in accordance with an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled an act to perfect the public works of the State," approved June 24th, eighteen hundred and sixty-nine, and given in exchange for bonds issued by the State of Florida to aid the Jacksonville, Pensacola & Mobile Railroad Company to complete, equip, and maintain its road for an equal amount, in accordance with said act.

In witness whereof, the said company has caused this bond to be signed and attested in its behalf by its president, and its common seal affixed at its office in this first day of January, in the year 1870.

{ FLORIDA CENTRAL RAILROAD CO., 1868. } GEORGE W. SWEPSON, *President.*

H. H. THOMPSON, *Treasurer.*

Issued in accordance with the provisions of an act of the legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled an act to perfect the public works of the State," approved June 24th, eighteen hundred and sixty-nine.

January 1st, 1870.

2441 *Governor's certificate.*

EXECUTIVE OFFICE, TALLAHASSEE,
January 31, 1877.

I, George F. Drew, governor of Florida, hereby certify that the within is a true and correct copy of original bond No. 501, now on file in office of the State treasurer.

GEORGE F. DREW,
Governor.

SCHEDULE C.

No. 201.] UNITED STATES OF AMERICA. [$1,000.

STATE OF [coat of arms] FLORIDA.

Bond of the Jacksonville, Pensacola and Mobile Railroad Company.

Train of cars.] [Cut of steamship.

Know all men by these presents that the Jacksonville, Pensacola and Mobile Railroad Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars, for value received, which sum the said Jacksonville, Pensacola and Mobile Railroad Company promises and agrees to pay to the State of Florida, on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon at the rate of eight per centum per annum, payable semi-annually on the first days of July and January in each year, on the presentation and delivery of the proper coupons hereunto attached.

This bond is one of a series of like tenor, limited to sixteen thousand dollars per mile, issued in accordance with an act of the legislature of the State of Florida, passed on the 24th of June, eighteen hundred and sixty-nine, entitled "An act to perfect the public works of the State;" also an act amendatory thereof, approved January 28th, eighteen hundred and seventy, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine, and given in exchange for bonds issued by the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company for an equal amount, in accordance with said act.

In witness whereof the said company has caused this bond to be signed and attested in its behalf by its president, and its common seal affixed at its office in Tallahassee, this first day of January, in the year 1870.

[SEAL J., P. & M. R. R. CO.] M. S. LITTLEFIELD,
President.

2442 Issued in accordance with the provisions of an act of the legislature of the State of Florida, approved the 24th of June, 1869, entitled "An act to perfect the public works of the State," also an act amendatory thereof, approved January 28th, eighteen hundred and seventy, entitled an "Act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24th, eighteen hundred and sixty-nine.

January 1st, 1870.

STATE OF FLORIDA, EXECUTIVE OFFICE,
Tallahassee, February 14, 1877.

I, George F. Drew, governor of the State of Florida, do hereby certify that the within is a true and correct copy of bond No. 201 of the J., P. & M. R. R. Co., now on file in the office of the State treasurer.

GEO. F. DREW,
Governor.

SCHEDULE D.

Memorandum-plan.

Bijlage A.

For the reorganization of the Jacksonville, Pensacola and Mobile Railroad Company and the Florida Central Railroad Company of Florida, to be agreed upon by and between Frank R. Sherwin, agent of the owners and holders of the bonds of the State of Florida, issued in aid of said railroad companies, of the first part, and the owners and holders of the first mortgage bonds of the Pensacola and Georgia and Tallahassee Railroad Companies of said State, issued under the provisions of the act of January 6th, 1855, generally known as the "internal improvement act," represented by Henry R. Jackson, of Savannah, in the State of Georgia, and Charles H. Simonton, of Charleston, in the State of South Carolina, of the second part.

The object to be sought in said reorganization shall be the formation, under the general incorporation laws of said State, of a new company, under the name and style of "The Jacksonville and Mobile Railroad Company," for the purpose of purchasing the present lines of constructed railroads between Jacksonville and Chattahoochee, and Tallahassee and St. Mark's, with branch at Monticello Junction, together with all their rolling stock, depots, machine shops, and all their other property, and of completing the said line of road to Mobile, in the State of Alabama.

2443 To this end it is agreed between the said parties that the line of completed railway, to wit, the roads extending from Lake City to Chattahoochee, and from Tallahassee to St. Mark's, known as the Jacksonville, Pensacola and Mobile Railroad, and the road extending from Jacksonville to Lake City, known as the Florida Central Railroad, together with all their depots, rolling stock, machine shops, and all their other saleable proper'y, shall be sold at public outcry, in accordance with law, so soon as the following antecedent arrangements, numbered "first" and "second," shall have been completed:

First. The said the parties to this agreement shall, within 30 days, select three persons, who shall act as trustees in discharge of the trusts hereinafter set out; any vacancy in their number occurring by death or otherwise to be filled by the surviving trustees.

Second. The said bonds and coupons of the Pensacola and Georgia and Tallahassee Railroad Companies held by the said parties of the second part, and the said bonds and coupons of the State of Florida issued in aid of the said the Jacksonville, Pensacola and Mobile Railroad Company and the said the Florida Central Railroad Company shall be placed in the hands or under the control of the said trustees so selected for the purpose of said trust, within thirty days from the date of the acceptance of their appointment.

The said the governor shall offer at public sale, according to law, said line of railroads, together with all their depots, rolling stock, machine shops, and all their other property, or such portions of it as may be legally saleable; and at the said sale the said trustees shall bid for the said property so to be exposed for sale to the extent, if necessary, of the par value of the said bonds and past due coupons of the State of Florida so placed under their control, the aggregate amount in dollars and cents, of which said bonds and past due coupons shall be treated and received as cash at said sale by the said governor, and if such bid be the highest made at such sale or sales the said line of railroad, together with all of its property as hereinbefore detailed. shall be struck off to the said trustees so bidding, and upon the delivery to the said the governor of the said bonds and past due coupons last mentioned he shall immediately cause the said trustees so bidding to be placed in the actual possession of all said railroad property, and full title shall be made to said trustees by the governor, the same to be held by them subject to the following conditions, namely: In trust to be conveyed by them to the said "Jacksonville and Mobile Railroad Company," after the following arrangements and conditions shall have been perfected and complied with:

First. Such title to the line of railroad now known as the Florida
2444 Central, extending from Jacksonville to Lake City, and such
title to the Jacksonville, Pensacola and Mobile Railroad which extends from Lake City to the Chattahoochee River and from Tallahassee to St. Mark's; and such right of franchise to continue the construction of said line of railway westward to the city of Mobile as may not be perfected in the said selected trustees by the said sale, as hereinbefore provided, shall be perfected in the said the Jacksonville and Mobile Railroad Company through the action and agency of the said party of the first part, and shall be so perfected as not to leave any lien or incumbrance upon said last mentioned title or property which shall be superior to the special mortgage lien to be created as hereinafter provided; the provisions of this clause numbered first to be practically carried out by the said party of the first part within six (6) months from the date of this agreement.

Second. Title having been so perfected in the said The Jacksonville and Mobile Railroad Company, that company shall execute an obligation in writing to the said the selected trustees, stipulating that immediately after conveyance made to it, the said railroad property, so to be purchased, as aforesaid, by them (the said selected trustees), the said The Jacksonville and Mobile Railroad Company shall cause the entire line of constructed railroads heretofore named to be bonded at the rate of not more than twelve thousand dollars ($12,000) per mile, which bonds shall be due forty years from date, bearing interest at the rate of five (5) per cent. per annum, payable semi-annually either in New York

City or Amsterdam, Holland, at the option of the holders, principal and interest payable in gold, which bonds shall be a first-mortgage lien upon said line of railroad, its depots, machine shops, rolling stock, and all of its other property.

That distinct provision shall be made in said mortgage for the issue, in the first place, of a series of said bonds equal in amount only to the par value of said surrendered bonds and Georgia and Tallahassee Railroad Companies, in the event that the said lines of road formerly known as the Pensacola and Georgia and Tallahassee Railroads should be bid off by the said selected trustees at a sum below or not exceeding the aggregate amount of said last mentioned bonds and past due coupons; but should the said last mentioned roads be so bid off at a sum equal to or exceeding the aggregate amount of principal of said bonds and past due coupons and interest on said coupons, then the first series of bonds to cover the full amount of said last mentioned aggregate and this first and distinct series of bonds so issued shall constitute a prior lien upon the said line of railroad and its said property, to secure the
payment of the interest and principal of the same when due; and the
2445 first said series of bonds, when so issued, shall be delivered to the
owners of the said surrendered bonds and coupons of the said Pensacola and Georgia and Tallahassee Railroad Companies, whereupon the said last mentioned bonds and coupons shall be held by said trustees in trust, to be delivered to the trustees of the internal improvement fund of Florida for cancellation, so soon as all of the same class of bonds now outstanding shall have been surrendered to the said selected trustees, whether in exchange for the said new first mortgage bonds or otherwise.

That provision shall also be made in said mortgage that in case of default for one year by said new company in payment of interest on any of the bonds, foreclosure of said mortgage may be made for the entire amount of indebtedness secured by it, both principal and interest, and the said road and all of its property may be sold, and the proceeds derived from such sale shall be first applied to the payment of the said first series of bonds, principal and interest, and the surplus, if any, shall be applied toward the payment of the remaining or second series of said bonds.

That provision shall also be made in said mortgage for the creation, at the expiration of three years from the organization of said company, of a sinking fund of one per cent. per annum in gold, payable semi-annually, upon its said bonded debt, which said sinking fund shall be semi-annually applied, as paid, to the redemption at par of the said bonds of said company, the numbers of which shall be selected by lot, and the said first series of said bonds of said company, issued as aforesaid, shall have priority of payment out of said sinking fund.

A draft of said contemplated bonds and mortgage, to be approved by the selected trustees, shall be appended as an exhibit to the said written obligation, and also a copy of the proposed charter of the said Jacksonville and Mobile Railroad Company, showing powers in the said new corporation to issue such bonds and to execute such mortgage.

It shall be further stipulated in said written obligation that a sufficient number of the second series of said bonds shall be set apart and used for the purpose of placing said line of constructed railroad in first-class order and repair as to road-bed, rolling stock, and otherwise; and that said new railroad company shall be managed by a board of directors, consisting of not more than seven nor less than five members, who shall be named by the owners or holders of said State bonds, but who shall

be acceptable to said selected trustees; and that in case of vacancy in said board of directors or officers of said company, by death, resignation, or otherwise, notice of any intended new appointment shall be given to the said selected trustees; and a protest in writing, signed by the
2446 owners representing a majority of the said first series of bonds of said company shall operate to prevent the appointment to fill said vacancy; this provision to continue in operation for the period of six years from the organization of the said new company.

It is also further stipulated and agreed that all funds necessary to meet the costs and expenditures incurred in such sale or sales, and in perfecting said titles thereafter, shall be supplied by the said party of the first part.

In witness whereof we, the said parties to this agreement, have hereunto set our hands and affixed our seals interchangeably this 12th day of January, A. D. 1877, at Savannah, Georgia.

FRANK R. SHERWIN.
HENRY R. JACKSON.
CHARLES H. SIMONTON.

Signed, sealed, and delivered in the presence of—
(Geteekend) VINCENT L. STARR, *N. P.*

44l2422 Ontvangen voor zegleregt Vijftig Cent.

Amsterdam, den vijftienden Februarij 1800 Zeven en Zeventig.
De ontvanger B. A. No. 1.
KNIPSCHEER.

Geregistreerd te Amsterdam den Vijftienden Februari 1800 Zeven en Zeventig, deel 108, blad 145 No. vak 1, twee bladen geen renvooi, ontvangen voor regt *f* 0.80 voor 38 opcenten *f* 0.305, te zamen een Gulden tien en een halve Cent. De ontvanger B. A. No. 1.
(Geteekend) KNIPSCHEER.

Uitegeven voor Afschrift van vorenstaand stuk gededeponeerd onder de minuten van den ondergeteekende Jean Charles Gerald Pollones, notaries, residerende te Amsterdam, blijkens acte den veertienden Februari 1800 zeven ze zeventig, ten zijnen overstann verleden.
(Geteekend) J. C. G. POLLONES, *Notaris.*

Filed May 23d, 1877.

C. H. FOSTER, *Clerk.*
Per F. T. MYERS, *D. C.*

Received and filed April 20th, 1878.

P. WALTER, *Clerk.*

2447 Circuit court of the United States, northern district of Florida.
In equity.

To the honorable the judges of the circuit court of the United States for the northern district of Florida:

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J. Brunnekruff, J. H. Grem, Willenmier Van Tyer Van Taer, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaar, jr., Jacobus Wertheim, P. Van Reysen, Mey de Benedithy Beer, Gerard A. Heineken, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyen, N. J. Franket, Johannes Willem Donk,

Vander Stoop & Berg, who are aliens and subjects of the King of the Netherlands, bring this their bill of complaint in their own behalf and in behalf of such other persons having like claims, who may come in and be made parties plaintiffs herein and contribute to the expenses thereof,

against

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, a corporation created by and existing under the laws of the State of North Carolina, and a citizen thereof, The Jacksonville, Pensacola and Mobile Railroad Company, The Florida Central Railroad Company, corporations created by and existing under the laws of the State of Florida, and citizens thereof, Edward Lewis, Patrick Houstoun, Robert H. Gamble, Charles E. Dyke, sr., Edward M. L'Engle, Robert Walker, Clayton A. Cowgill, George W. Betton, directors in said last-mentioned corporation, and who are citizens of the State of Florida; James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, who are citizens of the State of Florida, and Joseph B. Stewart, who is a citizen of the State of New York, claiming 2448 to be directors in said Florida Central Railroad Company; Francis Vose, who is a citizen of the State of New York; M. K. Jessup & Co., who are citizens of the same State; Chandler H. Smith, S. A. Smith, sr., Smith Simkins, B. C. Lewis, D. Griffith Ambler, W. J. Hines, trustee, Mrs. A. F. Finlayson, James G. Gibbes, who are citizens of the State of Florida; Edward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Falligant, Lewis F. Nicoll, George Robertson, J. A. Hunnicutt, who are citizens of the State of Georgia; The People's Bank, a corporation created by and existing under the laws of the State of South Carolina, and a citizen of said State; William McBurney, Winthrop B. Williams, who are citizens of the State of South Carolina; George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer of the State of Florida; Hugh A. Corley, commissioner of lands and immigration of the State of Florida; George P. Raney, attorney-general; Walter Gwynn, treasurer; Columbus Drew, comptroller; George F. Drew, governor, which officers are trustees of the internal improvement fund, and herein sued as such; Milton S. Littlefield, in his own right; Robert J. Washington, who is a citizen of the State of Virginia.

To the honorable the judges of the circuit court of the United States, in equity, sitting in and for said circuit and district:

The supplemental bill of complaint of J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J. Brunnekruff, J. H. Grem, Willenmier Van Tyer Van Taer, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaar, jr., Jacobus Wertheim, P. Van Reysen, Mey de Benedithy Beer, Gerard A. Heinekin, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyen, N. J. Franket, Johannes Willem Donk, Vander Stoop & Berg, who are aliens and subjects of the King of the Netherlands, humbly shows that heretofore they filed their bill of complaint in this court against certain parties, namely: James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. 2449 C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, who are citizens of the State of Florida, and Joseph B. Stewart, who is a citizen of the State of New York, praying, amongst other things, for the sale of a certain railroad and other property in the said bill, particularly described, for certain decrees declaratory of the rights of complainants in respect to such property, and against claims and pretenses of rights therein and thereto, on the part of said defendants, and praying for orders of injunction against said defendants in said original bill described.

That said defendants have, since the filing of complainant's said bill, combined with one Aristides Doggett, and met together in the city of Jacksonville on the 28th day of May of the present year, and when so met pretended that they constituted a majority of the stockholders of the said Florida Central Railroad Company; that such meeting was a lawful assemblage of such stockholders for election of directors of said corporation; that the place of meeting was the legal place of business thereof; and thereupon said defendants and said Doggett held a pretended election and elected said defendants, James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, who are citizens of the State of Florida, and Joseph B. Stewart, who is a citizen of the State of New York, as directors of the said Florida Central Railroad Company, who now claim that they are lawfully chosen and have the right to fill said offices by reason of such proceedings, all of which said pretenses, complainant alleges, are false, and that said proceedings were concocted, planned, and carried on by said defendants and said Doggett to defeat complainants and deprive them of the relief which they seek and ask for in their original bill, and to avoid the special decree which they pray therein against said defendants in respect to the offices of directors in said corporation, which they are in said bill charged to have assumed by use of fraudulent and illegal acts; that said Aristides Doggett has no shares of stock in the said Florida Central Railroad Company, but that he falsely pretended that he was entitled to vote as the owner of four thousand seven hundred of such shares, and was by such combination and confederation with 2450 said last-named defendants admitted and induced to vote as owner of such shares.

Complainants allege that no call for such meeting of the stockholders of said corporation was made and published in the manner provided by its charter and by-laws; that the principal place of business of such corporation and place where the meetings of its stockholders were heretofore had was, by a vote of such body passed in 1865, fixed at Tallahassee, and that it never was changed by them. Complainants allege that since the last mentioned illegal voting for directors was done by said defendants, Lawton, Littlefield, and their said confederates, they have sought and are still seeking to get said railroad from Jacksonville to Lake City and property thereto pertaining into their possession, and that they threaten to take proceedings in the State court to compel Joseph H. Durkee, who now has such property in his possession, to deliver it to them; that said defendants hope, if they succeed in such effort, to be able to sell said bonds which they have issued or are about to issue in the name of said corporation, as in the said original bill alleged they had done or were about to do.

To the end, therefore, that the said James M. Baker, Geo. R. Foster, W. J. Lawton, Melton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, Charles B. Fenwick, who are citizens of the State of Florida, and Joseph B. Stewart, who is a citizen of the State of New York, may answer this supplemental bill. and that complainants may have such relief against them as is prayed in their original bill of complaint.

May it please your honor to grant unto complainants the writ of subpœna to be directed to said defendants commanding them to appear in this honorable court, on a day to be therein named, to answer this supplemental bill and to stand to, abide by, and perform such order and decree as your honor may see fit to make in the premises.

W. G. M. DAVIS,
Solicitor for Complainants.

2451 United States of America, northern district of Florida. In equity.

W. G. M. Davis, being duly sworn, says he is the solicitor of the complainants in the foregoing supplemental bill and the said original bills; that he drew said bills; that he knows the facts in said supplemental bill, relative to the meeting of said defendants and said Doggett and the holding of the election for directors, to be truly stated in said bill; that he derived his information from a published statement by defendant, N. K. Sawyer, annexed to this affidavit, as well as from persons to whom said defendant, Lawton, stated such transaction; that he knows that said Aristides Doggett is not the owner of any stock in the Florida Central Railroad Company, from the sworn statements of defendant, Joseph B. Stewart, from reading documents filed by defendant, Edward M. L'Engle, with the bill of Robert J. Washington, in this court, from the affidavit of defendant, Milton S. Littlefield, and from an examination of the transfer book and stock ledger of said Florida Central Railroad Company, made by affidavit within a few days; that from such sources of information, affiant says he believes that said Aristides Doggett has no legal title to any shares of the stock of said Florida Central Railroad Company; affiant says he has been informed by John A. Henderson, the attorney of Joseph H. Durkee, that said W. J. Lawton requested him to inform him, said Lawton, whether said Durkee would deliver said railroad and property to him and his codefendants, as directors of said Florida Central Railroad Company on demand, or whether said Durkee would require them to compel such delivery by proceeding in the State circuit court for Duval County; affiant, on such information, says that he believes the statement in said supplemental bill of the intentions of said defendants, Lawton and his said confederates, as to the possession of said railroad and their purposes generally, are true.

2452 Affiant further says, that he has read the answer which was filed by the said Florida Central Railroad Company in Duval circuit court, in the case of the State of Florida et als. against said corporations and others, and that from the statements in said answer as to the principal office and place of holding meetings of said corporation, he believes that the allegations in relation thereto, which are in said supplemental bill contained, are true.

Sworn to before me, Philip Walter, clerk United States circuit court, at Jacksonville, this 30th day of May, 1877.

Filed January 10th, 1879.

P. WALTER, *Clerk*.

2453

U. S. MARSHAL'S OFFICE,
NORTHERN DISTRICT OF FLORIDA,
Jan. 15, 1879.

I certify that I have served a true copy of the within notice, and of the interrogatories thereto attached, upon E. M. L'Engle, esq., and upon Jas. M. Baker, esq., att'y of the Florida Central Railroad Company, at Jacksonville, Florida, on the 7th day of Jan., A. D. 1879, and upon J. B. Stephens, esq., att'y of the J., P. & M. R. R. Co., at Quincy, Fla., on the 15th day of Jan., A. D. 1879, and upon Geo. P. Rainey, esq., att'y of the trustees of the internal improvement fund of Florida, at Tallahassee, on the 8th day of Jan., A. D. 1879.

S. CONANT,
U. S. Marshall.

Jos B. Stewart, esq., att'y for the W. D. W. N. C. R. R. Co., cannot be found within the northern district of Florida.

S. CONANT,
U. S. Marshall.

JACKSONVILLE, FLORIDA, *Jan.* 15, 1879.

Services 4 notices, & 4 interrogatories	$16 00
Mileage Tallahassee, 6c.	9 96
Mileage Quincy	11 22
	$37 18

Filed Jan'y 10th, 1879.

P. WALTER, *Clerk*.

2454 In the circuit court of the United States, northern district of Florida.

J. FRED SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company.

The defendant excepts to the third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, twentieth, twenty-first, twenty-second and twenty-fourth direct interrogatory addressed to the witness Frank H. Collins and Sidney W. Hopkins, because—

I. The said interrogatories are leading, illegal, and incompetent.

II. That the said interrogatories ask for the conclusions and opinions of the witnesses and others, instead of facts.

III. That the said interrogatories ask for hearsay evidence, and not for facts known to the witness.

2455 IV. That said interrogatories do not call for the best, but for secondary evidence.

And the exceptions so taken are not waived by reason of the cross-interrogatories propounded to the witness, but on the contrary are hereby reserved, and will be insisted upon on the trial of this cause.

Cross-interrogatory 1st. Was not your firm of S. W. Hopkins and Company the agents of the State of Florida, as well as of the said Jacksonville, Pensacola and Mobile Railroad Company, in the years 1870 and 1871? and, if yea, state when such agency commenced.

Cross-interrogatory 2d. If you say you were employed to sell any bonds issued by the State of Florida to said Jacksonville, Pensacola and Mobile Railroad Company, state the exact date of such
2456 employment; and was such employment written or verbal?

Cross-interrogatory 3d. If you say your said firm of S. W. Hopkins and Company received any bonds from the State of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, state the amount you agreed to receive from said State, and the actual amount you did receive and dispose of.

Cross-interrogatory 4th. If you say you were shown any maps or copies of laws, were they in any respect different to the maps to be found in the bookstores for sale, or any other laws than such as could be found in the statute books of Florida by any one who chose to examine?

2457 Cross-interrogatory 5th. Did you or not dispose of said Florida State bonds, if any you did sell, to John Collinson in London, and to G. M. Boissevain, A. J. Milders, Joseph Zadoks and others interested in this suit in Amsterdam and Rotterdam, in the Netherlands, who united with your firm in dealing in said bonds?

Cross-interrogatory 6th. Before you sold any of said bonds were they not denounced as being fraudulent and illegal in their issue, and was it not also alleged that the statute under which they were issued was unconstitutional and void, and that said bonds would never be paid by the people of Florida; and were not these charges of illegality published, and the publications copied in various public journals and newspapers throughout the United States, England, and Holland,
2458 where said bonds were offered for sale? State fully all the knowledge and information you have on the subject.

Cross-interrogatory 7th. In consequence of such charges of illegality and fraud in the issue of said bonds being so published, did you not fail to sell said bonds in the markets of New York and London, and in order to dispose of said bonds at any price, did or not the firm of S. W. Hopkins and Co. take said bonds to account, as the nominal purchaser thereof, at the reduced price of less than fifty (50) per cent. of their par value, or say about $500 for $1,000, less commissions? And did not your firm make an agreement to this effect with M. S. Littlefield on the part of said company about the month of June and November, 1870?

2459 Cross-interrogatory 8th. After making such agreement, if you say you did make such a one, authoriseing you to take said bonds to account, at say half their par value or thereabouts, or say £100 sterling per bond, did you or not transfer them to said Collinson, Boissevain, Milders, Zadoks, Stoop and others, as a syndicate formed for that purpose, at the rate of about $190 advance on said bonds, or say at about $690 per bond?

Cross-interrogatory 9th. Do you not know that in consequence of the

repeated charges of fraud and illegality and unconstitutionality in the issue of said bonds, that your firm was not able to make any positive sale of them at all, but on the contrary that the best you could do was to sell to the syndicate, composed of said Collinson and others, and in his name, an option to take the said bonds from time to time at
2460 a limited price; and were not said bonds held at the risk of the Jacksonville, Pensacola and Mobile Railroad Company until such option was exercised; and did not said option extend through a period of one year? and if said contract was in writing, produce a copy thereof as part of your answer.

Cross-interrogatory 10th. Do you not know that in consequence of said charges of fraud and illegality, that said Collinson on the part of himself and associates sought the opinion of eminent counsel, and among others the Hon. J. P. Benjamin, Queen's counsel, as to the question of the constitutionality of said Florida State bonds; and did not said Benjamin give it as his opinion that said bonds were unconstitutional and void; and after the giving of said opinions, did not said Collinson insist upon the executing of a modified contract for himself
2461 and associates, which was executed between your firm and said Collinson on the 28th day of December, 1870, a copy of which said modified agreement is appended hereto as a part of this question, marked Appendix A.

Cross-interrogatory 11th. Was it not a condition of this said modified agreement (Appendix A) between your firm and said Collinson and associates, that your firm should procure from the highest courts of Florida a judicial opinion to the effect that said bonds were not unconstitutional, but were valid and legal securities; and in pursuance of such agreement, did you not send one Charles H. Collins from Europe to Florida, whose mission was to procure such an opinion; and was not such advice procured and given to the governor of Florida by the judge of the supreme court of said State, as was regarded as comply-
2462 ing with the terms of said modified agreement for disposal of said bonds to and by your firm and said Collinson and his associates? Please state fully all that was said or done by the several parties in reference to said modified agreement, which is not expressed therein. State fully all that occurred.

Cross-interrogatory 12th. Do you not know that in consequence of the publication of fraud and illegality in the issue of said bonds, that it was necessary, and that your firm and said Collinson and associates agreed that a large portion of the nominal price at which said bonds were disposed of should be and was set apart as a fund to pay the accruing interest upon and to float said bonds in the market while they were being manipulated, and by your firm and said Collinson and associates; and do you not know that a sum of nearly $400,000 of the
2463 price for which said bonds were disposed of was used and applied to floating said bonds on the market? Please state fully all that occurred in this behalf.

Cross-interrogatory 13th. Was not the first sale or delivery of said bonds to said Collinson and associates in London and in Holland made on or about the 19th day of November, 1870, and was not the last sale, transfer, and delivery under said agreements to said parties made on or about the 19th day of July, 1871; and do you not know that there never was any of said bonds over or above those numbered from number 1 to number 2800 received and delivered by your said firm to said Collinson and associates in Holland or elsewhere, under said agree-

ments of 14th November and 28th December, 1870, and please
2464 append and make part of your answer, if you have it, a copy of
the account of such transfer and delivery of said bonds to said
Collinson, with the date of each delivery.

Cross-interrogatory 14th. Was not all the information, statements, and publications about the fraudulent, illegal, and unconstitutional character of said bonds equally accessible to all parties dealing in the same? And had your firm any information not given to and accessible to all other parties dealing in the said bonds either in England or Holland? If you can do so please produce and make part of your answer to this question all printed or published statements in reference to the illegality of said bonds, in either the English or Dutch language, with what you believe to be correct translations, if you have or can produce such.

2465 Cross-interrogatory 15th. Do you not know that said bonds were
first offered in New York and London, where they failed because
of the said charges of illegality preferred against them? And were they not offered on the market in England and Holland upon a printed prospectus, a copy of which is made part of this question, marked Appendix B, which was printed in both the English and Dutch languages? And if you say there was any other printed or published prospectus used in the putting of said bonds on the market, please produce the same as part of your answer.

Cross-interrogatory 16th. Was not the said printed
2466 London and the said Boissevain, Milders, Zadoks, Stoop, and
others co-operating with him in the placing of said bonds on the
market in Holland; or, if not, please state who, if you know, did prepare and publish said prospectus so addressed to the public for the sale of said bonds.

Cross-interrogatory 17th. If you say, in answer to the 16th direct interrogatory, that the governor of Florida rendered you any aid in the selling of said bonds, please state why it was necessary that you should have the assistance of the governor to make said sale. Was it not because, and only because, of the charges of fraud and illegality so published to the public as to render his (the governor's) official assurances necessary to aid in giving the said bonds any character in the market, even for speculative purposes? If there was any other reason or notice for seeking the governor's aid in the sale of said bonds, please state what it was.

2467 Cross-interrogatory 18th. Do you not know that all the Florida
State bonds numbered above 2,800—that is, 1,200 of said bonds
numbered up to and including 4,000—were brought to England by Thomas B. Coddington, as the agent of the State of Florida, and one Edward Houstoun, some time between the 11th day of January and the 18th day of April, 1871?

Cross-interrogatory 19th. Were not the said bonds, receipted for to said Houston as held for his use and the use of the State of Florida, charged with the payment of the sum of $163,000, with interest, besides the further sum of $5,000 to said Houstoun, and the sum of $57,500 to J. P. Sanderson, and $16,000 to M. D. Papy, and $15,000 to R. H. Gamble,
and F. H. Flagg $4,000, and J. D. Westcott $3,800, and Thomas B.
2468 Coddington $45,000, and the State of Florida $227,500, besides
$40,000 to T. W. Brevard, making in all about $573,800 to be paid
from the proceeds of said bonds, and to which purpose they were dedicated by the governor of Florida and said Houstoun, from whom the said Florida bonds were received by said Coddington, as shown by his receipt made part of this question, marked Appendix C.

Cross-interrogatory 20th. Was there not 224 of the State bonds delivered to said Coddington of the number above 3,000 to 4,000, inclusive, cancelled and returned to the State, leaving but 776 outstanding; and at 50 cents on the dollar, or $500 to the $1,000 bond, could these proceeds amount to more than $388,000, or, to add the 200 bonds numbered from 2,800 to 3,000, could the whole, at 50 per cent., or $500 per bond, produce more than $488,000, and would or could this amount pay
2469 the amount to which they were dedicated by over $90,000? And
do you not know that said 1,200 bonds numbered above 2,800 were not issued or sent to you for the benefit of either the Jacksonville, Pensacola and Mobile Railroad, or the Florida Central Railroad, but were issued and sent to you by the State of Florida and said Houstoun precharged with and set apart to pay the private debts and obligations to the State of Florida, and the other parties named, to the amount of over $570,000 as aforesaid?

Cross-interrogatory 21st. Were any of the bonds, numbered above 2,800, sold by your firm; and if not, state what disposition was made of the same, and especially the 1,000 bonds numbered from 3,000 to 4,000. Were not 224 cancelled and 206 taken by John Collinson in pledge to raise money to pay the interest due January 1st, 1873, on the re-
2470 mainder of the bonds, and 568 deposited in bank by order of
court, and 2 being lost, making the 1,000 bonds?

Cross-interrogatory 22d. Do you not know that at the time said bonds numbered from 3000 to 4000 were delivered by the governor of Florida and said Houstoun to said Coddington, who brought them to your firm as agent and trustee for the State of Florida and said Houston, that said bonds were then the subject of a suit in the circuit court of Leon County, Florida, on the part of J. D. Westcott and F. H. Flagg, on the ground that the said bond issue was illegal and fraudulent; and have not said bonds continued to be in litigation in the courts in Florida, New York, and London from the time mentioned to the present?

2471 Cross-interrogatory 23d. Did or not your firm ever at any time
receive any money or proceeds of any kind from the sale, use, or appropriation of any of said bonds numbered above 2800; and if you say you did not, then please state out of what fund or from what source you derived the money you paid, if any you did pay, said Houstoun, Papy, and others, as provided in the receipt of said Coddington, Appendix C. And did you or not pay said several sums of money to said Houstoun out of moneys received from the complainants in this suit?

Cross-interrogatory 24th. If in answer to the 22d, 23d, and 24th direct interrogatories you state that N. W. Woodfin was in London in 1870, or at any other time, having any business with the firm of Hopkins & Company in reference to said bonds, then state if he was not there as the representative of a commission constituted by the
2472 legislature of the State of North Carolina to seek the recovery of
upwards of a million dollars ($1,000,000) of the money belonging to the Western Division of the Western North Carolina Railroad Company which had been misapplied by its agents and fiduciaries. And did not said Woodfin devote his attention to that subject and no other; and did said Woodfin do or perform or offer to do or perform any act whatsoever which concerned said bonds, except to try to collect said debt and offer his approval of such measures as would produce that result?

Cross-interrogatory 25th. Subsequent to said Woodfin's visit to England, if you say he did visit England, did he or not cause suit to be brought against your firm in New York to enforce the payment to him of the proceeds of said Florida State bonds; and if you say such a suit was brought, how was it decided, and upon what grounds? State fully all that transpired in this respect.

2473 Cross-interrogatory 26th. Was not the said John Collinson with whom your firm made the agreements of 14th November and 28th December, 1870, in reference to the placing said bonds on the market, also interested with the parties in Holland who were engaged in placing said bonds on the market; and was he not a party in interest in both England and Holland? State fully your knowledge and information on this subject.

JOSEPH B. STEWART,
Solicitor for Defendant.

2474 A.

Memorandum of agreement made the 28th day of December, 1870, between Messrs. S. W. Hopkins and Company, of 58 Old Broad street, London, of the one part, and John Collinson, of 9 Victoria Chambers, London, of the other part.

Since the agreement between the same parties dated the 14th day of November, 1870, was signed, a question has been raised by Mr. Collinson, whether the issue of the bonds, which are the subject of such agreement, is not invalid, as being unconstitutional. Messrs. S. W. Hopkins and Company, although not admitting that there can be any doubt as to the validity of such bonds, have nevertheless agreed with Mr. Collinson as follows: It is therefore agreed between the parties that Mr. Collinson, in lieu of paying the Messrs. Hopkins and Company, against delivery on application of such bonds, the sum of one hundred and thirty-eight pounds one shilling and ten pence, shall pay to them one hundred and twenty-four pounds five shillings and ten pence, and that the
2475 difference, videlicit thirteen pounds sixteen shillings, shall, at the
risk of Messrs. Hopkins and Company, be paid to the joint account of Frank Howard Collins and John Collinson, with Messrs. Drake, Klienmuth and Cohen, bankers, of Fenchurch street, London. Messrs. Hopkins and Company engage forthwith to take steps for obtaining and to produce to Mr. Collinson, duly certified by the proper off'ers of the State, the decision of the supreme court of the State of Florida upon the question so as aforesaid raised by Mr. Collinson.

In the event of the decision of such supreme court being in favor of the validity of the bonds, the amount in the hands of Messrs. Drake, Klienmuth and Cohen shall, upon the production to Mr. Collinson, his executors, or administrators, of the official copy of such decision, duly certified as aforesaid, belong and be paid to Messrs. Hopkins and Company.

In the event of the decision being adverse to the validity of the bonds, such amount as aforesaid shall belong and be paid to the said John Collinson, his executors or administrators, as representing the bondholders.

2476 In either case, such interest as Messrs. Drake & Co. may allow shall be paid to Messrs. Hopkins & Co.

In other respects the agreement of the 14th day of November, 1870, shall remain in full force, and nothing herein contained shall prejudice the claims of Mr. Collinson or any bondholder against the State of Florida or the Jacksonville, Pensacola and Mobile Railroad Company, as witness the hands of the parties hereto, the day and year first above written.

(Signed) S. W. HOPKINS & CO.
JOHN COLLINSON.

Witness the signature of S. W. Hopkins & Co. and John Collinson.
(Signed) ADAM T. BLANDY.

2477 B.—(*Annex referred to in the affidavit of J. Wertheim, LL. D., dated 28th day of May*, 1877.)

DEFINITIVE PROSPECTUS.

1870.

FLORIDA STATE LOAN.

Issue of 4,000,000 dollars authorized by act of the legislature, dated 28th of January, 1870. In bonds to bearer of 1,000 dollars each, bearing interest at the rate of 8 per cent. per annum. Principal and interest payable in gold, free from all United States taxes.

Payments will be made at the Florida State agency in the city of New York, of the principal at par on January 1st, 1900, and the interest on January 1st and July 1st, in each year.

The bonds, with accrued interest since 1st July (being £6 18*s.* 2*d.*), are offered at the price of £183 per $1,000, making the interest equal to nearly 9½ per cent. per annum.

Payment on application £10 per 1,000 dollar bond, and the remainder on allotment. Should no allotment be made, the application money will be returned in full.

Messrs. are authorized to receive subscriptions for the Florida State bonds to the amount of $4,000,000.

The State of Florida pledges its credit for the above, guaranteeing payment in gold of both principal and interest.

The governor of Florida (Harrison Reed) makes the following statements:

That the real property therein, taken at its present minimum value, is $50,000,000, on which a tax of ½ of one per cent. is annually levied, being $250,000.

That an addition of $30,000 to $50,000 is receivable from specific taxes on polls, specific licenses, etc.

2478 That there are four hundred miles of railroad and a thousand miles of telegraph line in operation; oyster-beds and fisheries along a thousand miles of the coast, equal to the best in the world; foreign corporations doing business in the State, insurance companies, steamship companies, etc., all of which pay no taxes, and from which large tributes can, if necessary, be levied.

As further security for her debt, the State of Florida possesses already 11,000,000 acres of public lands, and will receive, when the government surveys are completed, over 5,000,000 acres additional.

The money to be now raised is solely to be devoted to railroad purposes, and will be paid on completion of every twenty miles, at the rate of $16,000 per mile; the State being secured by first mortgage liens conditional upon the payment by the company of principal and interest.

The Jacksonville, Pensacola and Mobile Railway, to aid in constructing which the money will be applied, is a line 450 miles in length, of which 250 miles are completed, fully equipped and given over to traffic. The full paid capital stock is $6,550,000, and the present earnings on the finished portion of the road show a net return of over $380,000 per annum.

This railway company has mortgaged to the State its entire property including all real estate, road bed, iron, equipments, and all franchises, as additional security for the prompt payment of principal and interest of these bonds.

The total debt of the State of Florida is $1,011,756, held by the United States Government, and within the State itself.

All the original documents connected with this loan have been submitted to Messrs. Ashurst, Morris & Co., solicitors, of 6, Old Jewry, London, who have stated that they are fully satisfied that they are in perfect order and that the bonds are properly issued.

Subscription lists will be simultaneously opened in London, Frankfort, Amsterdam, and Rotterdam, and prospectuses and forms of application can be obtained in London, of Messrs. .

2479 *Copy of the bond.*

UNITED STATES OF AMERICA.

No. .] STATE OF FLORIDA. [No.

It is hereby certified that the State of Florida justly owes to or beare', one thousand dollars, redeemable in gold coin of the United States, at the Florida State agency, in the city of New York, on the first day of January, 1900, with interest thereon at the rate of eight per centum per annum, payable, half yearly, at the said Florida State agency, in gold, on the first days of July and January in each year from the date of this bond and until the principal be paid, on surrendering the proper coupons hereto annexed.

Tallahassee, January 1st, 1870.

[FLORIDA GREAT SEAL.]

HARRISON REED,
Governor.
S. B. CONNER,
Treasurer.

Issued in accordance with act of the legislature of Florida, approved January 28th, 1870.

Form of coupon.

The State of Florida will pay to bearer forty dollars in gold, at the State agency, in the city of New York, for interest due , on bond for $1,000.

No. .

S. B. CONNER, *Treasurer.*

Indorsement.

STATE OF FLORIDA.

No. .] THIRTY-YEAR EIGHT PER CENT. BOND. [$1,000.

Payable January 1st, 1900. Interest payable 1st July and January, in gold, at Florida State agency, in the city of New York.

This bond is one of a series issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company, to the extent of $16,000 per mile upon completed road. The State of Florida holding the first mortgage bonds of said railroad company for a like amount, as further security to the holder hereof.

HARRISON REED,
Governor of Florida.

(Indorsed:) Prospectus of Florida State loan for $4,000,000 dollars.

2480 C.

TALLAHASSEE, FLA., *January* 11, 1871.

Received from Edward Houstoun, esq., in trust and for his account, one thousand Florida Central Railroad Company first mortgage bonds, payable to the State of Florida, for one thousand dollars each, with which I hereby undertake to arrange with General M. S. Littlefield, and other parties interested, and collect from him or them the amount which it is admitted is due to said Houstoun, viz: One hundred and sixty-three thousand and twenty-six, seventy one-hundredth dollars, with interest thereon at seven per cent. from the time M. S. Littlefield's draft on S. W. Hopkins & Co. for said amount fell due, and in addition thereto the sum of five thousand dollars for costs and expenses incurred by said Houstoun in suits brought by parties against said Houstoun in relation to these bonds or other bonds and the stock of the Florida Central Railroad Company; it being understood that all proceedings at law or otherwise are to be discontinued, or if that be impossible, he is to be indemnified by responsible parties against all damages or costs arising out of said proceedings; it being further understood that said Houstoun shall, when paid, transfer and assign to said Littlefield all the stock of the Florida Central Railroad Company, or other securities which he holds or which were given him as collateral security to secure the above amounts due to said Houstoun.

And it is further understood and agreed that said Coddington is to collect the further sums of money and pay to said Houstoun for account of the parties named below, which it is understood are a lien subsequent and inferior to said Houstoun's lien on these bonds, viz:

M. D. Papy, esq., the sum of sixteen thousand dollars.

Colonel R. H. Gamble, the sum of fifteen thousand dollars; who is to surrender to said Littlefield three hundred shares of stock in the Florida Central Railroad Company, and seventeen hundred dollars in the bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, at par.

J. P. Sanderson, esq., the sum of fifty-seven thousand five hundred and sixty dollars, and said J. P. Sanderson is to surrender to said Littelfield seventy shares of stock in the Florida Central Railroad Company, and comply with his agreements with said Littlefield, for which a part of said sum is in consideration.

J. H. Flagg, esq., the sum of four thousand dollars; for which he is to surrender the Central Railroad Company stock and the Pensacola and Georgia Railroad bonds which he holds to said Littlefield.

And also to pay for seventy shares of stock now or lately held by J. D. Westcott, jr., esq., the sum of thirty-eight hundred and forty-five thirty-three one-hundredth dollars, when said stock is to be delivered to said Littlefield.

This arrangement is based on the assumption that the money will be paid from the proceeds of bonds negotiated by S. W. Hopkins & Co., of New York; the remainder of said proceeds is to be disposed of as directed by the parties interested.

(Signed) T. B. CODDINGTON.

I approve and assent to the same:

(Signed) M. S. LITTLEFIELD,
President J., P. & M. R. R. Co.

2481 (Indorsed:) United States circuit court, northern district of Florida. J. Fred. Schutte et al. vs. The Western Division of the Western North Carolina Railroad Company et al. Cross-interrogatories on the part of the defendant to the interrogatories to be propounded to the complainants' witnesses, Frank H. Collins and Sidney W. Hopkins.

2482 UNITED STATES OF AMERICA,
Northern District of Florida:

I, Philip Walter, clerk of the United States circuit court, in and for the said district, do hereby certify that the foregoing is a true copy of the original cross-interrogatories and exhibits thereto attached, on file in my office.

Witness my hand and the seal of said circuit court at Jacksonville, in the said district, this 3rd day of March, A. D. 1879.

[SEAL OF CIRCUIT COURT.] PHILIP WALTER, *Clerk.*

2483 To JOHN A. SHIELDS, Esq.,
U. S. Commissioner, Post-Office Building, New York:

SIR: A commission was heretofore sent to you from this office with interrogatories annexed, entitled, in the cause of J. Fred Schutte et al. vs. the Western Division of the Western North Carolina Railroad Compan et al., authorizing you to take the deposition of Frank H. Collins and Sidney W. Hopkins and of Thomas B. Coddington, witnesses on the part of the complainants. Cross-interrogatories on the part of the defendant the Western Division of the Western N. C. R. R. Co., were not sent to you, but leave to file and forward such cross-interrogatories was afterwards granted by the court, and the same are herewith enclosed to you. You are therefore instructed to address to each of said witnesses the cross-interrogatories, certified copies of which from the
2484 original on file in this office are hereto attached, and return the same to this office with the direct interrogatories and depositions of the witnesses duly certified.

Respectfully,

PHILIP WALTER, *Clerk.*

2485 Circuit court of the United States for the northern district of Florida.

J. FRED SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

Cross-interrogatories and exceptions to interrogatories to be propounded to Thomas B. Coddington:

First cross-interrogatory. If in answer to the third direct interrogatory you say you had in your possession bonds issued by the governor of the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company, then please state whether said bonds were not numbered

from 3001 to 4000 inclusive; and whether you did not receive said bonds on the 11th or 12th day of January, 1871, at Tallahassee, Florida, from one Edward Houston; and whether you did not receive
2286 said bonds from said Houston, and receipt to him therefor as his
agent and trustee. And at the time you received said bonds did you not agree to apply the same, or the proceeds thereof, to the payment of the following debts and obligations: 1st, a debt to said Houston of $163,000, with interest; 2d, a debt to J. P. Sanderson for $57,500, with interest; 3d, a debt to M. D. Papy for $16,000; 4th, a debt to R. H. Gamble of $15,000; 5th, a debt to James D. Westcott for about $5,000; 6th. a debt to F. H. Flagg of about $5,000; 7th, a debt to yourself of about $45,000; 8th, a debt to the State of Florida of about $223,750? And were you not constituted agent of the State of Florida to take charge of said bonds and convey them to New York City and London, and to apply the proceeds thereof in the manner above inquired about, and did you not convey and deliver said bonds, as such agent and trustee. and according to such instructions?

The defendant excepts to the fourth direct interrogatory as immaterial and irrelevant.

2487 The defendant excepts to the fifth direct interrogatory—

(*a.*) Because the same is incomplete as the Exhibit A, made part thereof, is not annexed.

(*b.*) Because it is immaterial and irrelevant.

(*c.*) Because it calls for a mental condition of the witness—calls for no fact pertinant to this cause, and is incompetent.

The defendant excepts to the sixth direct interrrogatory—

(*a.*) Because it is immaterial and irrelevant.

(*b.*) Because it is leading.

(*c.*) Because it requests the witness to make his answer to a bill in equity in another cause without regard for its materiality.

(*d.*) Because it inquires about matters not embraced in the pleadings.

The defendant exceps to the seventh direct interrogatory, because it is irrelevant, incompetent, and calls for the hearsay statements of others.

2488 Second cross-interrogatory. If in answer to the eighth direct interrogatory you say that you did have knowledge of the sale of any of the first three thousand (3,000) bonds issued by the governor of Florida to the Jacksonville, Pensacola and Mobile Railroad Company inquired of, then please state whether said sale was not made by Milton S. Littlefield as president of said company to S. W. Hopkins & Co. at the rate of fifty per cent. (50 %) of their par value, or, say, one hundred pounds (£100) sterling, for each one thousand ($1,000) dollar State bond? And state whether said Hopkins & Co. did not resell, nominally, said bonds to John Collinson for about one hundred and thirty-eight (£138) pounds sterling per bond. And whether the first of said sales was not made on the 19th day of November, 1870, and the last of said sales July 21st, 1871. And state if a large portion of the gross amount of said sales, that is to say, £67,566 sterling or $337,830 was not deducted
2489 to pay interest on the bonds so sold, and to float the same in the
market. And state if said sales were not merely formal, and that in reality no bonds were purchased from said company by either said Hopkins & Co. or said Collinson, except for speculative purposes, and delivered only as the same were placed in the market. And state whether you do not know of your own knowledge, that none of said bonds numbered above 2,800 were sold and delivered in the market. And were they not also at, or below the reduced price above named?

Third cross-interrogatory. If in answer to the ninth direct interrogatory you say you did present to S. W. Hopkins & Co. a draft drawn by the president of the Jacksonville, Pensacola and Mobile Railroad Company in favor of the governor of Florida for the sum of $223,750, then please state if said money was not to be paid to the State of Florida out of the proceeds of the said bonds of said State numbered from 3001 to 4000, inclusive, which you received from or as the agent and trustee of said Houston on the 11th day of January, 1871. 2490

The defendant excepts to the tenth direct interrogatory as immaterial, irrelevant, and incompetent; and for the further reason that the record alone can show who are the parties to the suit.

Fourth cross-interrogatory. If in your answer to any of the preceding interrogatories you state that said Florida State bonds were sold at or about the reduced price of 50 per cent. of their par value, then please state whether said low rate of sale was not caused by the said bonds being declared fraudulent and illegal in their issue and use, and that the same was in violation of the constitution of the State of Florida? And state whether articles were not published and circulated in the journals of the United States and Europe, charging such to be the fact. And were not such charges of fraud and illegality a matter of common notoriety? 2491

Fifth cross interrogatory. If you say you received said bonds numbered from 3001 to 4000, inclusive, as the agent and trustee of said Houston and the State of Florida, were they or not, at the time you received them, the subject of litigation in suits brought by James D. Westcott and F. H. Flagg, charging the same to be illegal and fraudulent? And did you not have to agree to pay or cause to be paid a sum of money to get rid of said suits in order to possess yourself of said bonds? And was not said money paid or caused to be paid by you then or subsequently?

Sixth cross-interrogatory. At the time you received said State bonds inquired of, if any you did receive, did you or not leave Tallahassee, Florida, by the usual mode of transportation by rail, or adopt any other mode of travel? And if by any other mode, please state what mode it was, and the reason, if any, assigned therefor. 2492

JOS. B. STEWART,
Sol. for Western Division of the Western N. C. R. R. Co.

(Indorsed:) U. S. circuit court, northern dist. of Fla. J. Fred. Schutte et al. vs. The Western Division of the Western North Carolina Railroad Company et al. Cross-interrogatories to be propounded to the witness Thomas B. Coddington. Jos. B. Stewart, sol. for def't, 35 Broadway, N. Y. City.

2493 UNITED STATES OF AMERICA,
Northern District of Florida:

I, Philip Walter, clerk of the United States circuit court in and for said northern district of Florida, do hereby certify that the foregoing is a true copy of the original cross-interrogatories on file in my office.

Witness my hand and the seal of the said circuit court, at Jacksonville, in said district, this 5th day of March, A. D. 1879.

[SEAL OF CIRCUIT COURT.] PHILIP WALTER, *Clerk.*

2494 In the circuit court of the United States, fifth judicial circuit, northern district of Florida. In equity.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS Prins, and others, complainants,
against
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Jacksonville, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company, and others, defendants.

Interrogatories to be propounded to Adolph Engler, merchant doing business at 160 Pearl street, in the city of New York, a material witness for complainants, who is to be examined in the city of New York under a commission to be issued in said cause:

Interrogatory first. What is your name and residence?

2495 Interrogatory second. Have you read a copy of the bill of complaint filed in the suit in which you are now examined as a witness; are you not acquainted with the complainants, or defendants, or either of them?

Interrogatory third. Have you received from complainants any written authority to act for them in respect to the bonds in said bill of complaint mentioned? If you say you have, please annex a copy of such authority to your answer to this interrogatory.

Interrogatory fourth. Have you acquired any pecuniary interest in said bonds or any right or title to them by virtue of any transfer made to you by the said complainants, or either of them, of any of said bonds?

2496 Interrogatory fifth. Have you been before examined as a witness in any suit pending in any court in the State of Florida? If so, in what suit you were so examined, and say whether or not you testified on such examination that you held any bonds, and if any, what bonds, as trustee for complainants and others. If you did so testify, answer and say in what sence you used the word trustee, and what meaning you intended in the use of such word, whether you intended to say that you held such a title or had acquired such an interest in said bonds as that which in law or equity vested you with the sole power to sue for and collect the money which said bonds authorized the owners thereof to demand and sue for the recovery of.

2497 Interrogatory sixth. Of what country are you a native; what is and has been your profession? Are you acquainted or not with the meaning of legal technical words or phrases such as are used in the jurisprudence of the United States?

Interrogatory seventh. Have you in your possession any of the bonds mentioned in said bill of complaint? If yea, say how many you have and who are the legal and equitable owners of said bonds; that is to whom do they belong, whose property are they, for what purpose are they delivered to you; on what terms and conditions are you empowered to deliver them to any one? Have you any other interest, title or right in or to said bonds?

Interrogatory eighth. Look at the paper entitled "Memorandum Plan," hereto annexed; say to what does such paper refer, and what reference the same has to your authority touching said bonds; say whether, in case the plan stated in said paper becomes impossible 2498 of execution from any cause, your authority, control of, or right to possession of said bonds will be effected, and, if effected, how and why?

Interrogatory ninth. When did you first hear of the institution of the suit above stated? Whether you in any way aided in the conduct of said suit, and whether you claimed or do now claim to be entitled to be a party of complainant in said suit?

Interrogatory tenth. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question
2499 in this cause? If yea, set forth the same fully and at large in your answer.

C. D. WILLARD,
Solicitor for Complainant.

Dated, Jacksonville, Florida, January 21, 1879.

In the United States circuit court, northern district of Florida, fifth judicial circuit. In equity.

J. FRED SCHUTTE AND OTHERS
against
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company and others.

Please take notice that I have filed in the office of the clerk of said court interrogatories in the above cause, copy herewith served, for Adolph Engler, a witness for complainants, and that in ten days from this date I will apply for a commission to examine said Engler
2500 on said interrogatories and such cross-interrogatories as may be filed by you.

C. D. WILLARD,
Solicitor for Complainants.

Dated, Jacksonville, Fla., January 21st, 1879.

Filed January 22, 1879.

P. WALTER, *Clerk.*

U. S. MARSHALL'S OFFICE,
Northern Dist. Fla., Jan'y 31, 1879.

I certify that on the 22d day of Jan'y, A. D. 1879, I served a true copy of the within notice, and of the interrog atories thereunto attached, upon E. M. L'Engle, esq., at Jacksonville, Fla., and that on the same date I served a true copy of the same upon Jas. M. Baker, esq., att'y of the F. C. R. R., at Jacksonville, Fla., and on the 26th day of Jan'y I served a true copy of the same upon Geo. P. Rainey, att'y for the trustees of the internal improvement fund of the State of Florida, at Tallahassee, Fla., and on the 28th day of Jan'y, A. D. 1879, I served a true copy of the same upon S. B. Stephens, esq., att'y for the J., P. & M. R. R. Co., at Quincey, Fla.

S. CONANT,
U. S. Marshall.

Service, notice, & interrogatories: Rainey, 4.00; Stephens, 4.00; L'Engle, 4.00; Baker, 4.00; 166 miles to Talla., 9.96; 188 m. to Quincey, 11.28, 21.24—$37.24.

2501 United States circuit court for the northern district of Florida.

J. FRED. SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN
North Carolina Railroad Company et al.

Cross-interrogatories on the part of the defendant to the direct interrogatories, to be propounded to Adolph Engler.

First cross-interrogatory. If you say you have received from complainants their written authority to act for them, mentioned in the third direct interrogatory, then please state if they are not the same authorities to act which you communicated by letters and telegrams, at the request of one Charles D. Willard, to one Thomas D. Carter, at Asheville, North Carolina; and state if you did not send and transmit all the letters and telegrams above mentioned to the governor of
2502 Florida and said Carter at the request of said Willard, and did not said Willard dictate the terms of said telegrams and letters?

Second cross-interrogatory. Are you not to receive a commission as trustee from the complainants, or from Charles D. Willard, for your trouble in the matter of said trust; and state fully and distinctly, to the best of your knowledge and information, who is to pay, and who does pay, the fees, expenses, and charges of the prosecution of this suit on the part of the complainants, and under what contract, agreement and arrangement, or stipulation, and with and between whom made? State whether or not you are authorized to incur any expense or charge against the complainants herein. Do you not know, of your own knowledge, that Charles D. Willard and his associates are bound to pay all costs and expenses of the prosecution of this suit? Have you, or
2503 not, received letters or telegrams of instruction from any of the complainants called the "Dutch bondholders," in relation to said bonds of the management of this suit, or any such letters, telegrams, or other writings or documents in relation to the same, from Charles D. Willard, W. G. M. Davis, Henry R. Jackson, and Charles H. Simonton, or any such documents in relation to your trusteeship for said "Dutch bondholders," or touching your connection with this suit? If you answer yea, please produce each and all of such papers, and make the same, or copies thereof, part of your answer to this cross-interrogatory.

Third cross-interrogatory. If in answer to the fifth direct interrogatory you say you have been examined as a witness in any suit pending in the State of Florida concerning the bonds involved in this suit, then please state if you were not examined as a witness in the two suits in equity prosecuted by the defendant herein, styled the Western Division
2504 of the Western North Carolina Railroad Company; and did you not give a deposition in said suits, and did you not therein state what you knew and believed to be true, and state and mean to state just what the language implies and imports; and did you not notify Charles D. Willard and the other counsel for said Dutch bondholders that you were subpœnaed as a witness for the complainant in said suits, and did not said Willard and his associates advise you to disobey said subpœna; and did you not thereafter consult your own counsel on the subject, and not the latter advise you to obey said subpœna, and in fact attend you on your examination thereunder; and if you state that said Willard and his associates did advise you to disobey said subpœna, if such advice was by letter or telegram please make the same or copies

thereof part of your answer to this cross-interrogatory. State whether or not you were, as trustee for said Dutch bondholders, made a
2505 party defendant in said suits under an order of service made by the honorable circuit court of the United States for the northern district of Florida, on or about the 22d day of May, 1877, and did you show said order of service to said Willard, and did he not advise you to pay no attention to said order of service, saying that he would attend to it and retain the same in his possession; and were you not advised by said Willard's associate, W. G. M. Davis, not to enter an appearance in said suits in which you gave your depositions which you are asked to explain in the direct interrogatories under this commission; and since giving said deposition have you not been advised by said Willard and other counsel for said Dutch bondholders what language you should have used; and have you not been advised by said counsel verbally and by letter what answer to give to said fifth direct interrogatory on this examination; and have you not been furnished with a copy
2506 of the direct interrogatories propounded to you upon this examination by said Willard or other counsel, with directions or advice as to what answers you were desired to make thereto. If you answer that you were furnished with such copy and instructions or advice, please produce the same and make them part of your answer to this cross-interrogatory, with the name or names of the party or parties so instructing and advising you?

This defendant excepts to the sixth direct interrogatory as irrelevant, illegal, and incompetent.

Fourth cross-interrogatory. Are you not acquainted with the English language, and do you not read, speak, and write the same, and was not the language used by you in said former deposition understood and intended by you as then given; and were you not attended by
2507 counsel on said examination; and did you not critically and carefully revise the language you then used before it was taken down by the examiner and afterwards?

Fifth cross-interrogatory. If in answer to the seventh direct interrogatory you say you still hold any of the bonds involved in this suit, then please state if they are not the same bonds which you testified about in your former examination, and do you hold the same by the same authority and for the same purpose or trust for the complainants, as stated in your former examination. Please produce the power of attorney or authority executed and delivered to you by the complainant, J. Fred. Schutte, and make the same or a copy thereof a part of your answer to this cross-interrogatory. Are you not required by said power of attorney to deliver said bonds in exchange for bonds to be executed by a com-
2507½ pany to be formed and styled the Jacksonville and Mobile Railroad Company; are you authorized to deliver said bonds held by you in any other manner or for any other purpose? and, if you answer yea, please produce your authority therefor, and make the same or a copy thereof a part of your answer to this cross-interrogatory.

This defendant excepts to the eighth direct interrogatory because—

1st. The same is incomplete, in that the exhibits named therein are not annexed.

2d. The witness is asked to construe a paper not annexed, which if before him he could not do, such being the exclusive duty of the court.

3d. The witness is asked to state what effect will follow a contingency which has not transpired.

4th. The witness is asked to state conclusions, not facts.

2508 This defendant excepts to ninth direct interrogatory because—

1st. It is immaterial and irrelevant.

2d. The question calls for a conclusion of law and not for fact; and this after the question of law has been previously determined by the court in its order making him a party.

JOS. B. STEWART,
Solicitor for the Western Division of the Western North Carolina Railroad Company.

2509 (Indorsed:) U. S. circuit court, northern dist. of Florida. J. Fred. Schutte et al. vs. The Western Division of the Western North Carolina Railroad Company et al. Cross-interrogatories to direct interrogatories to be propounded to Adolph Engler, a witness on the part of the complainants.

2510 UNITED STATES OF AMERICA,
Northern District of Florida:

I, Philip Walter, clerk of the United States circuit court in and for the said district, do hereby certify that the foregoing is a true copy of the original cross-interrogatories on file in my office.

Witness my hand and the seal of said court at Jacksonville, in said district, this 4th day of March, A. D. 1879.

[SEAL OF CIRCUIT COURT.] PHILIP WALTER, *Clerk.*

2511 Deposition of John Collinson, a witness produced and sworn and examined the 7th day of February, A. D. 1879, at my office, in the post-office building in the city of New York, under and by virtue of a commission issued out of the circuit court of the United States for the northern district of Florida in a certain cause therein depending and at issue, wherein J. Fred. Schutte, Jan Prins, Adrianus Prins, and others are complainants, and The Western Division of the Western North Carolina Railroad Company, The Jacksonville, Pensacola and Mobile Railroad Company, The Florida Central Railroad Company, and others, are defendants.

JOHN COLLINSON, of London, England, aged 39 years of age, being duly and publicly sworn on the part of the complainants, doth depose and say as follows:

First. To the first interrogatory he saith: John Collinson; residence, London, England; I resided in London, England, during the 2512 years 1870, 1871, 1872, & 1873. I was a merchant during those years.

Second. To the second interrogatory he saith: During the years 1870, 1871, 1872, and 1873, or some of those years, I had dealings with the said firm, and purchased from them some of the bonds mentioned in the interrogatory. I had no dealing with S. W. Hopkins individually until after I had purchased the said bonds. Said dealings were confined to endeavors on my part to induce his firm to adhere to the agreement which they had entered into at the time of the sale of the bonds. I am not able to state from memory more particularly what occurred between said Hopkins and myself, as all papers and documents relating thereto are in England. I have made statements in judicial proceedings in connection with the said bonds, but I have no copy, either written or printed, in this country of said statements; what statements I made are true.

2513 In answer to the third interrogatory he saith: The bonds were purchased by me of S. W. Hopkins and Co., in London, England. They were put on the Dutch market and sold there, as I have been informed. I am also informed that such transaction was conducted by Messrs. Boissevain and Milders & Maingay, of Holland, who purchased the bonds from me for such purpose; that is, to put them on the market and sell them. Nothing was done by me to induce persons in Holland to purchase said bonds from Boissevain, Milders & Maingay, and I have no knowledge of what was said by said persons to induce such purchase.

To the fourth interrogatory he saith: So far as I can remember, the only person who was interested with me in the purchase was Alexander Mendel, of Brussels, since dead. I cannot state from memory what share he had therein or when his interest commenced.

2514 To the fifth interrogatory he saith: The purchase money was found in certain proportions by the said Boissevain, Milders & Maingay, Mendel, and myself. There was no organization or association created by me to buy and pay for said bonds.

To the sixth interrogatory he saith: No other representations were supplied by me to any of such persons, except copies of the various documents in connection with the matter received by me from said Hopkins & Co., and I cannot remember the contents of such documents nor at what time I acquired them.

In answer to the seventh interrogatory he saith: My answer to this interrogatory is the same as the answer to the sixth interrogatory.

To the eighth interrogatory he saith: I have already stated that I sold certain of the bonds to persons in Holland, but I am unable to state anything more particularly than I have already done
2515 respecting the transactions without reference to my books and papers, which are in England.

To the ninth interrogatory he saith: I have read the paragraphs of the copy of the bill referred to in the interrogatory, but I am unable to say whether the statements therein contained are correct or incorrect without reference to my books and documents, which are in England; it is impossible for me to make any statements on these matters from memory alone.

To the tenth interrogatory he saith: To the best of my recollection I did not receive any bonds from Calvin L. Chase, and I do not remember whether I received any bonds by his authority; I have no recollection of the numbers of any bonds so delivered to me, if they ever were so delivered, nor can I answer from memory any of the other questions contained in said interrogatory

2516 To the eleventh interrogatory he saith: To the best of my knowledge and belief, I did pay money for interest on some of the bonds specified in the second interrogatory; I cannot from memory and without reference to my books and papers in England answer any of the other questions contained in the eleventh interrogatory.

To the twelfth interrogatory he saith: I am unable from memory to set forth any other matters or things which would appear to me to be of benefit or advantage to the parties in this cause.

JOHN COLLINSON.

Examination taken, reduced to writing, and the witness subscribed and sworn to before me this 1st day of Feb'ry, A. D. 1879.

JOHN A. SHIELDS,
Commissioner.

2517 Deposition of Thomas B. Coddington, a witness produced and sworn and examined the 18th day of Feb'uary, A. D. 1879, at my office in the post-office building, in the city of New York, under and by virtue of a commission issued out of the circuit court of the United States for the northern district of Florida, in a certain cause therein depending and at issue, wherein J. Fred. Schulte, Jan Prins, Adrianus Prins, and others are complainants, and The Western Division of the Western North Carolina Railroad Company and others are defendants.

THOMAS B. CODDINGTON, of New York City, aged 64 years of age, being duly and publicly sworn on the part of the complainants, doth depose and say as follows:

First. To the first interrogatory he saith: Thomas B. Coddington; age, 64 years; occupation, merchant; and reside at 42 Fifth avenue, New York City.

Second. To the second interrogatory he saith: Yes; I have 2518 heard of them in connection with this and like litigations in these Florida railroad suits.

Third. To the third interrogatory he saith: I have received and delivered the thousand bonds, numbered from 3001 to 4000, inclusive, as stated in the copy of my answer which I now hand to the commissioner, and which is a copy of my original answer filed in the U. S. circuit court in that case (answer marked by the commissioner Coddington No. 1, J. A. S., com'r). The particulars as to the receipt and delivery of these bonds are stated on pages 11 to 18, inclusive, paragraphs 11 to 13, inclusive. I hand to the commissioner a sworn copy of the paper given by me to Colonel Houston at that time (paper marked by the commissioner Coddington No. 2, J. A. S., com'r), as stated on the pages and paragraphs before mentioned.

Fourth. To the fourth interrogatory he saith: Yes; the answer that I handed to the commissioner a copy of in answer to interroga- 2519 tory three is the answer.

Fifth. To the fifth interrogatory he saith: I have examined Exhibit A, and it is not an exact copy. It differs in the title-page and in the printing. They substitute italics which is not in the original, and omit italics that are in the original. I am willing and do testify as stated in the answer. I claimed to have a lien on these thousand bonds for forty thousand dollars and interest. When, in January, 1872, I was informed that 800 of these bonds had been sent to New York from London, and that the remainder were held in London, I caused a notice to be served on the holders of the remaining bonds (about two hundred) of my lien, and forbidding them from parting with the bonds. About this time I learned that John Collinson had commenced suit in London against Collins and others (Collins being a partner of Hopkins & Co.) to compel them to deliver, under a contract previously made, these 1,000 bonds above mentioned, with 200 more of like bonds of a 2520 previous issue, and that the Jacksonville, Pensacola and Mobile Railroad Company had intervened, assenting to and requiring Collinson to take the bonds he had contracted for with Hopkins & Co., and that after a negotiation by these parties a consent decree was made by which Collinson was to have all the bonds placed in his hands, with the option to buy them, except 224 that were to be cancelled. My notice to the holders of the 200 bonds prevented the carrying out of this arrangement. The railroad company admitted my claim of $40,000 and interest from 29th of August, 1872, and my lien on the bonds, and for this and the further consideration that I would withdraw my

notice, the company promised to pay my claim and interest in cash, or, failing to do so, the company would cause 192 of said bonds to be delivered to me, authorizing me to sell the same to satisfy my said debt. This agreement was in writing and signed by the Jacksonville, Pensacola and Mobile Railroad Company, by their attorney in
2521 fact, C. L. Chase, and at the time of its execution C. L. Chase,
L. P. Bayne, and W. G. M. Davis guaranteed in writing the faithful execution of this agreement. Copies of this agreement and guarantee and particulars of the foregoing will be found in the printed copies which I now hand to the commissioner and append as part of my evidence (and the same is marked by the commissioner Coddington No. 3, J. A. S., com.). Subsequently I learned that John Collinson had obtained in Dec., 1872, from the supreme court in New York the said 800 bonds, Nos. 3201 to 4000, inclusive, which were obtained by a consent, a copy of which is contained on pages 23 to 27, inclusive, of my said answer, which I have handed to the commissioner and made a part of my answer to this interrogatory. And on the 18th of January, 1873, the said railroad company and other parties in that court of record admitted my said debt and lien on the 1,000 bonds herein referred to, which were delivered to Collinson, that is, 200 in London and 800 in New York; which consent, admission, and order of the court
2522 thereon will be found copied at pages 28 to 32, inclusive, of my
said answer. After this, 224 of these 1,000 bonds were cancelled, which left 776. Of these, 568 were placed in the Bank of England by order of the English court of chancery on motion of the Jacksonville, Pensacola and Mobile Railroad Company. Of this 568 bonds, I received in June, 1878, by order of the said court in chancery in England (the company contesting), 192 of said bonds, which 192 bonds I still have in my possession. The remaining 376 bonds are still in the Bank of England, held by order of court to the credit of the cause of Coddington vs. The Jacksonville, Pensacola and Mobile Railroad Company. The remainder of these 1,000 bonds, I have heard from L. P. Bayne, and perhaps from other parties, that John Collinson had taken against the coupons due in January, 1873, on the other bonds of a previous issue.

Sixth. To the sixth interrogatory he saith: My said answer, down to the period to which it refers to, contains a full, true, and complete
2523 statement of my acts and dealings with said bonds, and the acts
of others so far as came to my knowledge. I do again make such answer in equity a reply to the question now repeated. To the last part of this interrogatory I say that my previous answer, to the fifth interrogatory, is a full statement of what was done by myself and others in respect to these bonds so far as I know or heard.

Seventh. To the seventh interrogatory he saith: I was in London in 1871 and I have stated in my previous answers all I know about the bonds.

Eighth. To the eighth interrogatory he saith: I understood from the legal proceedings of Collinson before referred to, that of the first issue 2,800 bonds had been taken from Hopkins & Co. and paid for by Collinson, but I have no personal knowledge of their disposition.
2524 Of the remaining 200 bonds I understood that Collinson obtained
them from the company through Chase, their attorney in fact, and paid for them, but I have no personal knowledge of it, the particulars being stated in the English bill of chancery (Coddington No. 3) and the answer of the company, which I now hand to the commissioner. (Answer marked by the commissioner, Coddington No. 3½, J. A. S., com.)

Ninth. To the ninth interrogatory he saith: No; I never heard of any such draft.

Tenth. To the tenth interrogatory he saith: No; I have never authorized Daniel P. Holland or any one else to have me made a defendant in this suit, but I did authorize the said Holland, as my solicitor and counsel, to file a petition for me in said court, and a petition was filed by me and my said counsel praying that the court would grant the
2525 prayers which are to be found on page 30, paragraph 31, of the petition filed in the case, a copy of which petition & prayer I now hand to the commissioner (petition marked by the commissioner Coddington No. 4, J. A. S., com.) and which I make part of my answer to this interrogatory.

Final. To the final interrogatory he saith: My answers and the documents I have handed the commissioner contains everything relating to these bonds as far as I know or have heard.

First. To the first cross-interrogatory he saith: My answers to direct interrogatories 5 and 6 indicate what is made from my own knowledge and what I derived from others.

Second. To the second cross-interrogatory he saith: My answer to the eighth direct interrogatory states the source of my information. I had no personal knowledge of the transaction.

2526 First. To the first additional cross-interrogatory he saith: I have already answered the first part of this interrogatory in my answer to the ninth direct interrogatory.

The witness here asks the commissioner to adjourn this examination till to-morrow morning at 11 o'c'k a. m., so as to enable him to examine his papers for the purpose of looking them over with a view to answer this interrogatory relative to the injunction.

Examination adjourned, at the request of the witness Coddington, to Wednesday, March 19th, 1879, at 11 o'c'k a. m.

WEDNESDAY, *March 19th*, 1879.

The witness THOMAS B. CODDINGTON, continuing his answer to the first additional cross-interrogatory saith: I have already stated what bonds I understood were sold and what were not sold. I have refer'ed to my papers and I hold in my hand a certified copy of an injunc-
2527 tion order in the case of T. B. Coddington vs. The Jacksonville, Pensacola & Mobile Railroad Company, being an order on motion for injunction made the 26th day of April, 1873, in the high court of justice, chancery division, in which the court doth order as follows: "This court doth order that an injunction be awarded to restrain the defendant, John Collinson, until the hearing of this cause or the further order of this court from delivering to or to the order of the defendant, the railway company, or to any other person or persons, the bonds in the plaintiff's bill mentioned remaining in his hands without delivering 192 of the said bonds to the plaintiff"; which is the only injunction I know anything about.

To the cross-interrogatories propounded by Jos. B. Stewart, solicitor for the Western Division of the Western North Carolina Railroad Company, the witness, answering, says:

2528 First. To the first cross-interrogatory he saith: In my answer to the third direct interrogatory I have stated fully and particularly as to my receiving and disposing of the bonds by delivering the same to Hopkins & Co., for whose account and the authority by which I acted. The receipt I gave to Houston, a copy of which I have handed to the commissioner, and which is marked Coddington No. 2, and the letter of M. S. Littlefield, pres. of the J., P. & M. R. R. Co., and the letter of Harrison Reed, governor of Florida, contained on pages 13 & 14 of Coddington No. 1, which is my answer in the suit before mentioned, will show what I was told to do with the money, if I received it, which I did not.

Second. To the second cross-interrogatory he saith: I have already
stated fully and particularly all I know or have heard in relation to the
disposition of these bonds. In regard to the price and terms of
2529 the sales I was told by W. G. M. Davis the particulars of the
transactions, very much as stated in the interrogatory, as near as
I can remember, but I know nothing of it of my own knowledge, except
as I have before stated in my answers to the direct interrogatories.

Third. To the third cross-interrogatory he saith: I have already answered in my answer to the ninth direct interrogatory that I never heard of any such draft.

Fourth. To the fourth cross-interrogatory he saith: I know nothing
about the newspaper publications referred to. I was told in London,
by Hopkins & Co., that there was a delay in consum'ating the contract
between Hopkins & Collinson until an expression from the supreme
2530 court of Florida could be obtained sustaining the legality of the
issue of these bonds, and that after the opinion of the said supreme
court had been given the sale under the contract went on.

Fifth. To the fifth cross-interrogatory he saith: When in Florida in
January, 1871, I was informed by Colonel Houston that Judge Westcott
and Colonel Gamble had obtained an injunction against his sending
the bonds from Florida, they, Wescott and Gamble, being stockholders
in the Florida Central Railroad Company. Subsequently
Westcott agreed to give his consent to the bonds being sent away if he
could be paid for his stock in cash $3,845.33, and Gamble agreed to
give his consent on my promise to Houston to take the bonds to London,
and if I received the money to pay it over to Houston for the parties
who alleged to have claims that were a lien on these bonds, amongst
which Gamble claimed fifteen thousand dollars. The particu-
2531 lars are stated in Exhibit Coddington No. 2, furnished by me to
the commissioner. The nature of the suit or proceedings I know
nothing about. I paid Westcott, as stated in paragraph 16, page 20, of
my answer marked Coddington No. 1, and I subsequently had to pay
Gamble, as stated on pages 20 & 21, paragraph 18, of Exhibit Coddington
No. 1, and which I here reiterate.

Sixth. To the sixth cross-interrogatory he saith: After I had received the *the* bonds, and instructions from Littlefield, president of the road, and of Reed, governor of Florida, the said Houston being fully advised and assenting thereto, I left Tallahassee, as stated on page 14, folios 40 & 41, of Exhibit Coddington No. 1, and which I here reiterate.

T. B. CODDINGTON.

Examination taken, reduced to writing, and by the witness subscribed apd *and* sworn to this 19th day of March, 1879, before

JOHN A. SHIELDS,
Commissioner.

2532 *Answer of Thomas B. Coddington.*

U. S. circuit court, northern district of Florida. In equity.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR OF THE STATE of Florida, the Florida Central Railroad Company, and others.

D. P. Holland, solicitor, and of counsel.

At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others are complainants and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced and shown to Thos. B. Coddington, and by him deposed unto at the time of his examination before John A. Shields, commis.

2533 Circuit court of the United States, northern district of Florida, at Jacksonville.

To the judges of the circuit court of the United States for the 5th circuit and northern district of Florida:

The separate answer of Thomas B. Coddington to the bill of complaint exhibited against him by the Western Division of the Western North Carolina Railroad Company, in which suit George F. Drew, governor of the State of Florida, the Florida Central Railroad Company, and others, together with him, the said Coddington, are made parties defendant.

This defendant, saving and reserving unto himself all and all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' bill of complaint contained; and insisting upon the several special matters in this answer set forth, as if he had plead the same, or had demurred to said bill, for answer thereunto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith:

2534 I. That the bill should be dismissed as to him, because he says that it does not allege that this defendant is a citizen of the State of New York, but avers that he is a citizen of New York, and this defendant alleges that this allegation of citizenship is not sufficient to give the court jurisdiction of this defendant. Wherefore he prays that the bill be dismissed as to this defendant; and subject to the foregoing objection to the jurisdiction of this court and claiming the benefit thereof as if he had specially demurred to said bill,

This defendant saith:

First. That he absolutely denies all, each and every charge of fraud or of fraudulent intent alleged against him by the complainants, and avers that the whole of the transaction, and each and every act (relative to the bonds which are the subject of this suit), were, so far as they were done by this defendant, or so far as he had any knowledge of them, and so far as this defendant was connected with them, good, honest, fair, legitimate and lawful acts, legally and morally; and that this defendant's whole connection with these bonds were had for a good and

lawful purpose, and, as this defendant then believed, for the benefit of the parties in interest; and the result, this defendant believed, would eventually be, that the line of railroad would be built, to the great benefit of the people and the State of Florida; this defendant was also informed, and he believed it, and he acted upon that belief, that the State of Florida had by law authorized the governor to exchange State bonds for the bonds of the railroad companies, and that S. W. Hopkins & Co. had sold in England State bonds that were then authorized to be issued, and had agreed to deliver to the purchaser four millions of said State bonds at a given time; and further, that it was essential for the consummation of the contract that the bonds should be delivered as stipulated, and that Edward Houstoun would, it was supposed,
2535, 2536 deliver one million of said bonds to this defendant, in trust for him, if this defendant would accept the trust, and that the receipt and delivery of this million of bonds held by Houstoun was the obstacle in the way of realizing the money from the sale of the bonds, and that if this million of bonds could be delivered in time to complete the contract of sale in London, that the whole enterprise would be a success and the railroad would be speedily constructed westward as designed by the legislative authority.

This defendant supposed that he was undertaking a matter that would be a great public and corporate benefit. This defendant had full faith in these representations, and acted upon them, and was most anxious that this Florida line of railroad should be completed westward through the State of Florida. This defendant had been the good business friend of the Florida railroads; that when the Pensacola & Georgia Railroad Company was building its road this defendant sold that company (Edward Houstoun being its president) large quantities of railroad iron, amounting to more than two hundred thousand dollars, on credit, and took the notes of the company therefor, and when that company failed to pay its notes he compromised with them and took the mortgage bonds of the company in payment at sixty cents on the dollar, and years afterwards this defendant's partner sold them at the solicitation of Edward Houstoun to George W. Swepson, while this defendant was in Europe, at fifty cents on the dollar. After the war this defendant again credited the company, and used all his best endeavors to assist the company and advance its credit, and gave up his coupons (and induced his friends to give up their coupons), past due, for alleged preferred stock, to the amount of over sixty thousand dollars, so as to save that railroad from bankruptcy and sale to its stockholders and to the people of Florida. And that this defendant did this because he had entire faith in the character, honor, and integrity of Edward Houstoun, its president, and gave these past due coupons, and obtained those of his friends, relying on the representations and statements of Ed-
2537 ward Houstoun, the president for the company, not supposing for one moment that Houstoun was deceiving this defendant, which afterwards proved to be the case. This defendant afterwards heard that the Pensacola & Georgia Railroad had been sold, as the other Florida railroads were, by the trustees of the internal improvement fund, and that new companies were organized, and that Houstoun and Milton S. Littlefield were the owners of more than two-thirds of the whole line of railroad from Jacksonville westward, and that an exchange of bonds by the State for railroad bonds had been authorized by law, and that these State bonds had been contracted to be sold and delivered to parties in London, and that there was no doubt of the success of the

new company in being able to speedily build the Florida railroads through to Mobile, Alabama. That the obstacle in the way was the delivery of the bonds in London in time, to the purchasers, according to the contract. And this defendant agreed to assist in taking this million of dollars of State bonds to London for this purpose, believing, as aforesaid, that it was a good and great public and corporate enterprise, and one to which he wished every success. That with this intent and purpose this defendant went to Florida, in January, 1871, and then obtained the bonds, and afterwards delivered them to S. W. Hopkins & Co. in London, in April, 1871, by the positive and peremptory order of Edward Houstoun, for whose account, and in trust for whom, this defendant received the bonds; and also by the order and direction of Milton S. Littlefield, the president of the Jacksonville, Pensacola and Mobile Railroad Company, and also by the order and direction of Harrison Reed, the governor of Florida; all of which will more fully appear in this, his answer, hereafter in detail.

II. This defendant says that he has had to pay many thousands of dollars of his own money because he obeyed the order of the said Houstoun.

2538 III. This defendant says that he never heard of these complainants, or that such a corporation existed until long after he had delivered the bonds to Hopkins & Co., in London. This defendant charges that if these complainants had any charge or complaint against him, they ought to have brought it before this time, and not wait for more than six years to bring suit against him; and then, instead of suing him at his domicil in the city of New York, bring this suit against him in Florida.

IV. This defendant says that if their bill be true, of which he knows nothing, and if Littlefield and Swepson embezzled the moneys of these complainants prior to the passage of the acts of 1869 and 1870, authorizing the bonds to be issued, as the complainants allege in their bill, that these complainants committed a gross fraud on the State of Florida and its people, and on this defendant, in not letting the embezzlement be known, so as to advise the authorities of Florida and the public and this defendant not to deal with the aforesaid parties. This defendant, so far from believing that these gentlemen were the criminals that the complainants in this their bill allege them to be, says that George W. Swepson and Milton S. Littlefield were, prior to his receiving these bonds, represented to him to be men of capital and of good character, or this defendant would not have had any connection with them; that he did not know Swepson at all in any part of this transaction, and has never seen him, and his only knowledge of him was that he had been introduced to defendant's partner by a banker, and at Houstoun's solicitation this defendant's partner had sold Swepson the aforementioned Pensacola and Georgia first mortgage bonds prior to the sale of that road in 1869, and while this defendant was a resident of London.

That if what these complainants say about these gentlemen in their bill is true (of which this defendant has no knowledge and does not assert), this defendant says that it was the duty of these complainants to have prevented them from obtaining the passage of the 2539 statutes of Florida, of 1869 and 1870, by which they obtained these public securities; that they the complainants should have published and declared the acts of embezzlement now in their bill of complaint alleged, instead of waiting till the securities were issued, and innocent parties and this defendant, and the public of Florida, had dealings with these securities, to their great injury, as this litigation shows,

V. This defendant absolutely denies that he had any knowledge of any of the illegal acts charged by these complainants against Littlefield, Swepson, or Houstoun, or either of them, relating to the embezzlement or fraudulent use by them, or either of them, of the moneys, securities, or other property of these complainants, as in their bill alleged. This defendant says that he did not know that there ever was such a company as these complainants, or such a corporation in existence, and never knew that either Littlefield or Swepson ever were agents or officers, or in any way connected with such corporation until long after he had delivered said bonds in April, 1871, and then only by hearsay, and in years afterwards, by pleadings in certain suits, this one among the number.

VI. This defendant further says that he delivered in London one thousand State bonds numbered 3,001 to 4,000, inclusive, on the eighteenth of April, A. D. 1871, to S. W. Hopkins & Co. (as will hereafter more fully appear in his answer), and that he is informed and believes that after this defendant had delivered up the whole thousand bonds, that 800 of these identical bonds, numbered 3,201 to 4,000, both inclusive, were afterwards, and in the year 1872, in the hands of a receiver of the
2540 supreme court of the city and of the State of New York, tied up
by order of that court in two actions then pending, in each of which this complainant, the Western Division of the Western North Carolina Railroad Company, was a party defendant.

And this defendant is informed and states, as will more fully appear by reference to Schedule I of complainants' exhibits, attached to this bill, that these complainants assisted to procure, and did consent to, and did thereby obtain an order, on the 6th day of December, 1872, by which John Collinson did receive 800 of these identical bonds, being numbered 3,201 to 4,000, inclusive, and carried the same to England to sell, according to the understanding and agreement between the said North Carolina Railroad Company and the other parties to that suit; and that if Collinson should buy the bonds, the proceeds were to be divided amongst certain parties. And these complainants were, of the proceeds of these identical bonds, to receive the sum of two hundred thousand dollars, according to a consent decree obtained in said court on the   day of December, A. D. 1872, which will more fully appear by reference to the consent and stipulation made by complainants, and a copy of this order filed with this answer, and marked Nos. 1 and 2. This defendant avers the facts to be, that these complainants caused eight hundred (800) of these bonds, after this defendant had delivered them in London to S. W. Hopkins & Co., to be taken from a receiver of a court in New York, where they then were, in December, 1872, and sent to England for sale. And this defendant says that these complainants are estopped from denying that they aided and assisted, and attempted to have these bonds sold long after this defendant had parted with the said bonds, and that it is a gross wrong on this defendant to have such charges brought against him by these complainants relative to these bonds.

VII. This defendant prays that the copies of the stipulations
2541 and consents of these complainants, filed herewith, marked No.
1 and 2, may be taken as a part of this his answer, and he says that when these orders were obtained he was not a party, and had no knowledge thereof; but subsequently, on hearing thereof, in the year 1877, he applied to said court, and was made a party thereto, and filed his answer in 1877, and in his answer insisted that the lien of this defendant therein admitted by these complainants and the Jacksonville,

Pensacola, and Mobile Railroad Company had priority and was superior to all other liens for the payment of the debt therein admitted to be due; and this defendant says that the said suit is still pending and undecided in the said court in the said city and State of New York.

VIII. This defendant further says, that he has been informed and believes, and so charges, that these complainants, on or about the 10th of April, A. D. 1870, and prior to the amendatory statute of 1870 (by the authority of which these bonds were issued), entered into a written agreement with the said Milton S. Littlefield and George W. Swepson, by which it was agreed that the said Littlefield should procure bonds of the State of Florida by legislation, substantially, as was afterwards done by the passage of the amendatory act of 1870; and that he, Littlefield, should thus obtain bonds of the State of Florida in exchange for railroad bonds; and that the said State of Florida bonds thus obtained should be sold, and the proceeds applied to the following purposes, to wit, one-half was to be paid to these complainants for the debts due by Littlefield and Swepson to these comptainants, and the residue should be retained by the Jacksonville, Pensacola and Mobile Railroad Company. And that under and in accordance with this unlawful and fraudulent contract on the people of Florida, and the minority stockholders of the Florida Railroad Companies, and this secret agreement, the said Littlefield subsequently caused and procured the passage of the act of 1870, which authorized the issue and exchange of these bonds, 2542 all of which was then unknown to this defendant, and was kept secret among the parties to the said agreement. And defendant says, that these complainants, by the said agreement, made the said Littlefield their agent, and that these complainants are now estopped from denying the legality of the issue and exchange of these bonds; and this defendant asks that he may have the benefit of the decision of Mr. Justice Bradley, heretofore made in this case, and the judgment of this court, that for and on the account of this agreement these complainants are estopped, as in the said judge's opinion then declared.

IX. This defendant further says that he is informed and believes that in accordance with a settlement made between these complainants and the said M. S. Littlefield, the complainants received of the proceeds of the sale of State of Florida bonds, issued under the act of 1870, to the Jacksonville, Pensacola & Mobile Railroad Company, the sum of fifty thousand dollars, at one time, from S. W. Hopkins & Co., the fiscal agents of the said J., P. & M. R. R. Co. And this defendant avers that he believes that these complainants are justly chargeable with the injuries that resulted from the alleged improper use of those bonds and their proceeds, and the failure to build the railroad westward, and this defendant says that there can be no doubt that if the stockholders or the people of Florida, or the legislature, had known that when the legislature passed the acts of 1869 and 1870 that the bonds thus authorized to be issued were to be sold, and the proceeds applied to repaying the embezzlement of the moneys and securities of this North Carolina corporation by Littlefield, Swepson, or by any other person, that the legislature would have refused to pass said acts, and if passed, that no business man would have had anything to do with either the said persons or the bonds. And this defendant charges that the complainants have in their bill shown that for and on account of their concealment 2543 of the alleged acts and defalcations of Littlefield and Swepson (if what these complainants say be true), they have debarred themselves of the relief prayed for in their said bill, and have committed a gross wrong on this defendant, and the public, and especially the people of Florida, by concealing the same until long after the legislation was had, and the bonds issued, and dealt with by this defendant and other innocent parties.

X. This defendant further says that the Jacksonville, Pensacola & Mobile Railroad Company is indebted to him in the sum of forty thousand dollars, with interest thereon, which is still due and unpaid, and that this defendant has a lien on 568 of these bonds for the payment of said sum of money. That these complainants and the said railroad company are estopped of record from denying the aforesaid claim and lien of this defendant, because, he says, that in the said suit in the supreme court of the State of New York, at a special term thereof, held in the city of New York, in said State, on the 18th day of January, A. D. 1873, these complainants and the said railroad company appeared before the Hon. George C. Barrett, justice, then presiding in said court, and then hearing the said suit of John Collinson, plaintiff, against S. W. Hopkins & Co., The Jacksonville, Pensacola & Mobile Railroad Company, The Western Division of the Western North Carolina Railroad Company, and others, being defendants; that these complainants and said railroad company, with others, did then and there, of record in said suit, among other things admit, and in said cause did in writing declare that this defendant, "Thomas B. Coddington, had, on the said 29th day of August, A. D. 1872, a claim and lien, to the amount of forty thousand dollars, and interest from the 29th day of August, 1872, on one thousand of the said twelve hundred bonds so delivered to the said John Collinson upon the footing of the said agreement with him, and the said decree of
2544, 2545 the said court of chancery, and such lien of said Thomas B. Coddington attached and still attaches to the proceeds or so much thereof as may be necessary, of the said one thousand bonds, and he is entitled to be paid out of such proceeds of said sum of forty thousand dollars United States currency and interest as aforesaid."

And this defendant says that these complainants are of record forever estopped from denying the lien and claim of this defendant, as is above set forth, and on the 13th day of January, 1873, by them admitted to be a lien on said bonds from the 29th day of August, A. D. 1872.

XI. This defendant says, that on the 12th day of January, A. D. 1871, he gave Edward Houstoun the written instrument, marked Schedule F. That although by the said instrument it appears that Houstoun delivered and that this defendant received one thousand Florida Central Railroad Company first mortgage bonds, payable to the State of Florida, for one thousand dollars each, yet this defendant alleges and says that the following are the actual facts:

That on the 11th day of January, Houstoun, taking a servant with him and accompanied by this defendant, went to the office of Col. Robert H. Gamble, and received from Gamble the one thousand railroad bonds described in Schedule F.

That thereupon Houstoun, and this defendant, and Houstoun's servant carrying the bonds, went immediately to the governor's office in the capitol, and the said one thousand railroad bonds were then and there given to Harrison Reed, governor of Florida, in the said executive chamber, and the said Governor Reed then delivered therefor one thousand State of Florida bonds of the face value of one thousand dollars each, and numbered from 3,001 to 4,000 inclusive, which said
2546 bonds this defendant understood were issued under the statutes of 1869 and 1870, described in complainants' bill.

That Houstoun directed his servant to take the package of State bonds and carry them to this defendant's room in the hotel; that Houstoun and this defendant, together with the said servant then carrying the bonds went to the hotel, where the State bonds were by Houstoun left with this defendant.

That this defendant the next morning, at Houstoun's request, delivered to Houstoun the paper marked Schedule F, and the said Littlefield, as president of the said J., P. & M. R. R. Co., gave his full authority and assent thereto, and signed the same in his official capacity.

And this defendant says, that in the manner aforesaid he did receive the said one thousand State of Florida bonds, numbered 3001 to 4000, and that the same were received by the authority, assent, and approval of the said president of the said Jacksonville, Pensacola and Mobile Railroad Company, and in trust and for account of said Edward Houstoun.

And this defendant says, that the disposition he was to make of the said bonds and their proceeds, if any were received by him, is set out in said Schedule F.

That the governor told this defendant, in Houstoun's presence, in the executive chamber, at the time of the delivery of the said State bonds, for this defendant not to take the bonds out of the State until the governor had made arrangements for the payments of certain moneys to the State of Florida with the said president Littlefield.

That, in accordance with this direction of the governor as aforesaid, this defendant remained with the bonds in Tallahassee until he received the following written instructions, which are in the words and figures following, to wit:

2547

PRESIDENT'S OFFICE,
JACKSONVILLE, PENSACOLA AND
MOBILE RAILROAD CO.,
Tallahassee, Fla., Jan. 12th, 1871.

T. B. CODDINGTON, Esq.,
Tallahassee, Florida :

MY DEAR SIR: I have the honor to give you the following instructions in relation to the bonds, or the proceeds thereof, which you have received from the governor in exchange for railroad bonds.

1st. The bonds will be delivered to the parties in London, England, who have purchased the four thousand bonds issued in aid of the Jacksonville, Pensacola and Mobile Railroad, and collect the pay therefor.

2d. You will pay the following named parties, viz: Edward Houstoun, $163,000; M. D. Papy, $16,000; Judge Wescott, $5,000; Gamble, $15,000; Col. J. P. Sanderson, $57,000. I state the amounts not exactly, but about the sums, as you have them exact, upon each party delivering to me, or to my order, all stock, bonds, coupons, notes, drafts, acceptances, or whatever the said is to pay for; but should any of the parties whose names are mentioned above refuse to receive the said amounts after it had been offered to them, and after Col. Houstoun has been paid, then the said amounts shall be paid to me or to my order.

3d. The balance of the money will be placed to the order of his excellency, Harrison Reed, governor of Florida, to pay indebtedness to the State.

Truly yours,

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

P. S.—This letter is so far modified as to conform to the letter or receipt given by me to Edward Houston and approved by me.

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

T. B. CODDINGTON, Esq.:

You will please place to my credit in the National Trust Company, of New York City, the amount called for in the above arrangement, either by wire or letter, and oblige, 2548

HARRISON REED,
Governor of Florida.

And this defendant, having received the above instructions from the said President Littlefield, and the governor of Florida and the said Houstoun being fully advised thereof and assenting thereto, this defendant having first personally bade good bye to all the parties, was making his arrangements to return to New York by the railroad from Tallahassee, and so informed the president of the road; thereupon President Littlefield directed this defendant to go by the way of Thomasville and Charleston; and the said Littlefield informed this defendant that he (President Littlefield) had provided a carriage, and that for the safety of the bonds, he, Littlefield, would send him by his carriage (accompanied by his secretary) to Thomasville, Georgia, where this defendant could take the rail, and that his secretary, for safety to the bonds, would accompany this defendant as far as Charleston. That, as directed by the said Littlefield, this defendant went in the said carriage to Thomasville, and thence by rail to New York, and that the secretary of the said Littlefield did accompany this defendant as far as Charleston, from Tallahassee. And that after the arrival of this defendant in New York, he proceeded by the first steamer to Europe, and reached the city of London with the bonds as speedily as practicable and without delay.

That this defendant, having thus received the said State bonds on the 11th day of January, A. D. 1871, retained and kept them in London, England, until the (18th) eighteenth day of April, A. D. 1871, because he could not get the money for them, when this defendant, having been peremptorily ordered by the said Edward Houstoun, did on said eighteenth day of April, A. D. 1871, deliver the said one thousand State bonds, numbered 3001 to 4000 inclusive, to S. W. Hopkins & Co., London, England.

2549 And this defendant says that as aforesaid he received said one thousand bonds No. 3001 to 4000 on the 11th of January, A. D. 1871, and delivered them as ordered on the 18th day of April, A. D. 1871, in London, to S. W. Hopkins & Co. And this defendant says the orders and directions to him to deliver the said 1,000 bonds are as follows:

That he received in London the following message by cable, from Edward Houstoun:

Atlantic cable message, station from Savannah.

From E. Houston to Coddington, care Hopkins, London.

Deliver bonds to Hopkins. Everybody protected.

And this defendant also received the following from Edward Houstoun:

SAVANNAH, GA., *April* 11*th*, 1871.

T. B. CODDINGTON, Esq.,
London:

DEAR SIR: I hereby authorize and request you to deliver to Messrs.

S. W. Hopkins & Co., of London, the one thousand Florida State bonds, of one thousand dollars each, received by you from the State of Florida, in exchange for a like number and amount of the bonds of the Florida Central Railroad Company, the same having been delivered to you by me, to be held in trust, as per your receipt, dated January 11, 1871, which I now surrender herewith, I having no further lien on or against either of the above-mentioned bonds.

Yours, respectfully,

E. HOUSTOUN.

2549½ Also, the following:

TALLAHASSEE, FLA., *April 6th*, 1871.

SIR: I hereby recall my letter of instructions to you, dated January 12, 1871, and also all instructions subsequently given, and now direct you to deliver to Messrs. S. W. Hopkins & Co., of 58 Old Broad street, London, the one thousand bonds of one thousand dollars each, to wit, one million dollars of the State of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, now held by you, as trustee, whenever Edward Houstoun, esq., shall authorize and direct you so to do, imposing upon you the single duty of procuring from Messrs. S. W. Hopkins & Co., their signature to the written agreement entered into with you, which is intended to fix upon them the responsibility of carrying out my original order and relieving you therefrom.

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

To T. B. CODDINGTON, Esq.

And on the face of this instrument and across the writing was the following:

I hereby approve of and ratify this order.

HARRISON REED,
Governor of Florida.

I do hereby authorize and request T. B. Coddington, esq., to deliver the within mentioned bonds to S. W. Hopkins & Co., of London, as I have no further lien against them.

E. HOUSTOUN.

Which was communicated to me by my firm in New York, prior to the cable from Houstoun ordering me to deliver the bonds.

2550 XII. This defendant further says that the said S. W. Hopkins & Co. had also a house in New York, as well as in the city of London, and were the same firm and composed of the said parties; and that the said S. W. Hopkins & Co. were then the fiscal agents of the State of Florida, and of the said Jacksonville, Pensacola and Mobile Railroad Company; and that, as aforesaid, this defendant as thus directed did deliver said one thousand bonds, number 3001 to 4000, inclusive, to said S. W. Hopkins & Co. in London, and obtained their signature, as in said instructions directed; that having delivered the said bonds on the 18th of April, as directed by cable from Houstoun, that afterwards the said S. W. Hopkins & Co. sent a message by cable to their New York house, notifying them of the receipt of the bonds, and thereupon the New York house of S. W. Hopkins & Co. sent the following letter to the partner of this defendant, and also sent Mr. Nichols the original receipt (Schedule F of complainants' bill) which this defendant had given to Houstoun as aforesaid; and also Houstoun's written authority, dated 11th April, to deliver the bonds; all of which the defendant was advised of by his said partner as aforesaid.

That acknowledgement and letter is as follows:

S. W. HOPKINS & CO.,
71 BROADWAY, NEAR WALL STREET,
New York, April 19th, 1871.

GEO. L. NICHOLS, esq.:

DEAR SIR: A cablegram received this morning from our London house announces that Mr. Coddington has delivered the bonds. Enclosed please find Mr. Coddington's original receipt to Mr. Houstoun, dated Tallahassee, January 11th, 1871; also Col. Houstoun's authority for the delivery. Please acknowledge receipt of these documents. We should be glad to know if you have anything from Mr. Coddington confirming our despatch.

Very truly yours,

S. W. HOPKINS & CO.,
P'r L. L. SPRING.

2551 XIII. This defendant further says that these bonds were delivered by the order of the Florida Central Railroad Company, and that the exchange of the railroad bonds for the said State bonds was made by the authority of the said Florida Central Railroad Company.

And that at a stockholders' meeting of the Florida Central Railroad Company, duly assembled in accordance with law, and after this defendant had received the said State bonds, as above stated, the following resolution was offered at said stockholders' meeting, to wit:

"Resolved, That Edward Houstoun do place the bonds referred to in the preamble and resolutions of the stockholders, adopted June 20th, 1870, in the hands of S. W. Hopkins & Co., for the purpose mentioned in said resolutions, subject to the same exceptions as therein expressed with respect to the proportion thereof applicable to the stock owned by other parties, and according to the same terms therein mentioned."

And this defendant has been informed and believes that said resolution was passed by a large majority of said capital stock, and was and is of lawful and binding force on said railroad company and on and all and every of its stockholders, and this resolution authorized the exchange and delivery aforesaid.

XIV. This defendant further says that the complainants are estopped from denying the legality of the said exchange of bonds, or of their delivery, to said S. W. Hopkins & Co., because he says that, as will appear by an examination of the case in the supreme court of the State of Florida, wherein the Florida Central Railroad Company and others were appellants, and the State of Florida and others were respondents, and in which case the legality and validity of the issue of the said railroad bonds and the exchange of the State bonds therefor, and the obligation of the said railroad company therefor was involved, the said supreme court of Florida did decide that after this defendant had
2552 received the said bonds that the foregoing resolution was adopted at a stockholders' meeting, and the supreme court did further in said case declare and decide that "The resolution was adopted. The

bonds here referred to are the bonds now held by the State. So far as the exchange of these bonds by the company is concerned, here is its express authority given for it, and that must be the end of the matter.'

This defendant says that the same will be found in the XV volume of Florida Reports, at pages 709 and 710, and that the same is a public record, and published by authority of the State of Florida, to which this defandant begs leave leave to refer.

And this defendant says, as advised by counsel, that these complainants to this bill have had all their rights adjudicated in the aforesaid case, as to the exchange, issue, and delivery of these bonds, and that they are estopped from denying the same, if the complainants are held to be the legal or equitable stockholders of the Florida Central Railroad Company.

This defendant therefore alleges, from the facts as before stated as to his receiving these bonds, and as to his delivering them, that as soon as he did, in accordance with the aforesaid instructions, deliver them to said S. W. Hopkins & Co., of London, there was no further obligation or liability resting upon this defendant, as he obeyed the instructions of all the parties interested, as heretofore shown.

XV. This defendant further says that he never paid any moneys to John P. Sanderson, nor to Flagg, nor to M. D. Papy, but that he understood and was informed that they were paid the said sums specified in Schedule F, by S. W. Hopkins & Co.; and that this defendant never paid any money to Governor Reed, nor to any other person except to Houstoun, and, as hereinafter mentioned, to Judge Wescott.

2553 XVI. That Judge Wescott insisted on selling his stock, and that this defendant gave the said Westcott his draft on T. B. Coddington & Co., of New York, before this defendant left Florida, for the price agreed upon, and that the firm of this defendant paid the said draft, but that this sum which defendant paid Judge Wescott for his stock, $3,845.23, was refunded to defendant's firm by S. W. Hopkins & Co. And this defendant was subsequently informed that Hopkins & Co., by order of M. S. Littlefield, turned over the certificate of Judge Wescott's stock to said Littlefield.

XVII. That this defendant, in New York, on the 17th January, 1871, received from S. W. Hopkins & Co. $5,000 for Edward Houstoun, and this defendant paid out the said $5,000 by Houstoun's order; and that in 1871 this defendant received for the said Edward Houstoun from S. W. Hopkins & Co., of London, $48,955, which this defendant sent to Earle & Perkins for the said Houstoun, and was duly received by the said Houstoun, making in all the *the* sums of $53,955, which this defendant received from S. W. Hopkins & Co., and paid to Edward Houstoun, prior to this defendant delivering up said one thousand bonds. This defendant turned over and delivered the entire said one thousand bonds to said S. W. Hopkins & Co., on the said 18th April, A. D. 1871. That the aforesaid sums of money were not derived from the proceeds of said bonds Nos. 3001 to 4000, inclusive.

XVIII. This defendant further says, that he received no benefit whatever from the said transaction relating to these bonds; but on the contrary, that he has had to pay out in cash many thousands of dollars, by reason of his turning over the said bonds to S. W. Hopkins & 2553½ Co., by order of the said Edward Houstoun, whose trustee and agent this defendant was; and that the said Houstoun received the benefit, and this defendant was thereby injured, as will more fully appear.

That Robert H. Gamble brought suit against this defendant in the court of common pleas for the city and county of New York, for the injury resulting to him, Gamble, by this defendant delivering said one thousand bonds to S. W. Hopkins & Co., of London, as aforesaid, without this defendant having first paid the said Gamble the moneys as set forth in Schedule F. This defendant employed able and skillful counsellors and attorneys to defend said suit, and did defend the same with all lawful measures. That the suit was tried by the court and a jury, and a verdict was rendered against this defendant in due form of law in favor of the said Gamble on the 27th day of April, A. D. 1876, for the sum of $21,553.33 and costs, and $250 allowance for counsel fee. That on the 19th of May, A. D. 1876, this defendant settled and fully satisfied the said verdict, upon an agreement between the said Gamble and himself, in full satisfaction, for the sum of $15,750, cash in hand paid by this defendant out of this defendant's own moneys; and that this defendant has had to expend of his own moneys the further sum of about three thousand dollars.

XIX. That Houstoun and Littlefield were the owners of about two-thirds of the capital stock of the Florida Central Railroad Company, and that Littlefield was also the owner of about two-thirds of the stock of the Jacksonville, Pensacola & Mobile Railroad Company.

XX. This defendant further says, that in this whole transaction relating to these one thousand State of Florida bonds, No. 3001 to 4000 inclusive, this defendant was acting as the agent and trustee of Edward Houston, and not of any other party, state, corporation, or
2554 individual. And that Edward Houston procured an order from the stockholders of the Florida Central Railroad Company, in due and legal form, directing him, Houstoun, to deliver said State bonds Number 3001 to 4000, inclusive, to S. W. Hopkins & Co., of London, and that the delivery of said State bonds by this defendant to the said S. W. Hopkins & Co. of London, was in accordance with the aforesaid resolution, this said defendant then acting as the agent of the said Houstoun, and delivering said State bonds by Houstoun's express direction, as aforesaid.

XXI. This defendant denies that the complainants were or are authorized by their charter to acquire or own any stock in any railroad company in the State of Florida, or to acquire any capital stock of any corporation, or any other property in the State of *of* Florida.

XXII. And this defendant having now fully answered, prays to be hence dismissed, with his costs in this behalf most wrongfully sustained.

D. P. HOLLAND,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Before me, John A. Shields, commissioner of the circuit court of the United States for the southern district of New York, personally appeared Thomas B. Coddington, one of the defendants in the above suit, who, being duly sworn, on oath says that the facts stated as of his own knowledge in the above answer are true, and those stated on information he believes to be true.

T. B. CODDINGTON.

Sworn to and subscribed before me this 18th day of Oct., A. D. 1877.
(Signed) JOHN A. SHIELDS,
Commissioner of the Circuit Court of the United States
for the Southern District of New York.

2555 EXHIBIT No. 1.

At a special term of the supreme court of the State of New York, held at the court-house in the city and county of New York, on the sixth day of December, A. D. 1872.

Present, the Hon. William H. Leonard, justice.

JOHN COLLINSON, PLAINTIFF,
against
SIDNEY W. HOPKINS, ROBERT J. CARPENTER, and Frank H. Collins, composing the firm of S. W. Hopkins & Co.; The Jacksonville, Pensacola and Mobile Railroad Company, The Western Division of the Western North Carolina Railroad Company, Samuel D. Babcock, Josph Stuart, D. G. Ambler, Francis H. Flagg, and Converse L. Chase, defendants.

2556 JOHN S. REQUA, PLAINTIFF,
against
AARON BARRETT, THE JACKSONVILLE, PENSAcola and Mobile Railroad Company, Lawrence P. Bayne, Henry J. Rogers, Milton S. Littlefield, James G. Gibbs, Calvin Littlefield, John Doe, Richard Roe, Edward Houston, George W. Swepson, Robert B. Swepson, The First National Bank of Knoxville, Tennessee, John T. Dewees, David J. Pruyn, The Western Division of the Western North Carolina Railroad Company, Nicholas W. Woodfin, W. G. Candler, W. T. Welsh, William H. Rollins, James L. Henry, commissioners appointed by an act of the legislature of North Carolina, E. C. Burrass, John B. Clark, D. G. Ambler, F. H. Flagg, C. L. Chase, Sidney W. Hopkins, Robert J. Carpenter, Frank H. Collins, forming firm of S. W. Hopkins & Co., John Collinson, George J. Haven, receiver (leave of the court having been obtained to sue said receiver), defendants.

2557 An application having been made on the part of the plaintiff in the first above entitled action, upon an order to show cause, made herein, and bearing date the fourteenth day of November instant, for leave to file a supplemental complaint, and for an order directing the receiver in this action to deliver the bonds in said supplemental complaint mentioned, now in the hands of the said receiver, to the plaintiff, upon the footing of the agreement set forth in said complaint.

And an application having been made in the said first above entitled action on the part of the plaintiff in the second above entitled action, upon a petition accompanied by an order to show cause, made the twenty-first day of November, 1872, for an order requiring the plaintiff in the first above entitled action, and the receiver not to part with the possession of the said bonds until the determination of the second above entitled action.

Now, on reading and filing the said orders to show cause respectively, and the affidavits and papers thereto annexed, and on reading and filing consent to the entry of this order, signed by the attorneys for all the parties who have appeared in the first above entitled action, and by the attorneys for the plaintiff in said second above entitled action, it is now ordered:

First. That the plaintiff have leave, and leave is hereby given him, to file and serve the supplemental complaint, of which a copy is annexed to the said order, to show cause of November 14th, 1872.

Second. It is further ordered that George J. Haven, the receiver in the first above entitled action, forthwith deliver or cause to be delivered to the said plaintiff the eight hundred bonds of the State of Florida, issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company, now in his hands, to be dealt with by the said plaintiff upon the footing of the agreement between Converse L. Chase, of the first part, the said Converse L. Chase and Francis H. Flagg, of the second part, and John Collinson, of the third part, dated the twenty-ninth day of August, one thousand eight hundred and seventy two, and the
2558 decree of the court of chancery, Great Britain, made in the suit of Collinson vs. Collins and the Jacksonville, Pensacola and Mobile Railroad Company vs. Collinson, copies of which agreement and decree are set out in said supplemental complaint, the plaintiff's option to purchase said bonds under said decree to be extended to the month after the date of actual shipment; this modification of the provisions of said decree or the receipt by said plaintiff of said bonds under this order in no way or manner to affect the rights or obligations of either of the parties to said agreement and decree thereunder, or to operate as a waiver of any default thereunder (this order as to the receiver to take effect upon the payment to him of one thousand dollars on account of his fees as such receiver, and also the legal fees of the New York Guaranty and Indemnity Company, the depositories of the said receiver in respect of said bonds for the custody thereof, the amount of the said receiver's compensation to be adjusted hereafter); and that said plaintiff, after the cancellation of the bonds to be cancelled under said agreement and decree, and the deduction of the amounts which under the said agreement and decree the said Collinson is authorized to make, including provision for future interest on the bonds of the issue to which said eight hundred bonds belong, as provided for in said agreement and decree, deposit the surplus moneys resulting from the sale of said bonds in the National Trust Company, in the city of New York, to be used and disposed of subject to the further order of this court, to be made in the said first above entitled actions, upon notice to the attorneys for all the parties who have appeared therein, and to the plaintiff in the said second above entitled action, and that the said proceeds so deposited stand in the place of the bonds themselves, subject to the same rights and liens, if any, on the part of either or any of the parties to either of said actions now existing as against said bonds.

Enter.

WM. H. L.,
J. S. C.

2559 We consent to the entry of the above order.

SEWELL & PIERCE,
Attorneys for Defendants Sidney W. Hopkins and others.
SEWELL & PIERCE,
Attorneys for Plaintiff John L. Requa.
ALGERNON S. SULLIVAN,
Attorney for the Western Division of the Western North Carolina R. R. Co.
MARTIN & SMITH,
Atty's for Joseph Stuart and Samuel D. Babcock, Def'ts.
HORACE BARNARD,
Att'y for Jacksonville, Pensacola and Mobile R. R. Co., Deft.
HORACE BARNARD,
Att'y for D. G. Ambler, Francis H. Flagg, and Converse L. Chase, Def'ts.
BARLOW, LAROCQUE & McFARLAND,
Atty's for Plaintiff in first above entitled action.

(Endorsed:) Filed Dec. 6, 1872.

STATE OF NEW YORK,
City and County of New York, ss:

I, Henry A. Gumbleton, clerk of the said city and county of New York, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original order on file in my office, and that the same is a correct transcript therefrom and of the whole of such original.

In witness whereof I have hereunto subscribed my name and affixed my official seal this twelfth day of October, 1877.

[L. S.] HENRY A. GUMBLETON,
Clerk.

J. F. M.

2560 EXHIBIT NO. 2.

At a special term of the supreme court of New York, held at the court-house in the city and county of New York, on the 18th day of January, 1873.

Present, Hon. George C. Barrett, justice.

JOHN COLLINSON, PLAINTIFF,
ag'st
SIDNEY W. HOPKINS, ROBERT J. CARPENTER, and Frank H. Collins, composing the firm of S. W. Hopkins & Co., The Jacksonville, Pensacola and Mobile Railroad Company, The Western Division of the Western North Carolina Railroad Company, Samuel D. Babcock, Joseph Stuart, D. G. Ambler, Francis H. Flagg, Converse L. Chase, and Lawrence P. Bayne, defendants.

Whereas an order was duly entered on the 6th day of December, 1872, in the above-entitled action, by consent of all parties who appeared therein, to which order reference is hereby made;

And whereas, in and by the said order, it was provided that John

Collinson, plaintiff, shall deposit the surplus moneys resulting from the
sale of the bonds mentioned in the said order in the National Trust
Company, in the city of New York, to be held and disposed of subject
to the further order of this court, to be made in this action, on
notice to the attorneys for all the parties who appeared there-
2561 in, and John L. Requa, in the action secondly mentioned in the
said order, and the said proceeds so deposited stand in place of
the said bonds themselves, subject to the same rights and liens, if any,
on the part of either or any of the parties in either of said actions now
existing against said bonds;

And whereas, by another order duly entered in this action on the 27th day of December, 1872, it was further ordered that the said order, bearing date the 6th day of December, 1872, directing a delivery to the plaintiff, by the receiver of the bonds therein mentioned, be, and the same was thereby, modified by substituting the New York State Loan and Trust Company as the depository of the surplus proceeds of the bonds to be sold, in place of the National Trust Company in the city of New York, mentioned in said order.

And whereas it is admitted by the parties who consent to the entry of this order that I, and by a certain agreement bearing date the 17th day of June, 1872, between the said Jacksonville, Pensacola and Mobile Railroad Company of the first part, L. P. Bayne & Co. and L. P. Bayne of the second part, Sidney W. Hopkins and others of the third part, Francis H. Flagg and Converse L. Chase, trustees, &c., of the fourth part, and Henry J. Rogers of the fifth part, it was among other things agreed that the claim of the said Lawrence P. Bayne against the said Jacksonville, Pensacola and Mobile Railroad Company was thereby admitted and adjusted at the sum of one hundred and fifty thousand dollars and interest, and that the said Lawrence P. Bayne had and shall have a lien upon the twelve hundred eight per cent. Florida bonds mentioned in the pleadings in this action, for the amount of his said claim of one hundred and fifty thousand dollars, and interest from the said seventeenth day of June, 1872;

And whereas it is in like manner admitted by the said parties that
there is now due and owing to the said Lawrence P. Bayne, on his said
claim, and on his said lien on the said bonds, the sum of ninety-
2562 six thousand six hundred and fifty dollars, paper currency of the
United States, with interest thereon from the said 29th day of
August, 1872;

And whereas it is in like manner admitted by the said parties that Thomas B. Coddington had on the said 29th day of August, 1872, a claim and lien to the amount of forty thousand dollars, and interest from the 29th day of August, 1872, on one thousand of the said twelve hundred bonds so delivered to the said John Collinson, upon the footing of the said agreement with him, and the said decree of the said court of chancery, and such lien of said Thomas B. Coddington attached and still attaches to the proceeds, or so much thereof as may be necessary, of the said one thousand bonds, and he is entitled to be paid out of such proceeds said sum of forty thousand dollars United States currency, and interest as aforesaid.

And whereas it is in like manner admitted by the said parties that by the said trust deed or indenture, duly made in the State of Florida, between the said Jacksonville, Pensacola and Mobile Railroad Company of the first part, and Francis H. Flagg, D. G. Ambler and Converse L. Chase of the second part, and bearing date the second day of October, 1871, the said parties thereto of the first part transferred and assigned to the said parties thereto of the second part, among other things, the proceeds of all the said eight per cent. Florida bonds, and to be applied as provided for in the said indenture or trust deed, as will more fully appear by reference to the same.

And whereas it is in like manner admitted by the said parties that the said Chase and the said Flagg alone accepted the trust reposed in them under and in virtue of said indenture or trust deed, and the other trustee therein named, D. G. Ambler, disclaimed and declined to accept the said trust, and the same devolved on the said Flagg and the said Chase, and whereas the said Francis H. Flagg recently died, leaving
the said Converse L. Chase sole surviving trustee, under and in
2563 virtue of the said indenture or trust deed, and he and the said
Flagg, during the lifetime of the said Flagg, were entitled, and the said Chase ever since the death of the said Flagg has been entitled as such trustee, to all the proceeds of said twelve hundred bonds, subject, nevertheless, to the aforesaid lien of the said Lawrence P. Bayne, for the said balance due him as aforesaid, and subject to the said lien of the said Thomas B. Coddington as aforesaid.

And whereas, by an order or decree heretofore entered in this action on the 27th day of December, 1872, it was ordered, adjudged, and decreed as between all the parties who consented to the entry of said decree, that two hundred thousand dollars be paid to the defendants the Western Division of the Western North Carolina Railroad Co., out of the first proceeds of said bonds, to be paid to the said trust company after first providing for the payment of the balance of the receiver's fees in this action, adjusted at the sum of nine thousand dollars:

Now, therefore, in consideration of the premises, and on the consent and stipulation of Horace Barnard, esq., attorney for the defendants, the Jacksonville, Pensacola & Mobile Railroad Company, and Converse L. Chase, surviving trustee as aforesaid, and of Algernon S. Sullivan, esq., attorney for the defendants, the Western Division of the Western North Carolina Railroad Company, and for the defendant, Lawrence P. Bayne, it is ordered as between all of the said parties consenting and stipitulating as aforesaid that the said Thomas B. Coddington had, and still has, a lien on the proceeds of the said one thousand bonds for the said sum of forty thousand dollars paper currency of the United States, with interest as aforesaid, subject nevertheless to the payment of the balance of said receiver's fees, adjusted as aforesaid, and also subject to the payment in the first place of the said sum of two hundred thousand dollars to the said Western Division of the Western North Carolina Railroad Company. And it is further ordered that as between all of the said parties consenting and stipitulating as aforesaid
that the said Lawrence P. Bayne had, and still has, a lien on the
2564 said twelve hundred bonds and proceeds, to the amount of the
said balance of ninety-six thousand six hundred and fifty dollars, and interest as aforesaid, subject nevertheless to the payment of the said balance of the said receiver's fees, adjusted as aforesaid, and to the payment as hereinbefore mentioned to the said Western Division of the Western North Carolina Railroad Company, and it is further ordered that as between all the said parties consenting and stipulating as aforesaid the said Converse L. Chase as such surviving trustee is the owner of and entitled to receive all of the residue of the said proceeds. And it is further ordered that this order is made without prejudice to the rights of any party to this action who has not expressly consented in writing to the entry thereof, and also without prejudice to

the rights of John L. Requa, the plaintiff in the action secondly mentioned in the order of the 6th of December above referred to.

(Endorsed:) Filed Jan'y 18, 1873.

(A copy.)

CHAS. E. LOEW, *Cl'k.*

We consent to and stipulate for the entry of the above order.

Dated New York, January 18th, 1873.

(Sig.) HORACE BARNARD,
Att'y for J., P. & M. R. R. Co., and C. L. Chase, Surv., &c., Trustee.
ALGERNON S. SULLIVAN,
Att'y for Western Division of the Western North C. Railroad Co., and for Lawrence P. Bayne.

2565 CODDINGTON No. 2.—John A. Shields, com'r. Thomas B. Coddington, March 18th, 1879.

TALLAHASSEE, FLORIDA, *January 11th*, 1871.

Received from Edward Houston, esq., in trust and for his account, one thousand Florida Central Railroad Company first-mortgage bonds, payable to the State of Florida, for one thousand dollars each, with which I hereby undertake to arrange with Gen'l M. S. Littlefield and other parties interested, and collect from him or them the amount which it is admitted is now due to said Houston, viz. one hundred and sixty-three thousand twenty-six $\frac{70}{100}$ dollars, with interest thereon at seven per cent. from the time M. S. Littlefield's draft on S. W. Hopkins & Co. for said amount fell due, and in addition thereto the sum of five thousand dollars for costs and expenses incurred by said Houston in
2566 suits brought by parties against said Houston in relation to those
bonds or other bonds, and the stock of the Florida Central Railroad Company, it being understood that all proceedings at law or otherwise are to be discontinued; or if that be impossible, he is to be indemnified by responsible parties against all damages or costs arising out of said proceedings, it being further understood that said Houston shall, when paid, transfer and assign to said Littlefield the stock in the Florida Central R. R. Co., or other securities which he holds, or which were given him as collateral security to secure the above amounts due to said Houston.

And it is further understood and agreed that said Coddington is to collect the further sums of money, and pay to said Houston, for account of the parties named below, which it is understood are a lien sub-
2567 sequent and inferior to said Houston's lien on these bonds viz,
M. D. Papy, esq., the sum of sixteen thousand dollars; Col. R. H. Gamble, the sum of fifteen thousand dollars, who is to surrender to said Littlefield three hundred shares of stock in the Florida Central Railroad Company, and seventeen hundred dollars in the bonds of the P. & G. R. R. Co. & the Tallahassee R. R. C., at par; J. P. Sanderson, esq., the sum of fifty-seven thousand five hundred and sixty dollars; and said J. P. Sanderson is to surrender to said Littlefield seventy shares of stock in Florida Central R. R. Co., and comply with his agreements with said Littlefield, for which a part of said sum is in consideration; F. H. Flagg, esq., the sum of four thousand dollars, for which he is to surrender the Central Railroad Co. stock and the Pensacola and Georgia R. R. bonds which he holds to said Littlefield, and also to pay

for seventy shares of stock now or lately held by J. D. Wescott,
2568 jr., esq., the sum of thirty-eight hundred and forty-five $\frac{33}{100}$ dollars, when said stock is to be delivered to said Littlefield. This arrangement is based on the assumption that the money will be paid from the proceeds of bonds negotiated by S. W. Hopkins & Co., of New York.

The remainder of said proceeds is to be disposed of as directed by the parties interested.

(Signed) T. B. CODDINGTON.

I approve and assent to the same.

(Signed) M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

UNITED STATES OF AMERICA,
Southern District of New York, City of New York, ss:

I do solemnly swear that the foregoing is a substantial copy of the original instrument, which is in my possession.

T. B. CODDINGTON.

Subscribed to & sworn before me this 18th day of March, 1879.

JOHN A. SHIELDS,
U. S. Com. So. D. N. Y.

2569 At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others are complainants, and The Western Division of the Western North Carolina Railroad Company and others are defendants, this paper-writing was produced by and shown to Thomas B. Coddington, and by him deposed unto at the time of his examination before

JOHN A. SHIELDS,
Commissioner.

2570 At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced by and shown to Thos. B. Coddington, and by him deposed unto at the time of his examination before John A. Shields, commis'r.

Circuit court of the United States, northern district of Florida, at Tallahassee. In equit.

To the judges of the circuit court of the United States for the fifth circuit and northern district of Florida, sitting in equity:

Thomas Butler Coddington, merchant, a citizen of the State of New York, residing at No. 42 Fifth avenue, in the city of New York, humbly petitioning, shows unto your honors:

I. That there is now pending in this court certain suits in equity, the Western Division of the Western North Carolina Railroad Company being plaintiff in two of said suits, and J. Fred Schutte and other holders of certain State of Florida bonds being the plaintiffs in the third suit, said suits being against the Florida Central Railroad Company and the Jacksonville, Pensacola and Mobile Railroad Company and others; that these last-named corporations are created by virtue of the laws of the State of Florida; that the Florida Central Railroad Company owns, and is now operating, the railroad from Jacksonville to Lake City, and that this court has, in one of the above mentioned suits, appointed 2571 a receiver upon the bill of complaint filed in this court by one J. Fred Schutte on behalf of himself and other holders of like bonds issued under an act of the State of Florida entitled "An act to perfect the public works of the State," approved June 29th, 1869, and the act amendatory thereof, passed in 1870; and that these last-named plaintiffs claim to be bona-fide holders of certain State of Florida bonds, dated January 1st, 1870, issued under said acts and numbered between 1 and 4,000.

II. That of these State bonds 3,000 were received from the State of Florida for 3,000 bonds of the Jacksonville, Pensacola and Mobile Railroad Company and 1,000 State bonds, numbered 3001 to 4000, inclusive, were given in exchange, under the act of 1870, to the Jacksonville, Pensacola and Mobile Railroad Company for a like number of bonds of the Florida Central Railroad Company.

That Schutte and others, the plaintiffs in the said suit in equity in this court, claim to hold certain bonds of both classes or issues, and that they seek to have the railroads and property of both these Florida railroad companies sold by decree of this court, to satisfy the amount due on said bonds for the past due interest and coupons of the 2572 bonds held by them; that the receiver of this court is now in the possession of all the property of the said Jacksonville, Pensacola and Mobile Railroad Company, and of its railroad from Lake City west ward, and collecting revenues, tolls, and incomes of said last-mentioned company by the order of this court.

III. That the said Jacksonville, Pensacola and Mobile Railroad Company is insolvent and totally unable to pay its debts.

IV. That the Jacksonville, Pensacola and Mobile Railroad Company is indebted to and owes your petitioner the sum of forty thousand dollars, with interest at the rate of seven per centum per annum from the 29th day of August, A. D. 1872, until paid, and that no part of said sums of money has been paid.

V. That on the said 29th day of August, A. D. 1872, the said last-mentioned company entered into the following agreement with your petitioner, to wit:

An agreement made this 29th day of August, 1872, between the Jacksonville, Pensacola and Mobile Railroad Company, by their duly constituted attorney, Converse L. Chase, of the one part, and 2573 Thomas Butler Coddington, of 9 Kensington Park Gardens, in the county of Middlesex, merchant, of the other part.

Whereas the said Thomas Butler Coddington claims from the company $25,00 and accrued interest thereon, on his own behalf, and also $15,000 and accrued interest thereon due to Colonel R. H. Gamble, and whereas the said claims, amounting to $40,000 with accrued interest, are alleged to be secured inter alia by some of the 210 Florida State bonds now in the hands of Mr. Cobb and Mr. Newman;

And whereas the said railroad company have been negotiating with Mr. Collinson, of London, with respect to 1,200 bonds, including the said 210 bonds;

And whereas the said Mr. Cobb and Mr. Newman having had notice on Mr. Coddington's behalf not to part with the said bonds, have refused to do so until such notice has been withdrawn, whereby the said negotiation between the said railroad and the said Mr. Collinson has been stopped;

And whereas it is to the interest of the said railroad that the said negotiation should proceed, and the said Thomas Butler Coddington, at the request of the said railroad, through their attorney, the said Converse L. Chase, has agreed to and has accordingly withdrawn such notice, upon the signing of this agreement;

2574 And whereas, in order to settle the said differences, and for the consideration aforesaid, the said company and the said Thomas Butler Coddington have agreed to execute this agreement, the parties mutually agree as follows:

1. The said railroad company shall authorize and direct the National Trust Company of New York (who have been appointed the fiscal agents of the sail railroad company), by their agents in London, to pay to the said Thomas Butler Coddington the sum of $40,000, United States currency, with interest thereon from this date at 7 per cent. per annum, the payment out of the first monies to be paid to such agents by Mr. Collinson, in pursuance of a decree of court made in two suits of Collinson vs. Collins and Jacksonville Railroad Company v. Collinson, after paying the sum of £31,800 in the said decree mentioned, or such sum not exceeding $40,000 and interest as may so be in their hands, or in default of sufficient monies coming to the hands of the said trust company, to deliver to the said Thomas Butler Coddington the first 192 bonds and coupons attached of the said State which shall come into the hands of the National Trust Company in pursuance of the said decree.

2575 2. That the said railroad company shall forthwith procure the recognition and acceptance by the said National Trust Company and also by their agents in London of the said direction in the first clause mentioned.

3. That the said Thomas Butler Coddinton shall have full power to sell the said 192 bonds in order to pay himself the said $40,000 and interest without further consent from the said railroad company, he, the said Thomas Butler Coddington, accounting to the company for any surplus beyond such principal and interest and the expenses attendant upon such sale.

4. On payment, as aforesaid, the said Thomas Butler Coddington shall deliver to the said company coupons of bonds of the Pensacola and Georgia Railroad Company amounting to $24,465.

JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD,
By C. S. CHASE, *Attorney in Fact.*
T. B. CODDINGTON,
A. P. BOWER, *His Attorney.*

VI. That said railroad company, on the same day, gave to your petitioner the order following:

To the National Trust Company of New York:

2576 Out of the first moneys paid after this date by Mr. Collinson, of London, to you as the fiscal agents of the Jacksonville, Pensacola and Mobile Railroad Company, after setting apart the sum of £31,800, you are hereby requested and irrevocably directed to pay to Mr. Thomas Butler Coddington, or his order, the sum of $40,000, United States currency, together with the interest thereon at 7 per cent. per annum till payment of such sum not exceeding $40,000 and interest as may be in your hands; failing payment of the said full amount of the said $40,000 and interest, you are hereby requested and irrevocably directed to deliver to Mr. Thomas Butler Coddington, or his order, the first 192 bonds of the State of Florida, with coupons attached, which shall be delivered to you by the said Mr. Collinson.

Dated this 29th August, 1872.

VII. That the said railroad company failed to pay said money and never paid any part thereof, and also wholly failed to perform the said agreement. And thereupon your petitioner brought suit in chancery in London, in England, against the said company and John Collinson, as defendants, and filed his bill of complaint in said English court for specific performance of said agreement.

That the said company and the said John Collinson severally appeared and answered said bill, and that subsequently your petitioner filed a replication, and rejoinder of issue was served on the solicitors of the defendant's company, and that the said suit in chancery in London is still pending and undetermined.

2577 That the following proceedings were had in said court in chancery in London:

The bill of complaint, marked Exhibit No. 1, was filed 26th April, 1873.

The answer of the Jacksonville, Pensacola and Mobile Railroad Company was filed 19 May, 1874, marked Exhibit No. 2.

The answer of John Collinson was filed 29th July, 1873, marked Exhibit No. 3.

That T. B. Coddington made and filed the affidavit on the 26th April, 1873, marked Exhibit No. 4.

That Arthur Perry Bower, solicitor, made and filed, on the 26th April, 1873, the affidavit marked Exhibit No. 5.

That on the 26th April, 1873, the court made the order of injunction, marked Exhibit No. 6.

That on the 3d of June, 1873, the court made an order, among other things, requiring the said John Collinson to make affidavit as to the number of said State of Florida bonds in his hands or control. This order is marked Exhibit No. 7.

That on the 19th June, 1873, John Collinson made affidavit that he held 568 bonds, numbered respectively 3201 to 3768 inclusive. This affidavit is marked Exhibit No. 8.

That upon the application of the Jacksonville, Pensacola and Mobile Railroad Company, the court made an order on the 28th June, 1873, directing that John Collinson deposit in a box to be endorsed "In chancery. Coddington v. The Jacksonville, Pensacola and Mo-
2578 bile Railroad Company, 1873, C. 102, securities, the 568 Florida State bonds, dated respect*fully* 3201 to 3768 inclusive, now in his possession or power, together with all coupons thereto attached, and deposit such box in court to the credit of this cause," etc. That the order from which this extract is given is filed herewith, marked Exhibit No. 9.

That John Collinson obeyed said order and brought the said bonds in court, and subsequently the court, by its officer, had the said box and the said 568 bonds deposited to the credit of the cause in the Bank of England for the better security thereof.

That on the 10th day of June, 1874, as will appear by Exhibit No. 10, an order was made by consent dismissing the said John Collinson as a defendant. And the cause thereafter continued with the said railroad company as the sole defendant before the court.

That subsequently replication was filed, and that the said cause is still pending before said court and the said 568 bonds are still in the

Bank of England subject to such future order, direction, or decree that the court may see fit to make in the cause.

VIII. That your petitioner did not press this suit to final de-
2579 cree because of the litigation that ensued in the American courts
relative to the State bonds issued to this company. and because its affairs were in such an embarrassed condition that to force the said cause to final decree or sale of the bonds would have resulted to the great injury of both the company and the value of the said securities; and that the case remained in abeyance on the bill and answer as aforesaid until the month of December, 1877, when the legal proceedings hereinafter set forth took place in England in the cause before Vice-Chancellor Hall.

IX. That your petitioner having seen the published order made by his honor Mr. Justice Bradley, in the said suit of Schutte and others, by which all the property of the said Jacksonville, Pensacola and Mobile Railroad Company was placed in the hands of a receiver of this court, and that the plaintiff Schutte and others, holders of some of the bonds of like class as the aforesaid 568 bonds, were seeking to sell the Florida Central Railroad for the interest due on the bonds held by them, and that the court had urged the speedy final hearing of the cause; and this petitioner seeing that unless he immediately took the most speedy measures that the said 568 bonds and his security for his debt
2580 aforesaid and the debt itself would be lost, by a final decree as
prayed in the Schutte cause, your petitioner on the 27th of last October, sent his American counsel, D. P. Holland, to London to confer with his English solicitors and counsel, and take such steps in the said English suit as would cause the bonds to be sold for the benefit of all the parties in interest and for the protection of the said securities.

X. That on the 15th of November, 1877, a motion was made on behalf of your petitioner in the high court of justice, chancery division, in London, before vice-chancellor Hall in the said suit, "that the said 192" bonds and coupons may be forthwith sold or that such other order may be made as to the court shall secure just, or that such other order may be made as the plaintiff on the admission of facts in the pleadings may be entitled to."

The railroad company appeared by counsel and contested the motion.

This motion was supported by the affidavits of A. P. Bower and D. P. Holland, a copy of which together with a copy of the short-hand notes of all that took place on this motion on the 15th November, before the court, and of what was said by counsel on both sides, and by the
2581 vice-chancellor, being hereto annexed, marked Exhibits No. 11 & 12.

Vice-Chancellor Hall having adjourned the hearing of the motion to the 29th of November, the motion came on for hearing on that day, when an affidavit of A. Scott Lawson and Frank Remington Sherwin therein was filed in opposition. And the court made the direction given in the short-hand notes and again adjourned the hearing of the motion to the 14th of December.

A copy of these affidavits and of the short-hand notes, setting forth all that took place or the hearing of the said 29th of November, 1877, is hereto annexed, marked Exhibits No. 13 and 14.

And so that your honors may know what the solicitors of your petitioner proposed should be the statement as to the sale of the bonds, if such sale was ordered by the chancellor, we hereto annex as Exhibit No. 15 a draft of the proposals for sale made by them before the chief clerk as authorized by the vice-chancellor, but, as it will appear, these proposals were never read to the chancellor on account of what subse-

quently took place in court on the 15th of December. That after these
proposals for sale had been drafted, it was deemed by the solicitors
2582 advisable for this American counsel, Mr. Holland, to return
immediately to the United States to take the necessary steps to
intervene in the case of Schutte, as is set forth in the short-hand notes as fell from Vice-Chancellor Hall on the 15th of November. That, accordingly, his American counsel left by steamer for New York on the 9th of December, when, as it appears, on the following 14th inst. an affidavit was filed by A. Scott Lawson, copy thereof being hereto annexed, marked Exhibit No. 16, and in the absence of this petition, and of his American counsel, which this petitioner has since answered and by his affidavit shown to be false in many particulars.

That, on the hearing of the motion on the 15th of December, the vice-chancellor, Hall, refused the motion, and in substance decided that under the practice of the English court the motion prayed for could not be made, but that the disposition of these bonds must abide the final hearing of the cause.

A copy of the short-hand notes showing the proceedings that took place before the vice-chancellor on the 15th of December, 1877, is hereto annexed, marked Exhibit No. 16. Your petitioner has annexed these
several exhibits from No. 1 to No. 16, inclusive, so that your, honors
2583 may be fully advised of the condition of the 568 bonds and of
what took place in the English court of chancery in relation thereto, and states that he has received the information and papers from his solicitors in said cause, and states the facts as received from his said solicitors and believes this information to be true, and he craves leave of reference to the several exhibits for the purposes of this petition.

XI. That he has instructed his solicitors to take an appeal from the said decision of the vice-chancellor, made as aforesaid on the 15th of December, 1877, and that he believes that the appeal from said order has been taken, and is still undecided.

XII. Your petitioner shows to your honors that these 568 bonds *or* a portion of 1,000 bonds, Nos. 3001 to 4000, inclusive, issued by the State of Florida, dated January 1st, 1870, and received in exchange for 1,000 Florida Central Railroad Company's bonds in accordance with said acts of 1869 and 1870. That the petitioner carried these bonds to England, and that he delivered these 1,000 State of Florida bonds, Nos. 3001 to
4000, inclusive, to S. W. Hopkins & Co., of 58 Old Broad street,
2584 London, on the 18th day of April, A. D. 1871, by the special and
peremptory order of Edward Houstoun, and by the written direction of the president of the Jacksonville, Pensacola and Mobile Railroad Company, and by the written approval of the governor of the State of Florida.

XIII. That your petition' is informed and believes that after he had delivered the whole said 1,000 State bonds to S. W. Hopkins & Co., the following disposition was made of the said 1,000 bonds, numbered 3001 to 4000, inclusive.

Eight hundred of these bonds were brought afterwards to New York and deposited in the supreme court of New York, by S. W. Hopkins & Co., and by that court these 800 bonds, being of the numbers 3201 to 4000, inclusive, were placed in the hands of George G. Haven, a receiver appointed by that court in certain suits therein pending in which the Western Division of the Western North Carolina Railroad Company was plaintiff, and S. W. Hopkins & Co. and others were defendants. That John Collinson, on the 6th day of December, 1872, receiver these 800 bonds, numbered 3201 to 4000, inclusive, from the received

2585 George G. Haven, by order of the supreme court of New York, a copy of said order and receipt is filed as Schedule I, as an exhibit on pages 16 and 17, of the printed bill of the Western Division of the Western North Carolina Railroad Company v. George F. Drew, governor, the Florida Central Railroad Company and other defendants, now pending in this court, to which your petitioner craves leave of reference for the purposes of this petition.

That of the 800 bonds thus received by Collinson from the said receiver 224 were returned to the State and cancelled, being 224 bonds, numbered 3777 to 4000, inclusive, as appears by the certificate of Harrison Reed, governor, set forth as an Exhibit Schedule J. "A," on page 18 of said bill of said North Carolina Railroad Company, to which he craves leave of reference for the purposes of this petition. Thus leaving these 800 bonds, after deducting the 224 bonds that were cancelled, 576 bonds, and of these 576 bonds John Collinson deposited in the English chancery court 568 bonds now kept by order of that court in the Bank of England, and numbered 3201 to 3768, inclusive, leaving 8 bonds of the numbers 3769, 3770, 3771, 3772, 3773, 3774, 3775, 3776, of the bonds
2586 thus received by John Collinson, from the receiver of the New York court, on the 6th of December, 1872, outstanding; which, together with the other 200 bonds, numbered 3001 to 3200, inclusive, make the whole amount of 1,000 bonds.

Thus to recapitulate—

200 bonds, numbered 3001 to 3200, inclusive.
8 bonds, numbered 3769 to 3776, inclusive.
208 bonds taken by John Collinson, under option, as agreed to in London in August, 1872 (see consent, decree, Exhibit No. 1, pages 3 to 6).
224 bonds, numbered 3777 to 4000, inclusive, were returned to the State and cancelled.
568 bonds, numbered 3201 to 3568, inclusive, are in the Bank of England by order of the chancellor.

Total, 1,000.

So that if the plaintiff Schutte and others held any of this class of bonds, they must be of the numbers 3001 and 3200, and of those 8 bonds numbered 3769 to 3776, inclusive.

XIV. Your petitioner alleges and charges that he had a lien, superior of all others, on these 1,000 bonds, for the sum of forty thousand dollars, and interest from the 29th day of August, A. D. 1872.

2587 That, as will appear by the agreement dated 29th day of August, A. D. 1872, he was given a specific lien on 192 of said bonds. And that upon the terms contained, and promises and consideration in said agreement set forth, your petitioner consented that 224 of the said 1,000 bonds should be returned to the State and cancelled, and that the Florida Central Railroad Company be to that extent relieved, to wit, two hundred and twenty-four thousand dollars, with interest from the 1st of January, A. D. 1870, the said Florida Central Railroad Company was benefited by this petitioner by the agreement of the 29th day of August, A. D. 1872, by which the said 192 bonds were specially pledged to your petitioner.

And your petitioner avers and charges that the said Jacksonville, Pensacola and Mobile Railroad Company did, at said date, to wit, 29th day of August, A. D. 1872, specially pledge the said 192 bond' to this petitioner, to secure said debt of $40,000 and interest, as in said agreement set forth, and for the considerations therein expressed, and that at this date, to wit, the said 29th day of August, A. D. 1872, they, the said Jacksonville, Pensacola and Mobile Railroad Company, were the lawful owners of said 192 bonds, and had then and there full power and authority to sell or pledge the said 192 bonds to your petitioner.

2588 XV. That the Jacksonville, Pensacola and Mobile Railroad
Company and the Western Division of the Western North Carolina Railroad Company did, on the 18th day of January, A. D. 1873, of record in writing, admit and declare in and to the supreme court of the State of New York, in the suit of John Collinson, then and there pending against S. W. Hopkins & Co., both of the aforesaid railroad companies and others. That your petitioner had a lien to the amount of $40,000 and interest from the 29th day of August, A. D. 1872, on one thousand of said bonds, which had been previously delivered to John Collinson, and that the lien attached to said 1,000 bonds on the 29th day of August, 1872, and that it still attached, and that this petitioner was entitled to be paid said sum of money out of the proceeds of sale of the said 1,000 bonds, all of which will more fully appear by a reference to a copy of the said orders of December 6th, 1872, and January 18th, 1873, filed herewith, marked Exhibit No. 18, to which leave of reference is craved for the purposes of the petition.

XVI. Your petitioner further shows that at this time, 1873, he was
no party to any or either of the said actions in the supreme
2589 court of New York, and had no knowledge of any of the proceed-
ings therein, but that, during the year 1877, this petitioner, hearing of the same, obtained a copy of said orders above referred to, and thereupon, by leave of the court first had, your petitioner was made a party to the actions in which the order of January 18th, 1873, was made; and that he subsequently filed his answer, denying that any person plaintiff, or any or either of the defendants, or any or either of the parties to those actions, had a lien on said 1,000 bonds superior to your petitioner, but claimed and insisted that this petitioner had a lien on the aid 1,000 bonds for the sum of $40,000 and interest, from the 29th day of August, A. D. 1872, superior to all others.

Your petitioner shows that the said action, in which this answer is filed in said supreme court of New York, is still pending and undecided.

XVII. Your petitioner further shows that, as it will appear
from the records of this court, that subsequent to 1873, and some
time in 1877, the said Western Division of the Western North
Carolina Railroad Company brought suit in equity in this court
against George F. Drew, governor of the State of Florida,
2590 and the Florida Central Railroad Company, and the Jackson-
ville, Pensacola and Mobile Railroad Company, and this petitioner and others, therein in said suits, claim to be the real owners of the majority of the stock of both the said Florida railroad Companys, and deny in their bills of complaint in this court the validity of the said 1,000 bonds, and are seeking to relieve the Florida Central Railroad of all liability therefor, and the said North Carolina Railroad Company in this court have and do take the position, that so far from their being entitled to have these 1,000 bonds sold to satisty a debt and lien for $200,000 due them by the Florida Central Railroad Company, as they allege in the supreme court of New York, that they are the real owners of both Florida railroads, and that the bonds are void, and that the Florida Central Railroad Company is not liable for any or either of said bonds. Wherefore, your petitioner claims that the said Western Divis-

ion of the Western North Carolina Railroad Company can not now in this court be heard, or claim to have a lien on said 1,000 bond', or any part thereof, superior to the lien of this petitioner by them add-
2591 mitted of record in the said proceedings of the 18th of January, A. D. 1873, and set forth in the order of said date in Exhibit No. 18.

XVIII. Your petitioner alleges and charges, as advised by counsel, that John Collinson received these 800 bonds in January, 1873, under the order and direction of the supreme court of New York, with notice of the lien thereon of this petitioner, and that all other persons who took or bought any of said 800 bonds, took them with like notice and subject to the lien of this petitioner; that John Collinson, as to these 800 bonds was acting under the orders of the supreme court of New York, and that all parties who dealt with these bonds took them with the notice of the suits pending in the State of New York and of the lien of this petitioner thereon for the sum of $40,000, with interest from the 29th day of August, A. D. 1872.

XIX. That at this time, to wit, the 18th day of January, A. D. 1873, when the said Western Division of the Western North Carolina Railroad Company and the Jacksonville, Pensacola and Mobile Railroad Company in writing, admitted in and thereby informed the
2592 supreme court of the State of New York that this petitioner had a lien on said 1,000 bonds, they, the said Jacksonville, Pensacola and Mobile Railroad Company, had the legal and lawful right and power to sell or pledge said 1,000 bonds, 800 of which were then in the hands of John Collinson, under the order of the said supreme court of New York, to be disposed of by that court in its said order directed. And that each and both of said railroad companies are estopped from denying either that the debt or lien of the petitioner on the said 1,000 bonds from the said 29th day of August, A. D. 1872, for the sum of $40,000, and interest at the rate of seven per cent. from that date until paid.

XX. Your petitioner herein shows to your honors that the following are the facts as to receipt and delivery of these 1,000 bonds by your petitioner, from the time when he received them in Florida up to the time when he delivered the same 1,000 bonds to S. W. Hopkins & Co at 58 Old Broad street, London, in April, 1871: That on the 12th day of January, A. D. 1871, he gave Edward Houstoun the written instrument, marked Schedule F, in the bill of the North Carolina Rail-
2593 road Company, and that by the said instrument it appears that Houstoun delivered, and that this petitioner received, 1,000 Florida Central Railroad Company first mortgage bonds, payable to the State of Florida for $1,000 each, yet your petitioner says that the following are the actual facts:

That on the 11th day of January, Houstoun, taking a servant with him and accompanied by the petitioner, went to the office of Col. Robert H. Gamble, and received from Gamble the 1,000 railroad bonds described in Schedule F. That thereupon Houstoun and this petitioner, and Houstoun's servant carrying the bonds, went immediately to the governor's office in the capitol, and the said one thousand railroad bonds were then and there given to Harrison Reed, governor of Florida, in the said executive chamber, and the said Governor Reed then delivered therefor 1,000 State of Florida bonds of the face value of $1,000 each, and numbered from 3001 to 4000, inclusive, which said bonds this petitioner understood were issued under the statutes of 1869 and 1870, described in complainants' bill.

2594, 2595 That said Houstoun directed his servant to take the package of State bonds and carry them to the petitioner's room in the hotel; that Houstoun and this petitioner, together with the said servant then carrying the bonds, went to the hotel where the State bonds were, by Houstoun left with the petitioner.

That this petitioner the next morning, at Houstoun's request, delivered to Houstoun the paper marked Schedule F, and the said Littlefield, as president of the said J., P. & M. R. R. Co. gave his full authority and assent thereto and signed the same in his official capacity. And that in the manner aforesaid, he did receive the said one thousand State of Florida bonds, numbered 3001 to 4000, and that the same were received by the authority, assent, and approval of the said othe' said president of the Jacksonville, Pensacola and Mobile Railroad Company, and in trust and for account of said Edward Houstoun.

That the disposition he was to make of the said bonds and their proceeds, if any were received by him, is set out in said Schedule F.

2596 That the governor told the petitioner, in Houstoun's presence, in the executive chamber, at the time of the delivery of the said State bond, for the petitioner not to take the bonds out of the State until the governor had made arrangements for the payment of certain moneys to the State of Florida with the said President Littlefield.

That, in accordance with this direction of the governor, as aforesaid, the petitioner remained with the bonds in Tallahassee until he received the following written instruction, swhich are in the words and figures following, to wit:

PRESIDENT'S OFFICE,
JACKSONVILLE, PENSACOLA & MOBILE RAILROAD CO.,
Tallahassee, Fla., Jan. 12th, 1871.

T. B. CODDINGTON, Esq.,
Tallahassee, Florida:

MY DEAR SIR: I have the honor to give you the following instructions in relation to the bonds, or the proceeds thereof, which you have received from the governor in exchange for railroad bonds.

1st. The bonds will be delivered to the parties in London, England, who have purchased the four thousand bonds issued in aid of the Jacksonville, Pensacola and Mobile Railroad, and collect and pay therefor.

2597 2d. You will pay the following named parties, viz: Edward Houstoun, $163,000; M. D. Papy, $16,000; Judge Wescott, $5,000; Gamble, $15,000; Col. J. P. Sanderson, $57,000. I state the amounts not exactly, but about the sums, as you have them exact, upon each party delivering to me or to my order all stock bonds, coupons, notes, drafts, acceptances, or whatever the said is to pay for; but should any of the parties whose names are mentioned above refuse to receive the said amounts after it *it* has been offered to them, and after Col. Houstoun has been paid, then the said amounts shall be paid to me or to my order.

3d. The balance of the money will be placed to the order of His Excellency Harrison Reed, governor of Florida, to pay indebtedness to the State.

Truly yours,

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

P. S.—This letter is so far modified as to conform to the letter or receipt given by me to Edward Houstoun and approved by me.

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

T. B. CODDINGTON, Esq.:

You will please place to my credit in the National Trust Company of New York City the amount called for in the above arrangement, either by wire or letter, and oblige,

HARRISON REED,
Governor of Florida.

2598 Your petitioner having received the above instructions from the said President Littlefield and the governor of Florida, and the said Houstoun being fully advised thereof and assenting thereto, the petitioner having first personally bade goodbye to all the parties, was making his arrangements to return to New York by the railroad from Tallahassee, and so informed the president of the road, thereupon President Littlefield directed this petitioner to go by the way of Thomasville and Charleston; and the said Littlefield informed the petitioner that he (President Littlefield) had provided a carriage, and that for the safety of the bonds he, Littlefield, would send him by his carriage (accompanied by his secretary) to Thomasville, Georgia, where this petitioner could take the rail, and that his secretary, for the safety of the bonds, would accompany the petitioner as far as Charleston. That, as directed by the said Littlefield, this petitioner went in the said carriage to Thomasville, and thence by rail to New York, and that the secretary of the said Littlefield did accompany him as far as Charleston from Tallahassee. And that after the arrival of this petitioner in New
2599 York, he proceeded by the first steamer to Europe, and reached the city of London with the bonds as speedily as practicable and without delay.

That this petitioner, having thus received the said State bonds on the 11th day of January, A. D. 1871, retained and kept them in London, England, until the (18th) eighteenth day of April, A. D. 1871, because he could not get the money for them, when this defendant, having been peremptorily ordered by the said Edward Houstoun, did on said eighteenth day of April, A. D. 1871, deliver the said one thousand State bonds, numbered 3001 to 4000, inclusive, to S. W. Hopkins & Co., of London, England.

XXI. Your petitioner says that, as aforesaid, he received said one thousand bonds, No. 3001 to 4000, on the 11th of January, A. D. 1871, and delivered them as ordered on the 18th day of April, A. D. 1871, in London, to S. W. Hopkins & Co.; that the order and directions to him to deliver the said 1,000 bonds are as follows:

That he received in London the following message by cable from Edward Houstoun:

[Atlantic cable message. Station from Savannah. From E. Houstoun to Coddington, care Hopkins, London.]

2600 Deliver bonds to Hopkins; everybody protected.

And the defendant also received the following from Edward Houstoun:

SAVANNAH, GA., *April 11th*, 1871.

T. B. CODDINGTON, *London*:

DEAR SIR: I hereby authorize and request you to deliver to Messrs.

S. W. Hopkins & Co., of London, the one thousand Florida State bonds of one thousand dollars each received by you from the State of Florida in exchange for a like number and amount of the bonds of the Florida Central Railroad Company, the same having been delivered to you by me, to be held in trust as per your receipt dated January 11th, 1871, which I now surrender herewith. I have no further lien on or against either of the above mentioned bonds.

Yours, respectfully,

E. HOUSTOUN.

Also the following:

TALLAHASSEE, FLA., *April 6th*, 1871.

SIR: I hereby recall my letter of instruction to you, dated January 12th, 1871, and also all the instructions subsequently given, and now direct you to deliver to Messrs. S. W. Hopkins & Co., of 58 Old 2601 Broad street, London, the one thousand bonds of one thousand dollars each, to wit*t*, one million dollars of the State of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, now held by you as trustee, whenever Edward Houstou, esq., shall authorize and direct you to do so; imposing upon you the single duty of procuring from Messrs. S. W. Hopkins & Co. their signature to the written agreement entered into with you, which is intended to fix upon them the responsibility of carrying out my original order and relieving you therefrom.

M. S. LITTLEFIELD,
Pres. J., P. and M. R. R. Co.

To T. B. CODDINGTON, Esq.

And on the face of this instruction and across the writing was the following:

I hereby approve of and ratify this order.

HARRISON REED,
Governor of Florida.

I do hereby authorize and request T. B. Coddington, esq., to deliver the within-mentioned bonds to S. W. Hopkins & Co., of London, as I have no further lien against them.

E. HOUSTOUN.

2602 That the contents of these documents were communicated by cable to your petitioner by the firm of your petitioner, to whom these papers were sent in the city of New York, and that he received by cable as aforesaid information of their contents and authority before he received the cable message of E. Houstoun, ordering him to deliver the bonds.

That the said S. W. Hopkins & Co. had also a house in New York as well as in the city of London, and were the same firm and composed of the said parties, and that the said S. W. Hopkins & Co. were then the fiscal agents of the State of Florida and of the said Jacksonville, Pensacola and Mobile Railroad Company; and that as aforesaid, as thus directed, he did deliver said one thousand bonds, numbered 3001 to 4000, inclusive, to said S. W. Hopkins & Co., in London, and obtained their signature as in said instructions directed; that having delivered the said bonds on the 18th of April, as directed by cable from Houston, that afterwards the said S. W. Hopkins & Co. sent a message by cable to their New York house, notifying them of the receipt of the bonds, and thereupon the New York house of S. W. Hopkins & Co. sent the following letter to the partner of the petitioner, and also sent his said partner the original receipt (Schedule F of the North Carolina bill) which this defendant had given to Houstoun as aforesaid, and also Houstoun's written authority, dated 11th April, to deliver the bonds, all of which the petitioner was advised of by his said partner, as aforesaid.

2603 That acknowledgment and letter is as follows:

[S. W. Hopkins & Co., 71 Broadway, near Wall street.]

NEW YORK, *April* 19*th*, 1871.

GEO. L. NICHOLS, Esq.:

DEAR SIR: A cablegram received this morning from our London house announces that Mr. Coddington has delivered the bonds. Enclosed please find Mr. Coddington's original receipt to Mr. Houstoun, dated Tallahassee, January 11th, 1871; also Col. Houstoun's authority for the delivery. Please acknowledge the receipt of these documents. We should be glad to know if you have anything from Mr. Coddington confirming our dispatch.

Very truly yours,

S. W. HOPKINS & CO.,
P'r L. L. SPRING.

XXII. Your petitioner further says that these bonds were delivered by the order of the Florida Central Railroad Company, and that the exchange of the railroad bonds for the said State bond' was made by the authority of the said Florida Central Railroad Company; and that at a stockholders' meeting of the Florida Central Railroad Company, duly
assembled in accordance with law, and after this petitioner had
2604 received the said State bonds as above stated, the following res-
olution was offered at said stockholders' meeting, to wit:

"Resolved, That Edward Houstoun do place the bonds referred to in the preamble and resolution of the stockholders, adopted June 20th, 1870, in the hands of S. W. Hopkins & Co., for the purpose mentioned in said resolutions, subject to the same exceptions as therein expressed with respect to the proportion thereof applicable to the stock owned by other parties, and according to the same terms therein mentioned."

And this petitioner has been informed and believes that said resolution was passed by a large majority of said capital stock, and was and is of lawful and binding force on said railroad company, and on all and every of its stockholders, and this resolution authorized the exchange and delivery aforesaid.

Your petitioner alleges that the Florida Central Railroad Company, the Western North Carolina Railroad Company, who, in the aforesaid suit now pending in this court, claim to be the real owners of the ma-
jority of the stock of the Florida Central Railroad Company, and
2605 each and every stockholder of the Florida Central Railroad Com-
pany and the said Jacksonville, Pensacola and Mobile Railroad
Company, and each and every of its stockholders' are estopped from denying the legality of the said exchange of bonds or their delivery to said S. W. Hopkins & Co., because he says that as will appear by an examination of the case in the supreme court of the State of Florida, wherein the Florida Central Railroad Company and others were appel-

lants, and the State of Florida and others were respondents, and in which case the legality and validity of the issue of the said railroad bonds, and the exchange of the State bonds therefore, and the obligation of the said railroad company therefor was involved, the said supreme court of Florida did decide that after this petitioner had received the said bonds that the foregoing resolution was adopted at a stockholders' meeting, and the supreme court did further in said case declare and decide that "the resolution was adopted. The bonds here referred to are the bonds now held by the State. So far as the exchange of these bonds by the company is concerned, here is its express authority given for it, and that must be the end of the matter."

2606 This petitioner says that the same will be found in the XV volume of Florida Reports, at pages 709 and 710, and that the same is a public record, and published by authority of the State of Florida, to which he begs leave to refer for the purposes of this petition. Your petitioner says as advised by counsel that the said railroad companies, their stockholders, and all other persons, parties to that suit, and their privies, have had all their rights adjudicated in the aforesaid case, as to the exchange, issue, and delivery of these bonds, and *and* that they are estopped from denying the same.

This petitioner therefore alleges from the facts as before stated as to his receiving these bonds, and as to his delivering them, that as soon as he did, in accordance with the aforesaid instructions delivered them to said S. W. Hopkins & Co., of London, there was no further obligation or liability resting upon this defendant, as he obeyed the instructions of all the parties interested as heretofore shown.

XXIII. Your petitioner says that he was not a party to this suit in the supreme court of Florida, and that he had no knowledge of any such suit in the State of Florida.

2607 That after the same was published his attention was called to it, and he then, for the first time, by reading the printed report of the case in the said volume XV, Florida Reports, to his great surprise and indignation read what the parties to that suit agreed and admitted that this petitioner if called upon would testify to in said case, and more especially what is found on pages 720, 721, and 722 of said volume, which purports to be in substance what was agreed upon by the parties to that suit that the defendant The Florida Railroad Company could prove by T. B. Coddington; your petitioner says that it is false, and that your petitioner never could nor would he have testified to any such thing as in said volume found, but that the real and true occurrences and things relating to the exchange, receipt and delivery of these bonds, so far as known to your petitioner, are as stated in this petition, and have been heretofore stated in the answer of your petitioner heretofore filed in the suit of the Western Division of the Western North Carolina Railroad Company vs. George F. Drew, governor of the State of Florida, The Florida Central Railroad Company, T. B. Coddington, and others, now pending in this court.

2608 That these admissions and statements in that suit were made by the parties therein without the knowledge of the petitioner, and for their own purposes, and, as herein shown, are false so far as they contradict the facts in this petition heretofore stated.

XXIV. Your petitioner further shows that Houstoun and Littlefield were the owners of about two-thirds of the capital stock of the Florida Central Railroad Company, and that Littlefield was also the owner of about two-thirds of the stock of the Jacksonville, Pensacola and Mobile Railroad Company. And that Edward Houstoun procured and order from the stockholders of the Florida Central Railroad Company in due and legal form directing him, Houstoun, to deliver said State bonds, Nos. 3001 to 4000, inclusive, to S. W. Hopkins & Co., of London, and that the delivery of said State bonds by this petitioner to the said S. W. Hopkins & Co., of London, was in accordance with the aforesaid resolution, this said petitioner then acting as the agent of the said Houstoun, and delivering said State bonds by Houstoun's express direction as aforesaid.

2609 XXV. That Robert V, Gamble brought suit against this petitioner in the court of common pleas of the city and county of New York for the injury resulting to him, Gamble, by this petitioner delivering said one thousand bonds to S. W. Hopkins & Co., of London, as aforesaid, without his having first paid the the said Gamble the moneys as set forth in Schedule F. Your petitioner employed able and skilful counsellors and attorneys to defend said suit, and did defend the same with all lawful measures. That the suit was tried by the court and a jury and a verdict was rendered against this petitioner in due form of law in favor of the said Gamble on the 27th day of April, A. D. 1876, for the sum of $21,553.33 and $250 allowance for counsel fee. That on the 19th of May, A. D. 1876, this petitioner settled and fully satisfied the said verdict upon an agreement between the said Gamble and himself in full satisfaction for the sum of $15,750 cash in hand paid by this petitioner out of his, petitioner's, own moneys, and that this petitioner has had to expend of his own moneys the further sum of about three thousand dollars.

XXVI. Petitioner further alleges that the agreement of the 29th of
August, A. D. 1872, is and was founded upon a good and lawful
2610 consideration as therein expressed, and that the debt and claim
of your petitioner is therein admitted to be there due and owing and that this debt and claim is also admitted to have been due and occurring and unpaid, and that your petitioner had a lien on the 29th day of August, A. D. 1872, on the whole of said one thousand State bonds, numbered 3,001 to 4,000, inclusive, and upon their proceeds until paid, and this by admission of record as aforesaid in the supreme court of New York on the 18th day of January, A. D. 1873.

That the said John Collinson took the said 1,000 bonds with knowledge of the lien of this defendant thereon, and that all parties now holding any of said bonds of said 208 remaining as aforesaid and numbered 3001 to 3200, inclusive and numbers 3760, 3770, 3771, 3772, 3773, 3774, 3775, and 3776 took them with knowledge of the lien of the petitioner, and received these bonds, numbered as aforesaid, long after the said 29th day of August, A. D. 1872, and that John Collinson did not part with any of the aforesaid bonds until after the said 18th day of January, A. D. 1873.

XXVII. Your petitioner alleges that it would be unjust and inequi-
table to cause the said Florida Central Railroad Company's prop-
2611 erty to be sold by the decree of this court without first ordering
the parties in interest to pay your petitioner the debt due him, to wit, the said sum of forty thousand dollars, and interest from the said 29th day of August, A. D. 1872, and the costs that he has incurred in England in defending and protecting these securities.

XXVIII Your petitioner further shows that the said Jacksonville, Pensacola and Mobile Railroad Company, in January, A. D. 1871, promised and agreed to pay to your petitioner the sum of twenty-five thousand dollars, or two and one-half per centum on one million of the bonds of the State of Florida by him received as aforesaid, as compensation for his services connected therewith.

And your petitioner claims that he had a lien on the said one million of State bonds so received as aforesaid, on the eleventh day of January, A. D. 1871, for the sum of twenty-five dollars and interest until paid. That the said Jacksonville, Pensacola and Mobile Railroad Company, by its president, M. S. Littlefield, in furtherance of said agreement, gave an order on Messers. S. W. Hopkins & Co., of London, the fiscal agents of said railroad company, to pay your petitioner the said twenty-2612 five thousand dollars. This order is dated February 1st, 1871, and is in the words and figures following, to wit:

PRESIDENT'S OFFICE,
JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD CO.,
Tallahassee, Fla., Feb. 1st, 1871.

Messrs. S. W. HOPKINS & CO., *London:*

GENTLEMEN: For the risk and responsibility assumed by T. B. Coddington in taking charge of and carrying to Europe one million of the bonds of the State of Florida, issued in aid of the Jacksonville, Pensacola and Mobile Railroad Co. (which bonds were delivered to him by Edward Houstoun for transmission to Europe), and for disbursing the proceeds of the sale of the same, you are hereby authorized and directed to pay the said T. B. Coddington as compensation for the services so performed, out of the funds of the sale of said bonds, a commission of two and one-half ($2\frac{1}{2}$) per cent. on the par value of said bonds; provided, T. B. Coddington surrenders to you for my account all its past due coupons held by him of the Pensacola and Georgia Railroad Co., amounting to about the sum of $24,465.

Truly yours,
(Signed) M. S. LITTLEFIELD,
President J., P. & M. R. R. Co.

2613 I hereby acknowledge were received against the proceeds of the within named bonds, fifteen thousand dollars, Jan. 15th.
(Signed) M. S. LITTLEFIELD,
President J., P. & M. R. R. Co.

Your petitioner alleges that the aforesaid order was sent to said S. W. Hopkins & Co., and was not paid. And your petitioner further says that when, in the April following, to wit, in April, A. D. 1871, that he delivered the said one million of bonds to the said S. W. Hopkins & Co., in London, as directed as aforesaid, that he did not surrender or relinquish his lien as aforesaid on said bonds, and that this will appear by reference to the agreement of the 29th of August, A. D. 1872, where the agreement says, "And wheras the said claim, amounting to $40,000, with accrued interest, are alleged to be secured inter alia by some of the 210 Florida State bonds, &c."; and as it will further appear by the admission of record aforesaid by the said railroad company, made in the supreme court of New York, wherein the said company admitted a lien of your petitioner for the said sums of money as existing on the whole of the said one thousand bonds. Wherefore your petitioner claims and insists that he had and has a lien for the said sums of money 2614 on the said one thousand State bonds, Nos. 3001 to 4000, from the said 11th day of January, A. D. 1871, and that all parties dealing with the aforesaid bonds had notice either actual or constructive of his said lien.

XXIX. Your petitioner avers that he is now ready, and has always been ready, to deliver up the said coupons in said agreement mentioned to the said company upon being paid his said debt and interest, and his cost expenses, as is in said agreement contained, and now states to the court his readiness so to do upon being paid such sums of money within such reasonable time as this court may direct.

Your petitioner shows unto your honors that he is the true and sole owner of the said coupons in the said agreement mentioned, and that the said coupons and each and every of them were and have ever since continued to be the property of this petitioner, from a date previous to the creation of this corporation, and previous to the year 1869.

XXX. Your petitioner further says that the acts and doings of the said Milton S. Littlefield, president of said J., P. & M. R. R. Co.; relative to these bonds, were done by the direction and authority of
2615 said company; and that he is informed and believes the following resolutions were adopted at a stockholders' meeting of said company, duly assembled according to law on the 24th day of January, A D. 1871, and are as follows:

At a meeting of the stockholders of the J., P. & M. R. R. Co., held at Tallahassee on the 24th day of January, 1871, the following resolutions were adopted:

Resolved, That the preamble and the several resolutions adopted at a meeting of the directors convened at the call of the vice-president, Col. J. P. Sanderson, on the 10th day of December, A. D. 1870, be, and they are hereby, rescinded, revoked, and repealed, and the directors are required to carry this into effect by resolution.

Resolved further, That the acts and doings, contracts and negotiations made by Milton S. Littlefield, president, relative to the sale of the bonds of the State of Florida issued to this company and delivered to the president under the charter of the company and the acts of the legislature of Florida for the purpose of aiding and assisting this company in fulfilling the objects of its charter, and perfecting the public works of the State, be and they are hereby approved, ratified, and confirmed,
2616 and every officer of this company is hereby required to furnish the president of this company every aid to complete the sale of the bonds issued by the State of Florida to this company and to complete the road into Mobile as soon as possible.

Resolved further, That the stockholders at this meeting, representing forty-two thousand and forty-three (42,043) shares of stock, do hereby declare that they have full confidence in their president, M. S. Littlefield, and the directors are requested to pass such resolutions as will carry into effect this expression of confidence, and notify those in interest and other parties in this country and abroad that the company sustain their president in his negotiations relative to the sale of the bonds of the State of Florida issued to aid this company.

Resolved further, That the governor of this State be respectfully requested to aid and assist the president of this company in negotiating the bonds of the State now in his possession.

Resolved further, That the directors of this company be instructed to take steps to build the road to the "Spanish Hole" at the earliest practicable moment.

I certify the foregoing to be true extracts from the minutes of the stockholders of this company.

[SEAL.] (Signed) F. H. FLAGG,
Secretary.

2617 XXXI. Your petitioner therefore prays that the premises considered, your honors will order and direct:

I. That your petitioner shall be paid the said sum of forty thousand dollars, with interest from the 29th day of August, A. D. 1872, at the rate of seven per centum per annum, and that your petitioner has a lien on said one thousand bonds from said date until the said sums are paid.

II. That the sale of the Florida Central Railroad Company shall not take place until your petitioner shall have realized the securities as pledged to him in said agreement of 29th of August, A. D. 1872, or until the said sums of money are paid, together with his costs and expenses in the English court in chancery.

III. That this petitioner shall have such order as to your honors shall seem meet and just, the premises considered.

And your petitioner will ever pray.

T. B. CODDINGTON,
Petitioner.

D. P. HOLLAND,
Of Counsel.

2618 UNITED STATES OF AMERICA,
Southern District of New York, *ss:*

Before me, John A. Shields, commissioner of the circuit court of the United States for the southern district of New York, personally appeared Thomas B. Coddington, to me well known to be the petitioner, who, being duly sworn, on oath says that the facts stated of his own knowledge in the above petition are true, and those stated on information he believes to be true.

T. B. CODDINGTON.

Sworn to and subscribed before me this 12th day of January, A. D. 1878.

[SEAL.] JOHN A. SHIELDS,
Commissioner of the Circuit Court of the United States for the Southern District of New York.

2619 (Indorsed:) United States circuit court, fifth circuit, northern district of Florida. In equity. In re J. Fred. Schutte and others vs. The Jacksonville, Pensacola and Mobile Railroad Company, The Florida Central Railroad Company, and others. Petition of Thomas B. Coddington. D. P. Holland, counsel for petitioner.

2620 1873. C., No. 102.—Filed 26th April, 1873.

In chancery.

Lord Chancellor.
Vice-Chancellor Wickens.

BETWEEN THOMAS BUTLER CODDINGTON, plaintiff,
and
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company and John Collinson, defendants.

Bill of complaint.

To the right honorable Roundell Baron Selborne of Selborne, in the county of Southampton, lord high chancellor of Great Britain.

Humbly complaining, sheweth unto his lordship Thomas Butler

Coddington, of No. 9 Kensington Park Gardens, in the county of Middlesex, merchant, the above named plaintiff, as follows:

1. The defendants, the Jacksonville, Pensacola and Mobile Railroad 2621 Company (hereinafter called the railroad company), are a company duly incorporated and regulated by certain acts of the legislature of the State of Florida, one of the United States of America, for the purpose of constructing and working a railway in that State, and by virtue of the laws of the said State they became entitled to receive, in order to aid them in effecting such purpose, and they did receive, from the governor of said State, 4,000 bonds of the said State, dated 1st January, 1870, each bond being for $1,000, American currency, payable in gold, and bearing interest payable half-yearly at the rate of eight per centum per annum.

2. A firm of S. W. Hopkins & Co., of New York and London, who were at that time the financial agents of the railroad company, entered into several agreements with the defendant, John Collinson, who is a banker, contractor, and civil engineer, resident in England, under which agreements the said defendant claimed to be entitled to purchase 2622 the said 4,000 bonds on the terms thereby fixed, and 2,800 of the said bonds were accordingly delivered to the said defendant by the said firm, but the said firm refused to deliver to him any more of the said bonds on those terms, and thereupon the said defendant, on 23rd August, 1871, commenced the suit hereinafter referred to as Collinson v. Collins, by filing a bill of complaint in this honorable court against Frank Howard Collins, who was then one of the partners in the said firm.

3. The said bill was for specific performance of the said agreements, including the delivery to the defendant John Collinson *of* the remaining 1,200 of the said 4,000 bonds, and the railroad company, the remaining partners in the said firm of S. W. Hopkins & Co., and certain other persons and another company were added as defendants to it by amendment.

4. On 25th May, 1872, the railroad company commenced the suit hereinafter referred to as the Jacksonville Company v. Collinson, by filing a bill of complaint in this honorable court against the defendant 2623 John Collinson and all the other parties to the suit of Collinson v. Collins and certain other persons as well, and by that bill the railroad company admitted the validity of some but repudiated others of the agreements between the said S. W. Hopkins & Co. and the defendant John Collinson, charged the said defendant with delay and collusion with the said S. W. Hopkins & Co. in the prosecution of the said suit of Collinson v. Collins, and prayed among other things that the defendant John Collinson might be decreed to complete his purchase of the said 4,000 bonds, and to pay the balance of the purchase-money thereof to them, the railroad company, or to certain trustees for them.

5. By this said bill the railroad company stated, as the facts were, that 210 of the said 1,200 (residue of the said 4,000) bonds had by arrangement between the said Frank Howard Collins and the defendant John Collinson been deposited and then were in the London and 2624 County Bank, in the city of London, in the joint names of their respective solicitors; such solicitors, though not named in the said bill, were in fact Mr. Newman, of the firm of Newman, Dale & Stretton, on behalf of the said Frank Howard Collins or S. W. Hopkins & Co., and Mr. Cobb, of the firm of Janson, Cobb & Pearson, on behalf of the defendant John Collinson.

6. The present plaintiff claimed to be interested in the said 210 bonds, and gave a notice with relation thereto to the said Mr. Cobb and Mr.

Newman. The said claim arose out of an agreement which, prior to the bringing of the said 4,000 bonds to England, had been made by the plaintiff with the railroad company, certain other parties interested in the said bonds, and the said S. W. Hopkins & Co., under which agreement the plaintiff rendered certain services, and became entitled to certain remuneration, to which it is not necessary more particularly to refer.

7. The various parties to the said suits of Collinson v. Collins 2625 and Jacksonville Company v. Collinson entered into negotiations for the settlement of their differences, which, on account of the notice given as aforesaid by the present plaintiff, they were unable to bring to any practical conclusion without his concurrence. In fact, before the rising of the court before the long vacation of 1872, a decree by consent had been pronounced by the vice-chancellor, Wickens, but it had not been drawn up, and the parties, finding that without the plaintiff's concurrence they would not be able to act on it, applied to the plaintiff, and for the first time informed him of it, and his sanction having been obtained on the terms hereinafter appearing, the minutes of the said decree were finally settled, as follows:

In chancery.

Vice-Chancellor Wickens.

COLLINSON
v.
COLLINS.

JACKSONVILLE, &C., COMPANY
v.
COLLINSON.

Upon hearing counsel for all parties except the defendants F. H Kleinwort, Edward Cohen, L.   , Lewis Spring, and the Western Division of the Western North Carolina Railroad Company 2626 (against whom respectively the bills in both suits have been dismissed), and upon reading a power of attorney, under the seal of the plaintiff company, in favor of the defendant Converse L. Chase, enabling him to compromise suits on behalf of the company, and an affidavit of the said Converse L. Chase verifying the same, and upon reading an affidavit of the said Converse L. Chase that the National Trust Company of New York have been duly appointed and have accepted the office of fiscal agents of the State of Florida and of the Jacksonville, Pensacola & Mobile Railroad Company, and it being alleged by counsel that the company, by the said Converse L. Chase, as their attorney, and the plaintiff, John Collinson, and the defendants, Collins, Hopkins, and Carpenter, have agreed to compromise all litigations and questions between them, or any of them, and to determine all existing contracts between them or any of them, relating to any of the bonds hereinafter mentioned, on the terms embodied in this order, it is, by consent of counsel for all parties, ordered that 224 of the 1,200 2627 Florida State bonds in the pleadings mentioned be delivered to the National Trust Company of New York, and to be by them delivered up to the State of Florida to be cancelled against the delivery by the said State to the said National Trust Company of New York of 224 bonds of the said railroad company to be also cancelled, the same

having been overissued by them, in respect of a deficiency in the length of the line constructed by the company; and it being alleged that two others of the said bonds have been lost, it is, by consent as aforesaid, ordered that the remaining 974 of the said 1,200 bonds be dealt with as follows; that is to say, 166 of such 974 bonds be sold and delivered to the said John Collinson at the rate of £120 and accrued interest per bond, and the remaining 808 of such 974 bonds be deposited as hereinafter mentioned; and the defendant Converse L. Chase, by his counsel, consenting to receive the purchase money for such 166 bonds and apply the same, as hereinafter directed, on behalf of the said company,
2628 and also of himself and the defendant Francis H. Flagg, as the
trustees of the indenture of the 2nd of October, 1871, in the pleadings mentioned, it is, by consent as aforesaid, ordered that on such payment being made as hereinafter mentioned by the said John Collinson to the said Converse L. Chase, Thomas Pix Cobb, and George Gunnell Newman, do deliver the 210 bonds, part of such 1,200 bonds, which 210 bonds are deposited in their joint names, as in the pleadings mentioned, to the said John Collinson, to be held by him on the terms hereinafter mentioned.

And it is by consent, as aforesaid, ordered that the defendant Converse L. Chase, upon such payment being made to him by the said John Collinson as hereinafter mentioned, do deliver to the said John Collinson 166 bonds so purchased by him and 22 bonds, making with such 210 bonds 232 of such bonds, to be held by the said John Collinson on the terms hereinafter mentioned, and that on such payment being made the said defendant, Converse L. Chase, do remit to the said John
2629 Collinson, to be held on the terms hereinafter mentioned, the re-
maining 576 of such 1,200 bonds, by the first mail leaving New York on or after the 1st October, 1872.

And it is ordered that on such delivery to him of such 166 and 232 bonds as aforesaid, the said John Collinson do pay the amount of the purchase for such 166 bonds, at the rate aforesaid, to the said defendant, Converse L. Chase, to be applied by him in accordance with such of the trusts of the indenture of the 2nd of October, 1871, in the pleadings mentioned as are applicable thereto.

And it is by consent, as aforesaid, ordered that the said Converse L. Chase do apply the same accordingly.

And it is by consent, as aforesaid, ordered that the said John Collinson do, out of the said 232 bonds to be deposited with him as aforesaid, retain 40 bonds for his own use in satisfaction of the losses sustained by him by breach of the contracts entered into with him by the defendants Collins and Hopkins & Co. on behalf of the company, in relation to the said bonds, or any of them.

2630 And it is by consent, as aforesaid, ordered that the said John
Collinson do retain the remaining 192 of such 232 bonds, and also the said 576 bonds (being the balance of the 800 bonds in America after the delivery of the said 224 bonds) when so delivered to him as aforesaid, subject to an option to him, the said John Collinson, to purchase the same or any part thereof at any time within 7 months from the date of this order at the price of £130 and accrued interest per bond, such price to be paid (subject to the retention thereout by the said John Collinson of any sums of money which he may pay for costs, charges, and expenses to any defendants in the suit of Collinson v. Collins, and to any defendants in any proceedings instituted in America by the said John Collinson in respect of the said bonds, or any of them) to the agents in London of the National Trust Company against their receipts

for the same as fiscal agents of the company, and to be applied by them in manner following:

2631 The first monies coming to their hands up to £31,800 shall be specially set apart as a fund for and applied by them in payment of the January coupons on all the said bonds already negotiated or which shall hereafter be negotiated in accordance with the foregoing provisions, such interest being for the purpose calculated on 3,974 bonds at the exchange of 108 and a commission of 1% thereon, and any balance over and above the said sum of £31,800 shall be applied by the said National Trust Company as such fiscal agents for the purposes of the railroad company. And it is by consent, as aforesaid, ordered that they do pay and apply the same accordingly, the said Converse L. Chase, by his counsel, undertaking that the said National Trust Company shall be legally and fully confirmed in their appointment as fiscal agents of the said company and also of the State of Florida.

And it is by consent, as aforesaid, ordered that the said John
2632 Collinson do, at the expiration of such period of 7 months, deliver the 192 and 576 bonds, or such of them, if any, as he shall not so purchase to the said agents of the National Trust Company as such fiscal agents of the company and for and on behalf of the said company. And it is by consent, as aforesaid, ordered that all bonds hereinbefore ordered to be delivered be delivered, with all coupons subsequent to those due July, 1872, attached thereto.

And it is by consent as aforesaid ordered that the bill in the first mentioned suit be dismissed without costs as against all the remaining defendants thereto other than Kleinwort and Cohen, but it is ordered that what the plaintiff, John Collinson, shall pay on account of the cost of Kleinwort and Cohen be refunded to him by the company. And it is by consent as aforesaid ordered that the bill in the secondly mentioned suit be dismissed without costs as against the remaining defendants except as against Kleinwort and Cohen, and with costs as against them.

2633 And it is by consent as aforesaid ordered that the company do forthwith dismiss their suit now pending in New York, without costs, and that the said John Collinson do also dismiss his suit now pending in New York, the said Converse L. Chase undertaking that the several defendants in the same suit shall consent to such dismissal without claiming costs against the said John Collinson. And it is ordered that the said company do indemnify the said John Collinson against any costs, either of himself or of any person or company, of his suit in New York which he may have to pay.

8. At the foot of the said minutes an agreement was written in the following words:

"We severally agree that a decree in the terms of the above minutes shall as soon as practicable be drawn up and entered, and meanwhile that we will severally be bound as if the decree had been actually drawn up and entered."

2634 And to the said minutes and agreement the following signatures and date were appended:

JOHN COLLINSON.
JANSON, COBB & PEARSON,
His Solicitors.
F. H. FLAGG,
SYDNEY W. HOPKINS,
ROBERT J. CARPENTER,
By C. L. CHASE,
Att'y in Fact.
JACKSONVILLE, PENSACOLA AND
MOBILE RAILROAD COMPANY,
By C. L. CHASE,
Att'y in Fact.
C. L. CHASE.
JACKSONVILLE, PENSACOLA AND
MOBILE RAILROAD COMPANY,
By W. G. M. DAVIS.
FRANK H. COLLINS,
NEWMAN, DALE & STRETTON,
His Solicitors.
A. SCOTT LAWSON.

29TH AUGUST, 1872.

9. The present plaintiff concurred in the arrangement embodied in the said minutes on the faith and in consideration of the agreement and documents set forth in the three following paragraphs hereof, which were respectfully entered into and signed between and by the parties between and by whom they respectively purport to have been
2635 entered and signed and were exchanged on the same date with the signature of the said minutes.

10. An agreement made this 29th day of August, 1872, between the Jacksonville, Pensacola and Mobile Railroad Company, by their duly constituted attorney, Converse L. Chase, of the one part, and Thomas Butler Coddington, of 9 Kensingston Park Gardens, in the county of Middlesex, merchant, of the other part.

Whereas the said Thomas Butler Coddington claims from the company $25,000, and accrued interest thereon on his own behalf, and also $15,000 and accrued interest thereon due to Colonel R. H. Gamble; and whereas the said claims, amounting to $40,000, with accrued interest, are alleged to be secured inter alia by some of the 210 Florida State bonds now in the hands of Mr. Cobb and Mr. Newman;

And whereas the said railroad company have been negotiating with Mr. Collinson, of London, with respect to 1,200 bonds, including the 210 bonds; and whereas the said Mr. Cobb and Mr. Newman,
2636 having had notice on Mr. Coddington's behalf not to part with the said bonds, have refused to do so until such notice has been withdrawn, whereby the said negotiation between the said railroad and the said Mr. Collinson has been stopped.

And whereas it is to the interest of the said railroad that the said negotiation should proceed, and the said Thomas Butler Coddington at the request of the said railroad, through their attorney, the said Converse L. Chase, has agreed to and has accordingly withdrawn such notice upon the signing of this agreement;

And whereas in order to settle the said differences and for the consideration aforesaid, the said company and the said Thomas Butler Coddington have agreed to execute this agreement; the parties mutually agree as follows:

1. The said railroad company shall authorize and direct the National Trust Company of New York (who have been appointed the fiscal agents of the said railroad company), by their agent in London to pay to the said Thomas Butler Coddington the sum of $40,000 United States 2637 currency, with interest thereon from this date at 7 per cent. per annum, till payment out of the first monies to be paid to such agents by Mr. Collinson in pursuance of a decree of court made in two suits of Collinson v. Collins, and Jacksonville Railroad Company v. Collinson, after paying the sum of £31,800 in the said decree mentioned or such sum not exceeding $40,000 and interest as may so be in their hands, or in default of sufficient monies coming to the hands of the said Trust Company, to deliver to the said Thomas Butler Coddington the first 192 bonds and coupons attached of the said State which shall come into the hands of the National Trust Company in pursuance of the said decree.

2. That the said railroad company shall forthwith procure the recognition and acceptance by the said National Trust Company, and also by their agents in London, of the said direction in the first clause mentioned.

3. That the said Thomas Butler Coddington shall have full power to sell the said 192 bonds in order to pay himself the said 2638 $40,000 and interest, without further consent from the said railroad company, he, the said Thomas Butler Coddington, accounting to the company for any surplus beyond such principal and interest and the expenses attendant upon such sale.

4. On payment as aforesaid the said Thomas Butler Coddington shall deliver to the said company coupons of bonds of the Pensacola and Georgia Railroad Company amounting to $24,465.

JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD,
By C. L. CHASE,
Att'y in fact.
T. B. CODDINGTON,
A. P. BOWER, *His Atty.*

11. On the same date the railroad company gave to the present plaintiff the order following:

To the National Trust Company of New York:

Out of the first monies paid after this date by Mr. Collinson, of London, to you as the fiscal agents of the Jacksonville, Pensacola and Mobile Railroad Company, after setting apart the sum of £31,800, 2639 you are hereby requested and irrevocably directed to pay to Mr. Thomas Butler Coddington or his order the sum of $40,000, United States currency, together with interest thereon at 7 per cent. per annum till payment, or such sum not exceeding $40,000 and interest as may so be in your hands.

Failing payment of the said full amount of the said $40,000 and interest, you are hereby requested and irrevocably directed to deliver to Mr. Thomas Butler Coddington or his order the first 192 bonds of the State of Florida, with coupons attached, which shall be delivered to you by the said Mr. Collinson.

Dated this 29th August, 1872.

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY.
By C. L. CHASE,
Duly authorized by power of attorney.

12. On the the same date the following letter of guarantee was signed by the persons respectively thereby appearing and delivered to the present plaintiff:

2640 29 AUGUST, 1872.

T. B. CODDINGTON, Esq're:

DEAR SIR: You have this day, at our request and for our interest, withdrawn a certain notice given on your behalf to Mr. Cobb and Mr. Newman as to 210 bonds of the State of Florida.

In consideration of such withdrawal we hereby jointly and severally undertake and agree that one or other of the following things shall be done by the 29th day of March, 1873:

1. That $40.000 United States currency with interest thereon at 7 per centum per annum from this date till payment shall be paid to you as to $25,000 and the interest for your own use, and as to $15,000 and the interest thereon for the use of Colonel Gamble, your friend.

Or, 2. That 192 bonds (bearing some of the numbers 3001 to 4000) of the State of Florida (part of the 1,200 bonds in the suit of Collinson v. Collins mentioned) shall be handed to you as security for such $40,000.

2641 It is understood that if the said amount be paid within three months from this date you shall relinquish all interest on the $40,000.

Yours, truly,

C. L. CHASE.
L. T. BAYNE.
W. G. M. DAVIS.

I, the said T. B. Coddington, assent to the above.

T. B. CODDINGTON.
A. P. BOWER.

13. The agreement and documents on the faith and in consideration of which the present plaintiff agreed to concur in the settlement of the said suits of Collinson v. Collins and Jacksonville Company v. Collinson having been thus completed, the present plaintiff, by his solicitors, Messieurs Bower and Cotton, wrote and delivered to the solicitors of the said S. W. Hopkins & Co., and of the defendant, John Collinson, the following letter withdrawing the notice which had been given as aforesaid with relation to the said 210 bonds:

Florida bonds.

46 CHANCERY LANE,
29 *August*, 1872.

2642 DEAR SIRS: The draft having been prepared of the proposed minutes of decree in the suits of Collinson v. Collins and Jacksonville, &c., Company v. Collinson, by the terms of which decree the proceeds of certain bonds, or the bonds themselves, are to be paid or handed to the fiscal agents of the Jacksonville, Pensacola and Mobile Railroad Company and Mr. Collinson and his solicitors, General Davis and his solicitor, Mr. Collins and his solicitor, Messrs. Hopkins and Carpenter, by Mr. Chase, their attorney, and Mr. Chase having signed a memorandum at the foot of such draft engaging that a decree in the terms of such minutes shall be drawn up as soon as practicable, we hereby, on the faith of such engagement and on behalf of our client, Mr. Coddington, withdraw the notice given to Mr. Cobb and Mr. Newman by our letter of the 3rd July, 1872, respectively, addressed to Messrs. Janson, Cobb and Pearson, and Messrs. Newman, Dale and Stretton, and also all other notices, if any, given by us or any 2643 person on behalf of Mr. Coddington to Messrs. Janson, Cobb and Pearson or to Messrs. Newman, Dale & Stretton or to Mr. Collinson or to any other person or persons or company in relation to the Florida State 8 per cent bonds mentioned in the suit of Collinson v. Collins, 1871, C. No. 178, or any of them, or any matter relating thereto, and Mr. Cobb, Mr. Newman, and Mr. Collinson shall be at liberty to deal with such bonds, or any of them, as if no such notice or notices had been given.

Yours, truly,

BOWER AND COTTON.

To Messrs. JANSON, COBB & PEARSON, *Solicitors.*
To Messrs. NEWMAN, DALE & STRETTON, *Solicitors.*

14. A decree in the terms of the said minutes was then drawn up and dated 18th September, 1872.

15. Early in the present year it appeared by an advertisement in the New York Herald that the New York State Loan and Trust Company had been appointed by the railroad company as their fis- 6244 scal agents instead of the said National Trust Company of New York, and as soon as they became aware of this the plaintiff's said solicitors wrote to the said solicitors of the defendant, John Collinson, reminding them that no alteration must be made in the form of the said decree without notice to them the plaintiff's said solicitors, and on the same date, namely, 13th February, 1873, the plaintiff's said solicitors transmitted to the said New York State Loan and Trust Company copies of the agreement and order respectively set forth in the 10th and 11th paragraphs hereof, and of the said decree of 18th September, 1872, with a letter, in which they said: "You will of course take notice of Mr. Coddington's rights and act accordingly." But the said New York State Loan and Trust Company have not in any way replied to the said letter.

16th. On the 14th February, 1873, the plaintiff's said solicitors 2645 attended the solicitors of the defendant, John Collinson, whose clerk assured them that no alterations had been made in the said decree, and that none would be made without notice to them.

17th. On the 27th February, 1873, the said solicitors of the defendant, John Collinson, wrote to the plaintiff's said solicitors desiring their consent to certain alterations which appeared by an enclosed memorandum (and one of which was the substitution of the said New York State Loan and Trust Company in the place of the said National Trust Company of New York) being made in the said decree.

18. In reply to the said letter the plaintiff's said solicitors wrote and sent to the said solicitors of the defendant, John Collinson, a letter of the date and in the words following:

Florida bonds.

46 CHANCERY LANE, W. C.,
5th March, 1873.

2646 DEAR SIRS: We have seen our client. He holds guarantees from 3rd parties and he cannot consent to any alteration of the decree. You will not have failed to notice that the order for payment given to our client is on the National Trust Company, who have not been appointed the fiscal agents of the railroad, and that, therefore, even if disposed and able to consent we should be compelled to make it a condition that the actual fiscal agents (the New York State Loan and Trust Company) accept the order as a first charge (other than any charge made by the decree) on the first monies and bonds which come to their hands as such fiscal agents.

But would it not be better to get rid of our client (only about £8,000) and get the company to authorize Mr. Collinson to retain that sum to reimburse himself that amount as well as the money which you want for dividends, and which is referred to in the mem. of which you sent us a copy.

Yours truly,

BOWER & COTTON.

Messrs. JANSON, COBB & PEARSON.

2647 19. Some further letters afterwards passed between the said solicitors, but without any assent being given on the part of the plaintiff to any alterations being made in the said decree or in the other arrangements concluded as aforesaid on 29th August, 1872, and while the matter remained in this situation the plaintiff's said solicitors received from the solicitors of the defendant, John Collinson, a letter of the date and in the words following:

Florida bonds.

41 FINSBURY CIRCUS, E. C.,
19*th April*, 1873.

DEAR SIRS: Mr. Collinson having determined not to avail himself of the option (which is reserved to him by the terms of the decree of the 18th September last) of purchasing the unappropriated bonds remaining in his hands, we hereby give you notice that on Saturday next, the 26th instant, he will hand the same to Messrs. Jaffray & Co., of Saint
2648 Mildred's Court, Poultry, the London agents of the New York State Loan and Trust Company, who are the present fiscal agents.

We think it necessary to give you this intimation, having regard to the notices served by you on behalf of Mr. Coddington, and must leave you to take such course as you may think necessary under the circumstances.

Yours faithf'y,

JANSON, COBB & PEARSON.

Messrs. BOWER & COTTON,
46 *Chancery Lane.*

20. Mr. Bower, a member of the said firm of Bower & Cotton, who attends personally to this matter, was absent from London when the last-mentioned letter was delivered, but, immediately on seeing the same after his return, he wrote and sent a reply thereto of the date and in the words following:

Florida bonds.

46 CHANCERY LANE, W. C., 24 *April*, 1873.

DEAR SIRS: Our Mr. Bower has just returned from the north,
2349 and we must ask you to extend the time for taking any action.

We do not want to rush into law, but we must file a bill to restrain the handing over of the bonds to the company's agent. This would be clearly wrong after you have notice of the agreement with the company.

We feel sure, however, you will extend the time, say another week, and meantime we could meet and discuss the matter, with or without prejudice, as you please.

Yours faith'y,

BOWER & COTTON.

Messrs. JANSON, COBB & PEARSON.

21. Notwithstanding the said letter, the defendant, John Collinson, still threatens and intends to hand over the said bonds, as mentioned in his said solicitor's letter of 19th April, 1873; but if the said defendant should carry such threat and intention into execution, the plaintiff will lose the security provided for him by the said arrangements of 29th August, 1872.

2650 22. The plaintiff has been informed that an order has been served by the railroad company on the said New York State Loan and Trust Company in similar terms to those of the said order on the said National Trust Company of New York, set forth in the 11th paragraph hereof, but such information is unaccompanied by any evidence of the acceptance of such order by the said New York State Loan and Trust Company, or by any evidence that other orders for payment or delivery out of the moneys or bonds to be received by that company on behalf of the railroad company have not been previously served on or notified to the said New York Sate Loan and Trust Company.

Prayer.

The plaintiff prays as follows:

1. That the agreement between the railroad company and the plaintiff, dated 29th August, 1872, and set forth in the 10th paragraph
2651 hereof, may be specifically performed by the railroad company either literally or with no variation, which shall not give the plaintiff a first charge on the moneys and bonds mentioned in the first clause of the said agreement (subject only in the case of money to the sum of £31,800) for the sum of $40,000 and interest, or for 192 bonds, as the case may be, as mentioned in the same clause, the plaintiff hereby submitting to perform the said agreement so far as the same remains on his part to be performed.
2. That the defendant, John Collinson, may be restrained from delivering to or to the order of the railroad company or to any other person or persons the said bonds remaining in his hands without delivering 192 of the said bonds to the plaintiff.
3. That the defendants, or one of them, may pay the costs of this suit.

2652 4. That the plaintiff may have such further or other relief as the nature of the case may require.

J. WESTLAKE.

The names of the defendants to this bill of complaint are the Jacksonville, Pensacola and Mobile Railroad Company and John Collinson.

NOTE.—This bill is filed by Messrs. Bower and Cotton of No. 46 Chancery Lane, in the county of Middlesex, solicitors for the abovenamed plaintiff.

2653 (Endorsed as follows:)

At the execution of a commission of witnesses, wherein J. Fred Schutte, Jan Prins, Adrianeus Prins and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced by and shown to Thomas B. Coddington, and by him deposed unto at the time of his examination before

JOHN A. SHIELD,
Commissioner.

2654 (Endorsed:) 1873. C. No. 102. Filed 26th April, 1873. In chancery. Lord-Chancellor. Vice-Chancellor Wickens. Coddington v. The Jacksonville, Pensacola and Mobile Railroad Company and another. Bill of complaint. Fos. 92. Mr. Westlake, 2, C.

Victoria R. To the within named defendants, the Jacksonville, Pensacola and Mobile Railroad Company and John Collinson, greeting:

We command you, and every of you, that within eight days after service hereof on you (exclusive of the day of such service) you cause an appearance to be entered for you in our high court of chancery to the within bill of complaint of the within named Thomas Butler Coddington, and that you observe what our said court shall direct.

Witness ourself at Westminster the twenty-sixth day of April, 2655 in the thirty-sixth year of our reign.

NOTE.—If you, the said Jacksonville, Pensacola and Mobile Railroad Company fail to comply with the above directions the plaintiff may enter an appearance for you, and you will be liable to have your lands, tenements, goods, and chattels distrained upon, and other proceedings against you, and have a decree made against you in your absence; and if you, the said John Collinson, fail to comply with the above directions the plaintiff may enter an appearance for you and you will be liable to be arrested and imprisoned and to have a decree made against you in your absence.

Appearances are to be entered at the record and writ clerk's office, Chancery Lane, London.

Bower & Cotton, 46 Chancery Lane, plaintiff's solicitors.

2656 1873. C., 102. Filed 19th May, 1874. Grubb.

In chancery.

Fos. 44.

BETWEEN THOMAS BUTLER CODDINGTON, plaintiff,
and
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company and John Collinson, defendants.

The answer of the defendants, The Jacksonville, Pensacola and Mobile Railroad Company, to the bill of complaint of the above-named plaintiff.

In answer to the bill, we, the said company, say as follows:

1. We, the defendants, The Jacksonville, Pensacola and Mobile Rail-

road Company (in the plaintiff's bill called the railroad company), are a company duly incorporated and regulated by certain acts of the legislature of the State of Florida, one of the United States of America,
2657 for the purpose of constructing and working a certain railway in
that State, and we, by virtue of the laws of the said State, became entitled to receive, in order to aid us in effecting such purpose, and we, or our agents, by our order, accordingly did receive, from the governor or proper authority of that State 4,000 bonds of the said State dated 1st January, 1870, and each bond was for $1,000, American currency, and payable in gold, and bearing interest payable half yearly at the rate of 8 per cent. per annum.

2. A firm of S. W. Hopkins and Company, of New York and London, who were at that time our financial agents, entered into several agreements with the defendant, John Collinson, who is a banker, contractor, and civil engineer, resident in England, and the said defendant, John Collinson, under such agreements, claimed (as appears by a bill filed by him in this court on the 23d of August, 1871, and several times amended, and to which we claim to refer), to be entitled to purchase the said 4,000 bonds on the terms thereby fixed, and 2,800 of the said bonds were accordingly delivered to the said defendant by the said firm; but
2658 the said firm refused to deliver to him any more of the said bonds
on those terms, and he thereupon, on the said 23d August, 1871, commenced his aforesaid suit (in the bill in this suit referred to as "Collinson v. Collins"), and such suit was between such parties, and as we believe for such purposes as in the second and third paragraphs of the plaintiff's bill in this suit stated, but, for certainty, we crave to refer to the pleadings and proceedings in that suit now remaining of record in this suit.

3. On the 25th of May, 1872, we commenced the suit (in the bill in this suit referred to as "The Jacksonville Company v. Collinson"), and such suit was between such parties and for such purposes as in the 4th paragraph of the bill in this suit stated, so far as the said purposes are therein stated; but we crave to refer to the bill in our said suit now remaining of record in this suit.

4. We, by our bill in our said suit, stated as the facts were that 210 of the 1,200 (residue of the said 4,000) bonds had, by arrangements between Frank Howard Collins, in the said bill named, and the
2659 defendant John Collinson, been deposited and then were in the
London and County Bank in the city of London, in the joint names of their respective solicitors, who, though not named in our said bill, were Mr. George Gunnell Newman, of the firm of Newman, Dole and Stretton, on behalf of the said Frank Howard Collins, or S. W. Hopkins and Company and Mr. Thomas Pix Cobb, of the firm of Janson, Cobb and Pearson, on behalf of the defendant John Collinson.

5. The present plaintiff claimed to be interested in the said 210 bonds, and gave a notice with relation thereto to the said Mr. Cobb and Mr. Newman. The validity of the said claim, as we are advised, is not material in this suit, and we neither admit nor deny it. The said claim arose out of an agreement which, prior to the bringing of the said 4,000 bonds to England, had, as the plaintiff alleged, been made between such parties and of or to such purport and effect as in the 6th paragraph of the plaintiff's bill in this suit stated, and the plaintiff had, as he alleged, rendered certain services and become entitled to certain remuneration under the said agreement.

2660 6. The various parties to the said suits of Collinson v. Collins and Jacksonville Company v. Collinson entered into negotiations for the settlement of their differences, which on account of the said notice given by the present plaintiff, they were unable to bring to any practical conclusion so far as regarded the said 210 bonds without his concurrence. Before the rising of this court before the long vacation of 1872, a decree by consent had been pronounced by the vice-chancellor, Wickens, but had not been drawn up, and the parties finding that without the now plaintiff's concurrence they would not be able to act on the said decree applied to the plaintiff, and as we believe for the first time informed him of it, and the minutes of the said decree upon the present plaintiff's sanction having been obtained on terms in his bill appearing, were finally settled, and were in such words and figures as in the 7th paragraph of the now plaintiff's bill set forth.

7. We believe that there was written at the foot of the said
2661 minutes an agreement in such words as in the 8th paragraph of the now plaintiff's bill in that behalf set forth, and that there were appended to the said minutes and agreement such several signatures and date as in the 8th paragraph of the now plaintiff's bill are in that behalf set forth.

8. We believe that the present plaintiff concurred in the arrangement embodied in the said minutes on the faith and in consideration of the agreement and documents set forth in the 10th, 11th, and 12th paragraphs of his said bill, and that the same are respectively of such dates in such words and figures, and of or to such purport and effect, as in the said 10th, 11th, and 12th paragraphs in that behalf respectively set forth. And we believe that the same were respectively entered into and signed between and by the parties between and by whom they respectively purport to have been entered into and signed, and we believed that the same were exchanged and that the letter of guarantee in the 12th paragraph of the said bill set forth was delivered to the plaintiff on the same date with the signature of the said minutes.

2662 9. We believe that the present plaintiff by his solicitors, Messieurs Bower and Cotton, in his bill named upon the agreements and documents on the faith and in consideration of which the present plaintiff agreed to concur in the settlement of the said suits of Collinson v. Collins and Jacksonville Company v. Collinson, having been completed as in the plaintiff's bill and hereinbefore mentioned, wrote and delivered to the solicitors of the said S. W. Hopkins and Company, and of the defendant John Collinson, a letter of such date and as we believe in such words and figures as in the 13th paragraph of the now plaintiff's bill is in that behalf set forth.

10. A decree in the terms of the said minutes was then drawn up and was dated 18th September, 1872.

11. It appeared early in the year 1873 by an advertisement in the "New York Herald" and it is the fact that the New York State Loan and Trust Company had been appointed by us as our fiscal agents instead of the National Trust Company of New York, in the plaintiff's bill named.

2663 We were obliged to make the said substitution because the latter company declined to act as our agents as they had previously agreed to do. We are unable to say whether the now plaintiff's solicitors did or not, as soon as they became aware of the said substituted appointment, write to the said solicitors of the defendant John Collinson a letter of or to such purport and effect as in the 15th paragraph of the plaintiff's bill is in that behalf stated or any other letter, or did or not and on the same day, namely, 13th February, 1873, or in fact transmit to the said New York State Loan and Trust Company copies of the agreement and order respectively set forth in the 10th and 11th paragraphs of the now plaintiff's bill or of the said decree of the 18th September, 1872, or whether or not with a letter of or to such purport and effect as in the said 15th paragraph of the said bill is in that behalf stated so far as the same is therein stated, and for certainty we crave to refer to any such letters when produced. We are unable to say whether the said New York State Loan and Trust Company have or not in any way replied to the said letter.

2664 12. We are unable to say whether the plaintiffs' said solicitors did or not, on the 14th of February, 1873, or at any time, attend the solicitors of the defendant John Collinson, or whether the clerk of the latter solicitors assured them that no alterations had been made in the said decree, or that none would be made without notice to them, or what was said upon any such occasion.

13. We are unable to say whether the said solicitors of the defendant John Collinson did or not, on the 27th February, 1873, or at any time, write to the plaintiff's said solicitors a letter of or to such purport and effect as in the 17th paragraph of the plaintiff's bill is in that behalf stated, or any other letter of or to the like, or to any other or what purport or effect, or how otherwise, or whether there was or not enclosed in such last mentioned letter a memorandum of or to the purport or effect in the said 17th paragraph of the plaintiff's bill in that behalf stated, or of or to the like, or any other or what purport or effect, or how otherwise.

2665 14. We are unable to say whether the plaintiff's said solicitors did or not, or whether or not, in reply to the last-mentioned letter, write or send to the said solicitors of the defendant John Collinson a letter of such date, or in such words and figures, or of or to such purport or effect as in the 18th paragraph of the plaintiff's bill is in that behalf set forth, or any other letter of any other or what date, or in any other or what words or figures, or of or to any other or what purport or effect, or how otherwise.

15. We are unable to say whether some further letters did or not afterwards pass between the said solicitors, or whether or not, without any assent being given on the part of the plaintiff to any alterations being made in the said decree, or whether or not in the other arrangements concluded, as in the plaintiff's bill mentioned, on 29th August, 1872, or how otherwise, or whether the plaintiff's said solicitors did or not, or whether or not, while the matters remained in this situation, or how otherwise, receive from the solicitors of the defendant John Collinson a letter of such date, or in such words and figures, or of or
2666 to such purport or effect as in the 19th paragraph of the plaintiff's
bill is in that behalf set forth, or any other letter of any other date, or in any other words and figures, or of or to any other purport or effect, or how otherwise.

16. We are unable to say whether Mr. Bower, in the plaintiff's bill named, who, we believe, is a member of the said firm of Bower and Cotton, and attends personally to the said matter, was or not absent from London when the last-mentioned letter was delivered, or how otherwise, or whether he did or not immediately after his return, or, in fact, write or send a letter in reply thereto of such date, or in such words and figures, or of or to such purport or effect, as in the 20th paragraph of the plaintiff's bill is in that behalf set forth, or any other letter of any other date, in any other words and figures, or of or to any other purport or effect, or how otherwise.

17. We are unable to say whether the defendant, John Collinson, did or not, or whether or not, notwithstanding the said letter, threatened,
or whether or not intend to hand over the said bonds as
2667 mentioned in his solicitor's letter of 19th April, 1873, in the bill
mentioned, or how otherwise. We are unable to set forth the particulars of the bonds mentioned or referred to in such letter, or to give in particular the dates or consecutive or distinctive numbers of such bonds further or otherwise than they appear in the affidavit of John Collinson filed on the 19th day of June, 1873, and now of record in this court, and in the order made on the 28th day of June, 1873, for the deposit of the said bonds in this court, to which affidavit and order respectively we claim to refer.

18. We say that in consequence of the said National Trust Company withdrawing their previous consent to act as fiscal agents, in reliance on which they had been named in the said decree in that character, we were compelled to appoint, and did appoint, the said New York State Loan and Trust Company to fill that character, and we thereupon gave them an order in favor of the plaintiff to the same effect as that which we had previously given to the said National Trust Company, as recited
in the 11th paragraph of the said bill, and we have never
2668 consented to any alteration of the said decree, or taken any other
step to deprive the plaintiff of the benefit of that order or of the said decree, or done anything to give occasion for this suit, but we have been and are ready to consent to any alterations properly consequent on the said change of our fiscal agents, and we applied for and obtained the order which has been made to bring the said bonds into court in this suit hereinbefore referred to, and the bonds in such affidavit and order mentioned have been brought into court pursuant to the said order, and are now in court, and we submit that our costs of this suit ought to be properly paid or provided by the plaintiff.

{SEAL OF THE JACKSONVILLE,
PENSACOLA AND MOBILE
RAILROAD COMPANY.}

W. H. G. BAGSHAWE.

The seal of the defendants, The Jacksonville, Pensacola and Mobile Railroad Company, was affixed hereto by order this 23rd day of March, 1874, in the presence of—

2669 UNITED STATES OF AMERICA,
State of Florida, County of Duval:

I, J. W. Swain, a notary public duly commissioned and qualified by the State of Florida, in and for the county of Duval, in said State, and authorized and empowered as such to attest the acts done by individuals and corporate bodies in said county, and to certify the same to be used as evidence in any other State or country, do hereby certify that the seal attached to the foregoing answer in chancery is the seal of the Jacksonville, Pensacola and Mobile Railroad Company, and that the same was affixed to said answer by the proper officer of said corporation, at its office in the city of Jacksonville, in my presence, and that I was requested to make this attestation of said act.

In testimony whereof I have hereto set my hand and affixed my seal of office. Done at Jacksonville, in said State and county, this 23d day of March, A. D. 1874.

J. W. SWAIN,
Notary Public, County of Duval, State of Florida, U. S. A.

2670 (Endorsement:)

At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, and Adrianus Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced by, and shown to, Thomas B. Coddington, and by him deposed unto at the time of his examination before

JOHN A. SHIELDS,
Commissioner.

2671 (Indorsed:) 1873. C. No. 102. Filed 19th May, 1874. In Chancery. Coddington v. The Jacksonville, Pensacola and Mobile Railroad Company and another. Answer of the defendants, The Jacksonville, Pensacola and Mobile Railroad Company.

2672 Deposition of Frank H. Collins, a witness produced and sworn and examined the 26th day of April, A. D. 1879, at my office in the post-office building in the city of New York, under and by virtue of a commission issued out of the circuit court of the United States of America, for the fifth circuit, and northern district of Florida, in a certain cause therein depending and at issue, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others are complainants, and The Western Division of the Western North Carolina Railroad Company and others are defendants.

FRANK H. COLLINS, of New Hartford, Connecticut, aged 32 years of age, being duly and publicly sworn on the part of the complainants, doth depose and say as follows:

First. To the first interrogatory he saith: Frank H. Collins;
2673 age, 32 years; resid., New Hartford, Connecticut.

Second. To the second interrogatory he saith: I do not know the parties complainant, but I do know the parties defendants.

Third. To the third interrogatory he saith: I was formerly a member of the firm of S. W. Hopkins & Co.; it was composed of Sidney W. Hopkins, who resided in the city of New York, and Robert J. Carpenter and myself, who resided in the city of London, England; its business was the negotiating of securities for railway companies and others, and the dealing in railway iron and other articles at 71 Broadway, in the city of New York and 58 Old Broad street in the city of London, England, my position being that of the head of the London firm.

2674 Fourth. To the fourth interrogatory he saith: The firm of S. W. Hopkins & Co. became the agents of the Jacksonville, Pensacola & Mobile Railroad Company for the purposes named in the contract or agreement entered into between said company and said firm on the 13th day of April, 1870; and subsequent thereto, in pursuance of the provisions of said agreement, the said company authorized the governor of the State of Florida to deliver to said firm all of the bonds of the State of Florida authorized to be issued in aid of said company. I have no copy of said agreement and cannot therefore annex the same to my answer.

Fifth. To the fifth interrogatory he saith: S. W. Hopkins and Company were induced to act as agent of said company to sell said bonds, because they believed said bonds to be good security, that they
2675 would have no difficulty in selling them, being as they were bonds of a State whom they believed held first mortgage bonds of said company for an amount equal to the amount issued by the State of Florida in exchange therefor, and that the purchaser of said bonds

would really hold a double security: First, the State of Florida, and secondly the railroad itself, two hundred and fifty miles in length, built and in operation from Jacksonville to Quincey, with branches at Monticello and Tallahassee. Said bonds bore a high rate of interest, namely, eight per cent. per annum, payable in gold, and it was represented to the said firm by the president of said company that the Jacksonville, Pensacola and Mobile Railroad Company owned the line of railroad I have just named, and that under the act of the legislature of the State of
Florida the said railway company were to deliver to the said
2676 State first mortgage bonds of said railroad company to the ex-
tent of sixteen thousand dollars per mile, before the said State should deliver a like amount of its State bonds as security for the bonds of the State so to be issued to said company.

Sixth. To the sixth interrogatory he saith: Such representations were made to said firm by the president of said company, Milton S. Littlefield. He produced properly verified resolutions of the board of directors of said company authorizing him to act for and represent said company in dealing with said bonds. I have no copy of said authority and therefore cannot annex the same to my answer.

Seventh. To the seventh interrogatory he saith: It was repre-
2677 sented to the said firm at and for their appointment of agents of
said company by its president, that there were no prior liens upon any part of said line of railroad from Jacksonville to Quincey, with the branches at Monticello and Tallahassee. Each of said bonds has on its back an endorsement signed by the then governor of the State of Florida setting forth that there had been deposited by said company with the State of Florida first mortgage bonds of said company to the extent of sixteen thousand dollars per mile of completed road. The locality and line of railroad from Jacksonville westward, consisting of two hundred and fifty miles, was learned from statements made to said firm by the president of said company. From the then existing terminus at Quincey
the said line of railroad was to be built to the city of Mobile in
2678 the State of Alabama, and the bonds issued to said company by
said State were to be sold, and a sufficient amount of the proceeds used in the completion of the line of railroad of said company to said city of Mobile, an authenticated copy of the act of the legislature authorizing the issuing of said bonds; a map of the line of said railroad already constructed, and proposed to be constructed, and statements of the governor of the then State of Florida and of the president or other officers of said railway company, that said line of railroad was unencumbered by any prior lien, were delivered to said firm by the president of said company at or before the appointment of said firm as agent of said company. All of which statements and representations were relied upon by said firm and were repeated in Europe. I certainly believed that
the enterprise was a good and sound one, and would commend
2679 itself to the public. The most perfect reliance was placed upon
the representations made to said firm that the line of railroad was two hundred and fifty miles in length from Jacksonville to Quincey, with branches at Monticello and Tallahassee, and that no part of said railroad was encumbered by any prior lien. That first mortgage bonds had been executed upon said line of railroad and delivered in accordance with the act of the legislature of the State of Florida to the proper officer of said State as security for the payment of said bonds of the State of Florida and for a like amount, in order to aid in completing said line of railroad to the city of Mobile, thus perfecting as I then believed a great public work in the State of Florida, as well as a leading trunk

line of railroad in the south which would be a valuable property abundantly able to pay the interest on its bonds.

2680 Eighth. To the eighth interrogatory he saith: Our firm received in all four thousand of the bonds of the State of Florida of the denomination of one thousand dollars, each bearing interest at the rate of eight per cent. per annum due thirty years from date and issued under an act of the legislature of said State in aid of said company, three thousand of which I think were delivered to our firm by the then governor of the State or by the agent or agents of said railway company and one thousand of which were delivered to our firm by Thomas B. Coddington.

Ninth. To the ninth interrogatory he saith: Our firm sold two thousand eight hundred of said bonds direct to John Collinson, of London,
England, under and in accordance with certain contracts entered
2681 into between said Collinson and our firm. That in pursuance of
said contracts our firm delivered said bonds to said Collinson at various periods, commencing November 19th, 1870. The twenty-eight hundred has so sold and delivered to the said Collinson were the only bonds sold by our firm, though all had contracted to sell and deliver the entire issue of four thousand bonds.

Tenth. To the tenth interrogatory he saith: Our firm repeated the representations made to us by said company and by the then governor of the State of Florida, among which were the representations that the buyer of said bonds would have a double security, namely, the State of Florida and two hundred and fifty miles of completed railroad. That the State held the first-mortgage bonds upon completed railroad at the rate of
sixteen thousand dollars per mile as further security for the hold-
2682 ers of said bonds for the State of Florida. That the eastern ter-
minus of said railroad was at Jacksonville, 'at its western terminus was at Quincey, and that the bond' issued by said State were for the purpose of completing said line of railroad through to the city of Mobile, in the State of Alabama. All of which representations were repeatedly made to our firm by the president of said company, and were by our firm repeated to the said Collinson, to whom we sold said bonds. Our firm repeated said statements, believing them at the time to be true; and the said Collinson evidently accepted them as correct and bought said bonds. About the latter part of December, 1870, just as our firm had commenced to deliver a few of said bonds to said Collinson, doubts were suggested as to the legality of the issue of said bonds, in conse-
quence of which our firm delivered no more of the said bonds till
2683 we ascertained whether such doubts were or were not well founded.

One of our firm went at once to Tallahassee, in the State of Florida, and called the attention of said company as well as the then governor of said State to the subject, and the governor at once called upon the justices of the supreme court of the State, as he had a right to do under the constitution of the State, for their construction of the act of the legislature authorizing the issue of said bonds; and he obtained their separate opinions as to the constitutionality or legality of the same. All of the justices composing said supreme court gave it as their opinion that the bonds were legally and constitutionally issued for the purpose named in the act referred to. The result*ed* was promptly cabled to our firm in London on or about the 16th of February, 1871, and the governor,
clerk of the supreme court, and the attorney-general, each and all
2684 cabled the same purport to our firm in London on the same date.

Our firm in London also received a certified copy of the opinion of each of the justices of the said court, which cable dispatches and certified copies were shown to and, I believe, delivered to said Collinson immediately after their receipt in London; whereupon the said Collinson appeared to be perfectly satisfied as to the legality of the said bonds, and at once recommenced to take more of said bonds, and continued to take said bonds until two thousand eight hundred had been taken and paid for by him.

Eleventh. To the eleventh interrogatory he saith: At the time our firm agreed to accept and did accept the agency from said company to sell said bonds we had never heard that there was such corporation in existence as the Florida Central Railroad Company, or that any 2685 part of the *of the* line of railroad from Jacksonville to Quincy was claimed by such a company.

Twelfth. To the twelfth interrogatory he saith: Had it been represented to our firm at the time of our appointment as agent to sell said bonds that the said railway commenced at Lake City east and terminated west at Quincy, we certainly would not have attempted the negotiation or accepted the appointment of agent to sell said bonds; as a great through trunk line the railroad had a value, compared with which a short and unimportant line would not for a moment be considered.

Thirteenth. To the thirteenth interrogatory he saith: Our firm thought so highly of the character of said bonds that we did not hesitate to make a large advance to the said company, predicated solely upon a reimbursement from the proceeds of said bonds when sold. Our firm 2686 certainly would not have made any advances whatever to said company had we even had a suspicion that said company did not own a line of completed railroad from Jacksonville westward two hundred and fifty miles in length, as I have already stated was represented to us.

Fourteenth. To the fourteenth interrogatory he saith: Our firm sold the twenty-eight hundred of said bonds directly to the said Collinson, and received payment for them from him at the time of each delivery of said bonds. If he had any associates associated with him in such purchase I did not then nor do I now know who such associates were. He bought the bonds of our firm avowedly to resell, evidently believing them to be as represented by the State authorities and the said railway company. I am aware that said Collinson resold said bonds 2687 in Holland at about the time he purchased them from our firm, and I have not a doubt but that he repeated the representations that were made by our firm to him by documentary evidence and otherwise.

Fifteenth. To the fifteenth interrogatory he saith: Our firm had no interest in the resale of said bonds by said Collinson, but frequently, from time to time during the period of his taking said bonds from us, we answered questions and furnished him such data, official and otherwise, as we could obtain from said company and from officials in Florida, which information and data he informed our firm he wanted for the purpose of sending to Holland, where he was reselling said bonds. Our firm gave him all the information we could get from said company, under its corporate seal, and also from the State of Florida, for the purpose of aiding him in making a resale of said bonds in Hol- 2688 land, which representations I understood he transmitted to Holland, to the parties there to whom he had made a resale of said bonds.

Sixteenth. To the sixteenth interrogatory he saith: The governor of the State of Florida had appointed our firm to act as agent, for the purpose of paying the interest coupons on said bonds, and gave our firm various other documents and letters confirmatory to my mind of the validity of said bonds, all of which we gave to the said Collinson, and which I suppose he transmitted to the parties in Holland to whom he had resold said bonds; such documents evidently had the effect of convincing the said Collinson, as well as our firm, of the validity of said bonds and of the high character and soundness of them as a security.

2689 Seventeenth. To the seventeenth interrogatory he saith: Our firm paid out large sum' of the money received from said Collinson in payment of said bonds, under the orders and directions of the president of said company to various parties at various periods, the details of which payments are clearly set forth in the account rendered by our firm to said company.

Eighteenth. To the eighteenth interrogatory he saith: Our firm was notified in the month of August, 1870, by the president of said company that an agreement had been entered into between said company and N. W. Woodfin, W. W. Rollins, and others, representing the Western Division of the Western North Carolina Railroad Company, George W. Swepson, and others, under date of April, 1870, at the city of Washington, D. C., in respect to certain of the said bonds of the State of
2690 Florida. Our firm was again notified in writing on the 16th of November, 1870, by the said company, through its president, of another agreement, entered into on the tenth day of the same month, in London, England, between said company and said Woodfin, on behalf of the said North Carolina Railroad Company.

Nineteenth. To the nineteenth interrogatory he saith: Said Woodfin was in London in the fall and winter of 1870 & 1871. He was there in relation to the negotiation of the said bonds, and assisted our firm so far as he was able so to do in getting us information and making representations with respect to the said company and said bonds, the line of railroad, &c. He never denied to our firm while there the previous information and representations made to our firm by said company and said authorities of the State of Florida; nor that the bonds were issued upon a completed line of railroad two hundred and fifty miles
2691 in length, owned by said company, from Jacksonville to Quincy, with branches at Monticello and Tallahassee, and that the security for the payment of the interest and the principal of said bonds was the State of Florida and the two hundred and fifty miles of railroad.

Twentieth. To the twentieth interrogatory he saith: Our firm paid money by order and direction of said company to E. Houston, M. D. P. Papy, J. D. Wescott, J. P. Sanderson, and others.

Twenty-first. To the twenty-first interrogatory he saith: I did not personally know Edward M. L'Engle. I understood he was the law partner of Sanderson, under the firm-name of Sanderson and L'Engle, and I suppose the payments made to Sanderson were made for legal services. L'Engle never visited our offices, to my knowledge, and
2692 I do not remember any negotiation on his part as spoken of.

Twenty-second. To the twenty-second interrogatory he saith: When the said Woodfin was in London, in 1870 & 1871, he represented to our firm as acting for the Western Division of the Western North Carolina Railroad Company. He claimed to be entitled to a large amount of said bonds, or proceeds thereof, because of the agreement between himself and associates, and said company, and said Littlefield, of which I have before spoken. Our firm had been directed by the president of said company to hold eight hundred of said bonds, or of the proceeds thereof, subject to the order and control of said Woodfin.

Twenty-third. To the twenty-third interrogatory he saith: The said Woodfin authorized our firm in writing to sell said eight hundred 2693 bonds, and to account to him for the proceeds thereof, and he personally did all in his power to aid the firm in effecting the sale of said bonds.

Twenty-fourth. To the twenty-fourth interrogatory he saith: The said Woodfin never, to my knowledge, denied that the title of said company to the line of railroad from Jacksonville westward to Quincy, or any part of it. I never heard him set up any claim of the Western Division of the Western North Carolina Railroad Company to any part of the said line of railway. I never heard Woodfin, or any officer or person connected with the said North Carolina Railroad Company, deny the validity of said bonds or deny that they were a lien upon the entire line of railway from Jacksonville to Quincy, including the branches before mentioned. On the contrary, the said Woodfin assisted our firm, 2694 so far as he could, in our efforts to effect the sale of said bonds upon the representations I have previously stated, that said bonds were double security. The said Woodfin did not deny to our firm the representations and endorsements contained on said bonds over the signature of the Governor of Florida, herein before referred to. In the various litigations in London, New York, and elsewhere, after our firm had sold the twenty-eight hundred bonds, between our firm and said company—the Western Division Company—and others, which lasted for a long time. I am not aware that the Western Division of the Western North Carolina Railroad Company ever denied the ownership of the entire railroad westward from Jacksonville to Quincy, including the branches, or that the said bonds were not a lien on all of said railroad. Nor am I aware that the Florida Central Railway 2695 Company ever intervened, or set up any claim, or filed any protest in any of the suits hereinbefore referred to against the claim of the entire line of railroad by said company, or denied the right of said company to deal with all of said four thousand bonds.

Final. To the final interrogatory he saith: I cannot think of anything more touching this case.

To the cross-interrogatories propounded to the Florida Central Railroad Company the witness, answering, says:

First. To the first cross-interrogatory he saith: Our firm received in all, directly and indirectly, from the governor of the State of Florida and the railway company, four thousand of the bonds of the said State. I cannot say definitely when they were received, because I was the 2696 resident partner of our firm in London at the time said bonds were received.

Second. To the second cross-interrogatory he saith: Our firm sold twenty-eight hundred of said bonds, and delivered the same to John Collinson, of London, England, at various periods during the years 1870 & 1871, at the price of one hundred & thirty-eight pounds one shilling and ten pence sterling per each bond, and payment was made direct to our firm in London by the purchaser.

Third. To the third cross-interrogatory he saith: My impression is that such a despatch as is referred to in this interrogatory was sent to Amsterdam by the governor of Florida, and it is my impression that said despatch was sent by the governor in reply to the second despatch referred to in this interrogatory, but I do not remember by 2697 whom it was sent or to whom the reply was addressed. My impression is that it was one of the parties in Amsterdam connected with the market there. I think the party was a member of the bourse in Holland. I cannot say what publicity was given to the telegraphic correspondence, or whether it was made known to any officer or member of the bourse. I cannot say whether any of said bond or bonds had been sold before said telegraphic correspondence took place. I do remember that some such correspondence was carried on during the negotiation of the said bonds, but at what time I am unable in the absence of data to state.

Fourth. To the fourth cross-interrogatory he saith: I cannot state the date or amount of payments to the parties mentioned in my 2698 answer to the 20th direct interrogatory; all these payments were made by our firm in New York while I was residing in London, England. It is my impression these payments were made by authority given in writing by the president of the Jacksonville, Pensacola and Mobile Railroad Company.

Fifth. To the fifth cross-interrogatory he saith: It is my impression that such a communication as is referred to was sent to Hoji Boisevain, banker, of Amsterdam, a copy of which was delivered or shown to me by Collinson or by some other person in some way connected with the negotiation, and my impression is that I sent the communication to our firm in New York; my impression that I was informed that parties were members of the bourse doing business in Amsterdam and connected with placing the bonds on the market. I cannot recall what pub- 2699 licity was given to the communication or whether it was made known to any of the officers of the bourse. I have already stated that I am of the opinion it was known to the parties who were engaged in placing the bonds on the market in Holland. I think the communication came to me from John Collinson; if so, it was known to him. It is quite impossible for me at this remote day to fix the period when it was known in Amsterdam. I cannot now remember what action was taken thereupon.

Sixth. To the sixth cross-interrogatory he saith: I have a slight remembrance of such a communication as is referred to in this interrogatory, but I cannot recal anything further. I am utterly unable to make any further answer to any of the questions propounded in this interrogatory. It is my impression the sale of said bonds had been suspended about the time the said communication was seen by me and liti- 2700 gations had been commenced in New York. I cannot recal' any other circumstances connected with the receipt of such communication.

Seventh. To the seventh cross-interrogatory he saith: I do not remember anything more about the impeachment or attempted impeachment of Harrison Reed than that such a thing was impending at one time in Florida, but I cannot recal' any circumstances connected therewith.

Eighth. To the eighth cross-interrogatory he saith: I am utterly unable to answer any part of this interrogatory.

To the cross-interrogatories propounded by the trustees of the internal improvement fund of Florida the witness, answering, says:

Fifth. To the fifth cross-interrogatory he says: From my gene- 2701 ral knowledge, recollection, and remembrance of the transactions and the impressions that I had at the time of the negotiations.

To the additional cross-interrogatory propounded by the trustees of the internal improvement fund of Florida the witness, answering, says:

First. To the first additional cross-interrogatory he says: I was the resident partner in England, and therefore cannot give the amounts, dates, and details asked in this interrogatory.

To the cross-interrogatories propounded by Jos. B. Stewart, esq., solicitor for the defendant, the Western Division of the Western North Carolina Railroad Company, the witness, answering says:

2702 First. To the first cross-interrogatory he saith: Our firm of S. W. Hopkins & Co. were the agents of the State of Florida as well as of the Jacksonville, Pensacola and Mobile Railroad Company in the years 1870 and 1871. Such agency commenced on the 6th of May, 1870, on which day we were appointed by the governor as such agents, but only for the purpose of paying the interest coupons in the bonds issued by the State of Florida to said railroad company.

Second. To the second cross-interrogatory he saith: We were employed to sell all the bonds of the State of Florida issued and to be issued by the said State to the railroad company. The appointment was dated the 13th day of April, 1870, and was in writing.

2703 Third. To the third cross-interrogatory he saith: Our firm received from the State or from the said railroad company or on account of the said railroad two thousand nine hundred and sixty of said bonds, and subsequently forty of said bonds from a party to whom the railroad company had caused the same to be delivered; also one thousand of said bonds from Thomas B. Coddington, making in all four thousand of said bonds which our firm received in pursuance of a contract entered into with the said railroad company during April, 1870, by the provisions of which we were to receive all the bonds issued and to be issued by the State of Florida to said railroad company; we sold two thousand eight hundred of said bonds in all.

2704 Fourth. To the fourth cross-interrogatory he saith: Any maps or copies of laws that were shown to us were not to my knowledge in any respect different to maps to be found on sale or to any other laws than such as could be found in the statute books of Florida.

Fifth. To the fifth cross-interrogatory he saith: We disposed of the twenty-eight hundred of said bonds to John Collinson, and not to any person or corporation in Holland or in any other country.

2705 Sixth. To the sixth cross-interrogatory he saith: Before or at the time we were selling said bonds I believe a question arose as to their legality, and it is my impression that it was alleged that the statute under which they were issued was unconstitutional, and I believe these charges were published, and the publications copied in some public journals in the United States, but I do not remember that any such charges were ever published in England and Holland. I did not credit the statements made and circulated with respect to the validity of the issue, because our lawyers had examined all the laws under which they had been issued, and they advised our firm that the bonds were legally issued and constitutional, and therefore a good and valid security. I cannot state more definitely as to the publications with respect to the character of the bonds.

2706 Seventh. To the seventh cross-interrogatory he saith: In consequence of such charges of illegality in the issue of said bonds being so circulated, we were embarrassed in our efforts to sell said bonds, and it was agreed between our firm and M. S. Littlefield, who was at that time in London, and who was the president and agent authorized to represent the said railroad company in its dealings with our firm, that we should sell the issue of four thousand of said bonds to said Collinson, at one hundred and thirty-eight pounds one shilling and ten pence sterling for each bond, and that our firm should account to the said railroad company for them when we received payment for the same at the price of one hundred pounds sterling for each of said bonds, less five per cent., and that the said thirty-eight pounds one shilling and ten pence sterling on each of said bonds should belong to and be the property of our firm to indemnify us for such extraordinary expenses of such negotiations as we might find it necessary *as we might find it neccesary* to incur by reason of the attacks that were being continually made upon the character of said bonds. In pursuance of said agreement between said Littlefield and our firm a letter, dated Nov. 14, 1870, was addressed to our firm by said Littlefield, and replied to by letter dated November 28, 1870.

2707 Eighth. To the eighth cross-interrogatory he saith: After making said agreement we entered into a contract with, and in pursuance of the same we sold and delivered to John Collinson, of London, twenty-eight hundred in all of said bonds, at the price of one hundred and thirty-eight pounds one shilling and ten pence sterling for each bond, and said contract with said Collinson having been previous to execution shown by me to said Littlefield, who approved the same.

Ninth. To the ninth cross-interrogatory he saith: We were not able
to make any positive sale of the whole issue at one time, but an agreement was entered into between John Collinson and our firm, which was in the form of options, for the whole four thousand of said bonds, conditional upon his taking and paying for certain amounts from time to
time at the price agreed on. We had no dealings with any syn-
2708 dicate. Said bonds were undoubtedly held in the meantime at
the risk of the said railroad company. I believe said options extended through one year. I have not in my possession a copy of said agreements, and cannot therefore annex them to my answer.

Tenth. To the tenth cross-interrogatory he saith: It is my impression that the opinion of eminent counsel in England was obtained as to the constitutionality of the said Florida State bonds, and it is my impression that J. P. Benjamin, Queen's counsel, gave an adverse opinion as to the validity of said bonds, while De Tracey Gould, an eminent counsel in London, maintained that the bonds were constitutional. After said opinions were given said Collinson insisted upon and obtained from our firm a modified contract or agreement, which was executed on the 28th December, 1870, of which a copy annexed to the cross-interrogatories, and marked A, I believe to be correct.

2709 Eleventh. To the eleventh cross-interrogatory he saith: It was a condition of said modified agreement referred to in my previous answer, that our firm should procure from the highest court in Florida an opinion respecting the validity and constitutionality of the issue of said bonds, and, in pursuance of the condition, Charles H. Collins came from London to America to confer with the New York firm, with reference to procuring the opinion of the supreme court of the State of Florida on the question involved. The governor of the State of Florida obtained from each of the judges of the supreme court a favorable opinion with respect to the validity or constitutionality of the issue of said four thousand of said bonds by the State of Florida. Such
opinions were regarded, I believe, by John Collinson as settling the
question of the validity of the whole issue of such bonds, and
2710 said Collinson continued thereafter to take and pay for the bonds
under his agreement with our firm.

Twelfth. To the twelfth -interrogatory he saith: It was understood between our firm and said Collinson that a certain amount of the proceeds from the sale of said bonds should be set aside and appropriated to pay a certain number of the interest-coupons to mature thereafter. I believe the whole amount to be set apart and applied was about three hundred and fifty thousand dollars.

Thirteenth. To the thirteenth cross-interrogatory he saith: The first delivery of bonds to said Collinson was made on the 19th day of November, 1870, and the last delivery to Collinson of said bonds was made in London on or about the 21st day of July, 1871. No bonds over and above those numbered from one to 2800 were delivered by our
2711 firm to said Collinson under said agreements of November 14 and December 28th, 1870. I cannot annex a copy of the account of such transfers and deliveries of bonds to said Collinson, because I have none.

Fourteenth. To the fourteenth cross interrogatory he saith: I suppose all the information was accessible to everybody; our firm had no information that was not accessible to everybody. I cannot now put my hands on any of the printed or published statements, as the time when they were circulated is so remote.

Fifteenth. To the fifteenth cross-interrogatory he saith: I believe that the bonds were offered in New York to others. I believe they were also offered in London, which attempts failed until we had come to an agreement hereinbefore referred to with M. S. Littlefield,
2712 wherein we agreed to account to the railroad company, at the price already named. After the contract between our firm and said Collinson was made, the bonds were offered to the public in Holland by printed prospectus in the Dutch language. Whether the copy annexed, marked B, is or is not a correct translation, I am unable to say. I cannot say whether there was any other prospectus used in putting the bonds on the market.

Sixteenth. To the sixteenth cross-interrogatory he saith: I do not know where the prospectus was printed.

Seventeenth. To the seventeenth cross-interrogatory he saith: The governor materially aided in the sale of said bonds by procuring the opinions of the justices of the supreme court, which enabled the promoters to dispose of the said bonds.

2713 Eighteenth. To the eighteenth cross interrogatory he saith: Some time during the month of January, 1871, one thousand bonds, numbered from three to four thousand, inclusive, were brought to England and delivered to our firm by Thos. P. Coddington, as the agent or trustee of various parties, among which were the State of Florida, E. Houston, and the railroad company, from whom we had instructions respecting the disposition of the proceeds.

Nineteenth. To the nineteenth cross-interrogatory he saith: The thousand bonds brought to London by said Coddington were charged with the payments and to the persons named in the 19th cross-interrogatories, from the proceeds of the sale thereof. I believe the whole of the thousand bonds were received by the said Coddington from the governor of the State of Florida, and that a receipt was given to
2714 said Houston by said Coddington for them, a copy of which, annexed to the cross-interrogatories and marked C, is, I believe, correct.

Twentieth. To the twentieth cross-interrogatory he saith: I believe the 224 out of the thousand bonds, numbered from 3,001 to 4,000, inclusive, originally delivered to said Coddington, were delivered to the authorities of the State of Florida and cancelled; it is my impression that they were surrendered by the railway company, but I am not certain; but of the proceeds of the remaining 776 bonds it is my impression there would not be enough money to pay the sums so charged against the thousand bonds. It is my impression that the thousand bonds delivered to our firm by said Coddington were by us received, subject to some of the charges and conditions that were imposed upon said Coddington by his receipt given to said Houston. I cannot answer more completely 2715 the questions of this inter'ogatory, as I do not remember.

Twenty-first. To the twenty first cross-inter'ogatory he saith: None of the bonds numbered above 2800 were sold by our firm; my impression is that the remaining 200 bonds to complete the three thousand, numbered from one to three thousand, were by our firm delivered up to the authorized agent or agents of the company, and that 224 of the thousand bonds, numbered from three thousand and one to four thousand, were surrendered to and cancelled by the State of Florida, and it is my impression that about 568 of the said bonds were tied up in England in the chancery court; that two bonds were lost; and it is my impression that the remainder passed into the hands of said Collinson under some agreement made with him by the agent of the company to advance sufficient money to pay one or more of the interest coupons of 2716, 2717 the 2800 bonds previously delivered to him by our firm at the time we were acting as agents, and under the before-mentioned contracts.

Twenty-second. To the twenty-second cross-interrogatory he saith: It is my impression that there was some litigation, but I do not remember.

Twenty-third. To the twenty-third cross-interrogatory he saith: Our firm never at any time received any money or proceeds of any kind from the sale, use or appropriations of the bonds mentioned above 2800. The money paid to the persons mentioned in the interrogatory, if paid, was paid by the firm in New York, and I do not remember.

Twenty-fourth. To the twenty-fourth cross-interrogatory he saith: When N. W. Woodfin was in London in 1870, it is my im- 2718 pression he represented a commission constituted by the State of North Carolina with reference to the Western Division of the Western North Carolina Railroad Company; he claimed a large amount of the Florida State bonds or the proceeds thereof, and whatever he could do to further the negotiations of the bonds in order that he might be able to collect the large amount that he claimed was due the Western Division of the Western North Carolina Railroad Company, he did.

Twenty-fifth. To the twenty-fifth cross interrogatory he saith: It is my impression that the said Woodfin, on his return to this country, brought a suit against our firm to recover from our firm the proceeds of 800 of said bonds, which he claimed was sold in Europe. It is my impression the suit was subsequently discontinued by consent of both parties to the action.

Twenty-sixth. To the twenty-sixth cross-interrogatory he saith: I do not know who John Collinson was interested with, if with anybody, in Holland or elsewhere.

FRANK H. COLLINS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 26th day of April, A. D. 1879, before

JOHN A. SHIELDS,
Commissioner.

2719 Deposition of Sidney W. Hopkins, a witness produced and sworn and examined the first day of May, A. D. 1879, at my office, in the post-office building in the city of New York, under and by virtue of a commission issued out of the circuit court of the United States of America for the fifth circuit and northern district of Florida, in a certain cause therein depending and at issue, wherein J. Fred. Schutte, Jan Prins, Adrianus Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants.

SIDNEY W. HOPKINS, of New York City, aged 42 years of age, being duly and publicly sworn, on the part of the complainants, doth depose and say as follows:

First. To the first interrogatory he saith: My name is Sidney
2720 Wright Hopkins, age' 42 years old, and I reside in the city of
New York.

Second. To the second interrogatory he saith: I do not know the parties complainants, but I do know most, if not all, the parties defendants.

Third. To the third interrogatory: I was the senior member of the late firm of S. W. Hopkins & Co. It was composed of Sidney W. Hopkins, who resided in the city of New York, and Frank H. Collins and Robert J. Carpenter, the latter since deceased, who resided in the city of London, England. Its business was the negotiation of securities for railway companies and others, and the dealing in iron and steel rails, and other articles, with an office at 71 Broadway, in the city of New York, and another office at 58 Old Broad street, in the city of London, England.

2721 Fourth. To the fourth interrogatory he saith: The firm of S. W. Hopkins & Co. became the agents of the Jacksonville, Pensacola and Mobile Railroad Company for the purposes named in the contract or agreement entered into between said company and said firm on the 13th day of April, 1870, a copy of which contract or agreement appears in the pamphlet (page 20) annexed hereto and made a part of my answer, marked Ex. A, S. W. H., J. A. S., Com'r. Subsequent thereto, that is to say, on the 4th day of May, 1870, in pursuance of said contract or agreement, the said company executed a power of attorney to our firm, a copy of which I annex hereto and make a part of my answer, marked Exhibit B, S. W. H., J. A. S., Com'r, and on the 6th day of May, 1870, the said company, in writing, authorized the governor of the State of Florida to deliver to said firm all the bonds
2722 of the State of Florida authorized to be issued in aid of said company, a copy of which authority given to the governor I annex hereto and make a part of my answer, and the same is marked Ex. C, S. W. H., J. A. S., Com'r.

Fifth. To the fifth interrogatory he saith: The firm of S. W. Hopkins & Co. were induced to act as agents of said company to sell said bonds because they believed said bonds were a good security; that they would have no difficulty in selling them; that they were bonds of a State whom we believed held first mortgage bonds of the said company for an amount equal to the amount issued by the State of Florida in exchange therefor; and that the purchasers of said bonds would really hold a double security, namely, the State of Florida, and also the railroad itself, which we were informed was then built and in operation from Jacksonville to Quincy, with branches at Monticello and Talla-
2723 hassee, two hundred and fifty miles in length; said bonds bore a high rate of interest, namely, (8) eight per cent. per annum payable in gold, and it was represented to our firm by the president of

said company that the Jacksonville, Pensacola and Mobile Railroad Company owned the line of railroad *of* I have just named, and that under the act of the legislature of the State of Florida the said company were obliged to deliver to the said State first mortgage bonds of the said railroad company to the extent of $16,000 per mile before the authorities of the State could or would deliver a like amount of its State bonds as security for the bonds of the State, so to be issued to said company.

Sixth. To the sixth interrogatory he saith: Such representations were made to our firm by the president of said company, General Mil-
2724 ton S. Littlefield. He produced and delivered to our firm properly verified resolutions of the board of directors, and I believe also of the stockholders of said company, authorizing him to act for and represent said company in dealing with said bonds. I cannot, at the moment, find copies of said resolutions, and therefore cannot annex the same to my answer at this time; but I have them somewhere, and will endeavor to find and produce them if required before the final hearing in this action.

Seventh. To the seventh interrogatory he saith: It was represented to our firm at and before their appointment as agents of said company by its president, that there were no prior liens upon any part of said line of railroad from Jacksonville to Quincy, with the branches at Monticello and Tallahassee. That each of said bonds had on its back
2725 an endorsement signed by the then governor of Florida, setting forth that there had been deposited by said company with the State of Florida first-mortgage bonds of said company, at the extent of 16,000 dollars per mile of completed road. That the locality and line of railroad from Jacksonville westward consisted of two hundred and fifty miles; that from the then existing terminus at Quincy the said line of railroad was to be built to the city of Mobile, in the State of Alabama, and that the bonds issued to the said company by said State were to be sold, and a sufficient amount of the proceeds thereof were to be used in the completion of the line of railroad of said company to said city of Mobile. An authenticated copy of the act of the legislature authorizing the issue of said bonds, a map of the line of said railroad already constructed and proposed to be constructed, and statements of the then governor of the State of Florida and of the president and other
2726 officers of said company, that said line of railroad was unencumbered by any prior lien, were delivered to our firm by the president of said company, at or before the appointment of our firm as agents of said company, all of which statements and representations were relied upon and believed by our firm, and were repeated in Europe. I personally believed that the enterprise was a good and sound one, and would commend itself to the investing public. The most perfect reliance was placed on the representations made to our firm that the line of railroad was two hundred & fifty miles in length, extending from Jacksonville to Quincy, with branches at Monticello and Tallahassee, and that no part of said railroad was encumbered by any prior lien.

That first-mortgage bonds had been executed upon said line of
2727 railroad, and delivered in accordance with the provisions of the several acts of the legislature of the State of Florida to the proper officers of said State as security for the payment of said bonds of the State of Florida, and for a like amount, in order to aid in completing said line of railroad to the city of Mobile, thus perfecting, as I then believed, a great public work in the State of Florida, as well as creating a leading trunk line of railroad in the South, which would be a valuable property, abundantly able to pay the interest on its bonds.

Eighth. To the eighth interrogatory he saith: Our firm received in all 4,000 of the bonds of the State of Florida, of the denomination of
1,000 dollars each, bearing interest at the rate of eight per ct. per
2728 annum, maturing, and payable thirty years from their date, and
issued under an act of the legislature of said State, and the several acts supplemental thereto, or amendatory thereof, in aid of said company, three thousand of which bonds were delivered to our firm by the then governor of the State, or by the agent or agents of said company, and one thousand of which bonds were delivered to our firm by Thomas B. Coddington. A copy of said bonds is hereto annexed and made a part of my answer; and the same is marked Ex. D, S, W. H., J. A. S., com'r.

Ninth. To the ninth interrogatory he saith: Our firm sold and delivered 2,800 of said bonds direct to John Collinson, of London, England, under and in accordance with certain contracts, six in number, dated respectively Nov. 14 & Dec. 28, 1870, and Mar. 23rd, May 26, & June
14, 1871, entered into between said Collinson and our firm. A copy
2729 of each of which contracts are annexed hereto and made a part
of my answer, and the same are marked respectively Ex. E, F, G, H, J, K, S. W. H., J. A. S., com'r. That in pursuance of said contracts, our firm delivered said bonds to said Collinson at various periods, commencing Nov. 19, 1870, and ending July 21st, 1871. The 2,800 bonds so sold and delivered to said Collinson were the only bonds sold by our firm, though we had contracted to sell and deliver the entire issue of said bonds to said Collinson.

Tenth. To the tenth interrogatory he saith: Our firm repeated the representations made to us by said company and by the then governor of the State of Florida, among which were the representation that the
buyers of said bonds would have a double security, viz, the State
2730 of Florida and two hundred and fifty miles of completed railroad
that the State held first mortgage bonds upon, completed railroad at the rate of 16,000 doll's per mile, as further security for the holders of said bonds of the State of Florida. That the eastern terminus of said railroad was at Jacksonville, and that its western terminus was at Quincy, and that the bonds issued by said State were for the purpose of providing means to complete said line of railroad through to the city of Mobile in the State of Alabama, all of which representations, as I have said before, were repeatedly made to our firm by the president of said company, and were by our firm repeated to the said Collinson, to whom we sold said bonds; our firm repeated said statements believing them at the time to be true, and the said Collinson evidently
accepted them as correct when he first agreed to purchase
2731 said bonds about the last part of Dec., 1870. Just as our firm had
commenced to deliver a few of said bonds to said Collinson a question was raised by him as to the legality or constitutionality of the issue of said bonds, in consequence of which our firm delivered no more of said bonds till he ascertained whether there was any foundation for such question. I went at once to Tallahassee, in the State of Florida, and called the attention of said company, as well as of the then governor of said State, to the subject, and the then governor at once called upon the justices of the supreme court of the State, as he had a right to do under the constitution of the State, for their construction of the several acts of the legislature authorizing the issue of said bonds, and he subsequently obtained their seperate opinions as to the constitutionality or legality of the same; each of the justices composing said
2732 supreme court wrote and delivered to the governor an opinion, in

which it was held that the legislature of the State had the right to authorize the issue of State bonds for the purposes named in the several acts referred to. The substance of the opinions of the judges was cabled to our firm in London on or about the 16th of February, 1871, and the then governor, clerk of the supreme court, and attorney-general each and all cabled the same purport to our firm in London on the same date, and our firm in London notified said Collinson of said opinions under the date of February, 1871, by letter, a copy of which and a copy of which cabled dispatches is hereto annexed and made a part of my answer, and the same is marked Ex. L, S. W. H., J. A. S., com'r. Our firm in London also received a certified copy of the opinions of 2733 each of the justices of said court, which cabled despatches and certified copies were shown to and, I believe, a copy of each were delivered to said Collinson immediately after their receipt in London, whereupon the said Collinson appeared to be perfectly satisfied as to the validity and constitutionality of said bonds, and at once recommenced to take more of said bonds, and continued to take said bonds until 2,800 in all had been taken and paid for by him.

Eleventh. To the eleventh inter'ogatory he saith: At the time our firm agreed to accept and did accept the agency from said company to sell said bonds, we were informed and believed that the entire line of railroad from Jacksonville to Quincy, with the branches at Monticello and Tallahassee, belonged to the Jacksonville, Pensacola and Mobile Railroad Company.

2734 Twelfth. To the twelfth inter'ogatory he saith: Had it been represented to our firm at the time of our appointment as agents to sell said bonds that the said railroad commenced at Lake City east and terminated west at Quincy, we certainly would not have attempted the negotiation or accepted the appointment as agents to sell the said bonds. As a great through trunk line, the railroad had, in our judgment, a value compared with which a short and unimportant line would not for a moment be considered by us.

The examination is here adjourned by the commissioner till May the 2d, 1879, at 9 o'cl'k a. m.

Friday, May 2nd, 1879, the witness Sidney W. Hopkins appearing, his examination is resumed.

Thirteenth. To the thirteenth inter'ogatory: Our firm advanced 2735 to said company a large amount in cash and acceptances before we sold any of said bonds; we thought so highly of them at the time as an investment security that we did not hesitate to make such advances, predicated solely upon our being able to sell them and reimburse ourselves for the advances so made from the proceeds thereof when realized. We also agreed to supply the company with iron rails and other materials, and I think we made large contracts therefor before selling any of said bonds. We certainly would not have made any advances to or incurred any liability whatever on account of said company had we ever for a moment suspected that said company did not own a line of completed railroad from Jacksonville westward, two hundred & fifty miles in length, as I have already stated was represented to us.

2736 Fourteenth. To the fourteenth inter'ogatory he saith: Our firm sold the 2,800 of said bonds directly to the said Collinson, and received payment for them from him at the time of each delivery of said bonds. If he had any associates pecuniarily interested with him in said

purchase we did not then nor do we now know who such associates were. When he first agreed to take said bonds from us he did so with the avowed intention of reselling them, evidently believing them at the time to be such as they were represented by the State authorities and said company. I am aware that said Collinson either resold said bonds in Holland or arranged to have them put upon the market there at about the time he purchased them from our firm, and I have not a doubt but that he repeated to others the representations, documentary and
2737 otherwise. which we received from the said company and repeated to him. He was in the habit of asking for data from time to time. which he said he required for transmission to his friends in Holland.

Fifteenth. To the fifteenth inter'ogatory he saith: Our firm had no pecuniary interest whatever in the resale or negotiation of said bonds by said Collinson, but frequently from time to time during the period of his taking said bonds from our firm answered many questions and furnished a great deal of data, official and otherwise, such as we could obtain from said company and from officials in the State of Florida, which information and data he informed us he wanted for the purpose of sending to Holland, where said bonds were being placed on the market.
2738 Our firm gave him all the information we could get from said company under its corporate seal, and also from the State of Florida, for the purpose of aiding him in placing said bonds on the Holland market. These representations, we understand, he always transmitted to Holland to the parties there who had charge of marketing of said bonds.

Sixteenth. To the sixteenth inter'ogatory he saith: The governor of the State of Florida had appointed our firm to act as agents for the purpose of paying the interest on said bonds, a copy of which appointment I annex hereto and make a part of my answer, and the same is marked Exhibit M, S. W. H., J. A. S., com'r. He gave our firm various other documents and letters confirmatory to my mind of the validity of said bonds, all of which or a copy of which I believe we gave to the said Collinson, and which I suppose he transmitted to the parties
2739 in Holland who had charge of the marketing of said bonds. Such documents had evidently the effect of convincing the said Collinson, as they had already convinced our firm, of the validity of said bonds and of the high character and soundness of them as a security.

Seventeenth. To the seventeenth inter'ogatory he saith: Our firm paid out large sums from the monies we received from said Collinson in payment for said bonds under the orders and directions of the president of said company to various parties at various periods, the details of which payments are clearly set forth in the account rendered by our firm to said company, and which appears on pages 38, 39, 40, & 41 of the pamphlet annexed hereto and made a part of my answer, and marked Exhibit A.

2740 Eighteenth. To the eighteenth inter'ogatory he saith: Our firm was notified in the summer of 1870 by N. W. Woodfin that an agreement had been entered into between said company and said N. W. Woodfin, W. W. Rollins, and others, representing the Western Division of the Western North Carolina Railroad Company, Geo. W. Swepson, and others, under date of April, 1870, at the city of Washington, D. C., in respect to certain of the said bonds of the State of Florida. Our firm was again notified in writing on the 16 day of November, 1870, by the president of the Jacksonville, Pensacola and Mobile Railroad Company of another agreement entered into on the 10th day of the same month, in London, England, between said company and said Woodfin, representing said North Carolina Railroad Company, a copy of which letters will be seen on pages 7 & 8 of the pamphlet annexed hereto and made a part of my answer, and marked Ex. A.

2741 Nineteenth. To the nineteenth inter'ogatory he saith: Said Littlefield was in London in the fall and winter of 1870–'71; he was there in relation to the negotiation of the said bonds, and assisted our firm there so far as he was able so to do in giving information in making representations with respect to said company and said bonds, the line of the railroad, &c. He never denied to our firm while there the previous information and representations made to us by said company and by said authorities of the State of Florida, nor did he deny that the bonds were issued upon a completed line of railroad two hundred & fifty miles in length owned by said company from Jacksonville to Quincy, with branches at Monticello and Tallahassee, and that the security for the payment of the interest or the principal of said bonds was the State of Florida and the two hundred & fifty miles of the said railroad.

2742 Twentieth. To the twentieth inter'ogatory he saith: Our firm paid money by order and direction of said company to Edward Houston, M. D. Papy, Jos. D. Westcott, John P. Sanderson, and others. I never had any conversation with either of those persons as to the grounds upon which they based their respective claims, nor did I know then, nor do I know now, what the basis of any of these claims was. We made all such payments either out of our own pockets as advances or out of the proceeds realized by the sale of the 2,800 bonds.

Twenty one. To the twenty-first inter'ogatory he saith: I knew Edward M. L'Engle. I understood he was the law partner of the said Sanderson, practicing under the firm-name of Sanderson and L'Engle, and I supposed, although I did not know, that the payments to
2743 Sanderson were made for legal services. L'Engle may have visited the office of our firm in New York, but I do not remember that he took part in any such negotiations as are referred to in the 21st direct inter'ogatory.

Twenty-second. To the twenty-second inter'ogatory he saith: N. W. Woodfin was in London in the fall and winter of 1870–'71. He represented himself to our firm as acting for and representing the Western Division of the Western North Carolina Railroad Company. He claimed to be entitled to a large amount of said bonds or the proceeds to be derived from the sale thereof because of the agreements then existing between himself and associates and said company and said Littlefield, of which I have before spoken. Our firm had been directed by the president of said company to hold 800 of said bonds, or the proceeds thereof, subject to the order and control of said Woodfin. We
2744 never delivered any of the 800 bonds to him, or the proceeds, though we paid him ten thousand pounds sterling on account of the anticipated sale of them, which, however, was never made.

Twenty-third. To the twenty-third inter'ogatory he saith: The said Woodfin in his official character authorized our firm in writing to sell said 800 bonds and account to him for the proceeds thereof, and he personally did all in his power to aid our firm in London in effecting the sale of said bonds.

Twenty-fourth. To the twenty-fourth interrogatory he saith: The said Woodfin never to my knowledge denied the title of said company to a line of railroad westward from Jacksonville to Quincy, or any part of it. I never heard him set up any direct claim of the Western Divis-
2745 ion of the Western North Carolina Railroad Company to the

ownership of any part of the said line of railroad. I never heard the said Woodfin, or any other officer or person connected with the said Western Division of the Western North Carolina Railroad Company deny the validity of said bonds or deny that they were a lien upon the entire line of railroad from Jacksonville westward to Quincy, including the branches before mentioned. On the contrary, as I have before stated, the said Woodfin assisted our firm, so far as he could, in our efforts to effect a sale of said bonds upon the representations I have previously stated, that said bonds were doubly secured, being an obligation of the State of Florida, and as being secured also by a first mortgage on the entire line of railroad from Jacksonville westward to Quincy, including the branches before mentioned. The said Woodfin did not deny to
2746 our firm the representations and statements contained in the endorsement on the said bonds over the signature of the governor of the State of Florida, before referred to. In all the various litigations in the cities of London, New York, and elsewhere, after our firm had sold and delivered the 2,800 bonds, between our firm and the said company, the Western Division of the Western North Carolina Railroad Company and others, which lasted for a long time, I am not aware that the said North Carolina Railroad Company ever denied the ownership of the entire line of railway westward from Jacksonville to Quincy, including the branches, or that the said bonds were a lien on all of said line of railroad, nor am I aware that the Florida Central Railway Company ever intervened or set up any claim or filed any protest in any of the suits just referred to against the claim to the entire line of said railroad by said Jacksonville, Pensacola and Mobile Railroad Company.

2747 Final. To the final inter'ogatory he saith: I cannot think of anything more.

To the cross-inter'ogatories propounded by the Florida Central Railroad Company the witness, Sidney W. Hopkins, answering, says:

First. To the first cross-inter'ogatory he saith: Our firm received in all, directly and indirectly, from the governor of the State of Florida four thousand of the bonds of said State, numbered from one to four thousand, inclusive. I cannot say definitely at what periods they were received, but I know that the whole 4,000 were received between the 6th day of May, 1870, and the 18th day of April, 1871.

Second. To the second cross-inter'ogatory he saith: Our firm sold
2748 2,800 of said bonds, and delivered the same to John Collinson, of London, England, at various periods between Nov. 19, 1870, and July 21st, 1871, at the price of one hundred and thirty-eight pounds one shilling and ten pence sterling for each bond, and payment was made direct to our firm in London by the purchaser.

Third. To the third cross-inter'ogatory he saith: I was at the time informed by the governor of the State of Florida that such a despatch as is referred to in this inter'ogatory was sent to Amsterdam by him, and he told me at the same time that said despatch was sent in reply to the despatch referred to in this inter'ogatory, which he said he had received from one Boisevain, of Amsterdam, Holland. I believe the said Boisevain was one of the parties in Amsterdam connected with the placing of the said bonds on the market there. I think he or his partner, or both, were members of the Bourse, in Holland. I cannot say
2749 what publicity was given to the telegraphic correspondence, or whether it was made known to any of the members, or directors, or other officers of the Bourse or Stock Exchange of Amsterdam. Some, but I cannot say how many, of said bonds had been sold and delivered by our firm before said correspondence by telegraph took place.

Fourth. To the fourth cross-inter'ogatory he saith: I cannot state from memory the date or amount of each payment to the parties mentioned in my answer to the 20th direct interrogatory, but I refer to pages 38, 39, 40, & 41 of the pamphlet annexed hereto and made a part of my answer, marked Exhibit A, for the details of such payments. Those payments were made by authority given in writing by the president of the Jacksonville, Pensacola and Mobile Railroad Company.

Fifth. To the fifth cross-inter'ogatory he saith: I remember the 2750 fact that such a communication as is referred to in this inter'ogatory, purporting to have been written and mailed by E. M. L'Engle, at Jacksonville, Florida, to Hoji and Boissevain, bankers, of Amsterdam, Holland, or a copy of such a communication, was delivered to our firm in London, either by the said Collinson or by some one who had received the same from the said Collinson, and the paper so received by our firm in London, or a copy thereof, was mailed to and received by our firm in the city of New York. I was informed at the time that said communication was received by the person or persons to whom it was addressed, and I think the parties were members of the bourse in Holland. I know that they were bankers doing business in Amsterdam and that they were connected with the placing of said bonds on the market in Holland. They were the same parties or were connected with the same parties whose names appeared to the cable despatch received by the governor, and to whom the governor 2751 telegraphed in reply thereto. I cannot state what publicity was given to the said communication, or whether it was or was not made known to any one or more of the officers, directors of the bourse or stock exchange, in Amsterdam or elsewhere. I had already stated that it was known to the parties, or some of them, who were engaged in placing the said bonds on the market in Holland. It was known to John Collinson, because, as I have said, the communication came to our firm in London from him or from his office. It is quite impossible for me at this remote day to fix the period when the said communication was known in Amsterdam, but I should think it must have been known there about the last of February or beginning of March. I do not know what action was taken thereupon by the parties in Holland.

Sixth. To the sixth cross-inter'ogatory he saith: I remember 2752 to have seen such a communication as is referred to in this inter'ogatory, but I cannot recal' anything further than that I did see and read such a communication. I am utterly unable to make complete answers to the questions propounded in this inter'ogatory. The sale of the said bonds had been suspended because of the litigation in which they were involved. That was commenced about the period when the said communication was first seen by me, and these suits just commenced in New York, and finally continued in London, so absorbed my time and thought at that time that I cannot recal' now any of the circumstances connected with the receipt of said communication.

Seventh. To the seventh cross-interrogatory he saith: I do not remember anything more about the impeachment or attempted impeachment of Harrison Reed, the then governor of the State, than 2753 such a thing was impending at one time in the State of Florida, but I can not recal' any circumstances connected therewith that have left any impression behind.

Eighth. To the eighth cross-inter'ogatory he saith: I am utterly unable to answer any part of this inter'ogatory.

To the cross-inter'ogatories propounded by the trustees of the internal improvement fund of Florida, the witness, Sidney W. Hopkins, answering, says:

Fifth. To the fifth cross-inter'ogatory he saith: From memory of the circumstances therein testified to.

First. To the first additional cross-inter'ogatory he saith: In answer to this inter'ogatory I respectfully refer to pages 38, 39, 40, and 41, of the pamphlet annexed to my answer to the direct inter'ogatory, 2754 marked Exhibit A, which I make as this my answer to the first additional cross-inter'ogatory of the trustees of the internal improvement fund of the State of Florida.

To the cross-inter'ogatories propounded by Jos. B. Stewart, esq., solicitor for the defendant, the Western Division of the Western North Carolina Railroad Company, the witness, answering, says:

First. To the first cross inter'ogatory he saith: Our firm were the agents of the State of Florida as well as of the Jacksonville, Pensacola and Mobile Railroad Company, in the years 1870 and 1871; such agency commenced on the 6th of May, 1870, on which day we were appointed by the governor as such agents, but only for the purpose of paying the interest on the bonds issued by the State of Florida to said railroad company, as will appear by reference to a copy of the document con- 2755 ferring said appointment annexed hereto and made a part of my answer and marked Exhibit M.

Second. To the second cross-interrogatory he saith: We were employed by the said railroad company to sell all the bonds of the State of Florida issued and to be issued by the said State to the said railroad company. The date of such employment was on the 13th day of April, 1870; and was in writing, a copy of said authority will be found on page 20 of the pamphlet annexed hereto and made a part of my answer, marked Exhibit A.

Third. To the third cross-inter'ogatory he saith: We received from the then governor of the State of Florida or from the said railroad company or from the agent or agents of the said railroad company 2,960 of said bonds, and subsequently 40 more of said bonds from a party 2756 to whom the said railroad company had caused the same to be delivered, and later still one thousand of said bonds from Thos. B. Coddington, esq., making in all 4,000 of said bonds which we received in pursuance of the several contracts entered into between our firm and the said railroad company on the 13th day of April and 14th day of November, 1870, and 30th day of March, 1871, a copy of all of which contracts will be found from pages 20 to 28 of the pamphlet annexed hereto and made a part of my answer, and marked Exhibit A. By the provisions of these several contracts or agreements we agreed to receive and negotiate all of the bonds issued and to be issued by the State of Florida to said railroad company. We sold only 2,800 in all of said bonds.

Fourth. To the fourth cross-inter'ogatory he saith: Any maps 2757 or copies of laws that were shown us were not, I think, in any respect different from the maps to be obtained by any one or to any other laws than such as could be found in the statute books of the State of Florida by any person who chose to examine.

Fifth. To the fifth cross-inter'ogatory he saith: We disposed of 2,800 of said Florida State bonds to John Collinson, of London, England. We sold none to any other person in Amsterdam, Rotterdam, or in any other city in the Netherlands or elsewhere.

Sixth. To the sixth cross inter'ogatory he saith: Before we sold any of said bonds, I remember that they were by some parties denounced as being fraudulent and illegal in their issue, and I remember that some party alleged that the statute under which they were issued was 2758 unconstitutional and void, and that said bonds would never be paid by the people of Florida, and I remember that these charges of illegality were published, and the publications copied in some public journals and newspapers in the United States, but I do not remember whether any such charges or allegations were published at the time in newspapers in England or Holland. I never believed in the truthfulness of any of the damaging statements made and circulated about the validity of the issue of the bonds, because I had personally examined all the laws under which they had been issued, and I came to the conclusion at the time that said bonds were properly and legally issued under a constitutional enactment, and that therefore they were good and valid securities.

Seventh. To the seventh cross-inter'ogatory he saith: In con- 2759 sequence of the charges of illegality and fraud in the issue of said bonds being so circulated, we were somewhat embarrassed in our efforts to negotiate them, and we finally agreed between our firm and M. S. Littlefield, who was at the time in London, and who was the president and agent authorized to represent the said railroad company in its dealings with our firm and said bonds, that we should sell the whole issue of 4,000 of said bonds to the said Collinson at one hundred and thirty-eight pounds one shilling and ten pence for each bond, and that we should account to the said railroad company for them when we received payment therefor at the price of one hundred pounds for each of said bonds, less five per cent., and that said difference of thirty-eight pounds one shilling and ten pence on each of said bonds should belong to and be the property of our firm, to indemnify us for such ex- 2760 traordinary expenses of said negotiation as had already been incurred, and as might be found necessary thereafter to incur, in consequence of the attacks that had been and might continue to be made on said issue of bonds. In pursuance of said agreement between said Littlefield and our firm, a letter was addressed to our firm by said Littlefield, on the 14th of November, 1870, and a letter dated November 28th, 1870, was written by our firm in London, in reply thereto.

Eighth. To the eighth cross-inter'ogatory he saith: After making said agreement with said Littlefield, we entered into a contract with John Collinson of London, and in pursuance thereof we sold, transferred and delivered over to him, and to no other party or parties, 2,800 in all of said bonds at the price of one hundred and thirty-eight pounds one shilling and ten pence per bond. Said contract or agreement so 2761 entered into by our firm with said Collinson was before execution shown to said Littlefield by Mr. Collins, the chief resident partner of our firm in London, and was by the said Littlefield approved, and authority was given by him to us to execute the same, and carry it out, with the understanding, as I have before stated, that we should account to the said company at the price of one hundred pounds for each bond less five per cent., the difference to used and appropriated as before agreed on.

Ninth. To the ninth cross-interrogatory he saith: We were not able to make any positive sale of the whole issue of said bonds at one time to said Collinson, but an agreement was entered into between John Collinson and our firm on the 14th day of Nov., 1870, a copy of which is annexed hereto and made a part of my answer, marked Exhibit 2762 E, which, it will be seen, was in the form of options for the whole

4,000 of said bonds, conditioned upon his taking and paying for certain amount from time to time at the price agreed on. We had no dealing with any syndicate. We knew only the said Collinson in all our dealings with him. Said bonds were undoubtedly held in the mean time at the risk of the said railroad company; said options extended through a period of about one year. Copies of all the agreements or contracts with said Collinson are annexed hereto and made a part of my answer, marked Exhibit E, F, G, H, J, & K.

Tenth. To the tenth cross-interrogatory he saith: The said Collinson, or some one interested in the negotiation or sale of said bonds in Holland, sought and obtained the opinion of eminent counsel in England, as to the question of the validity or constitutionality of said 2763 bonds, and I remember that J. P. Benjamin, Queen's counsel, of London, England, gave said Collinson an adverse opinion as to their validity; I know that after said Benjamin's opinion was given, said Collinson insisted upon and obtained from our firm a modified contract or agreement, which was executed on the 28th Dec'r, 1870, and of which a correct copy is annexed to the cross-interrogatories and marked Appendix A, and another copy is annexed hereto and made a part of my answer, marked Exhibit F.

Eleventh. To the eleventh cross-interrogatory he saith: It was a condition of said modified agreement, dated Dec'r 28, 1870, that our firm should procure from the supreme court of Florida a decision respecting the validity and constitutionality of the issue of said bonds and 2764 in pursuance of that condition, Charles H. Collins, the father of my partner, Frank H. Collins, was sent from London to America to consult with me on the subject; shortly after his arrival in New York, I went to Florida to procure a decision of the supreme court of the State, on the question thus raised. The then governor, at my request, subsequently called for and obtained from each of the judges of the supreme court an opinion in writing on the question of the validity or constitutionality of the several acts under which said four thousand of said bonds were issued. The opinions thus obtained, I was informed were regarded by the said Collinson as satisfactorily settling in the affirmative the question that had been raised respecting the validity and constitutionality of the whole issue of said bonds. I know that the said Collinson continued thereafter to take and pay for the 2765 bonds under his contracts or agreements with our firm.

Twelfth. To the twelfth cross-interrogatory he saith: It was subsequently arranged between the said Collinson and our firm, by an agreement entered into on the 23rd day of March, 1871, between our firm and said Collinson, a copy of which is annexed hereto and made a part of my answer, and marked Exhibit G, that out of the proceeds to result from the sale of said bonds an amount should be set aside and appropriated sufficient to pay the three interest coupons to mature on the 1st of July, 1871, and first of January and 1st July, 1872, respectively. The whole amount so set apart and applied, amounted to about three hundred and fifty thousand dollars.

Thirteenth. To the thirteenth cross-interrogatory he saith: 2766 The first delivery of said bonds to said Collinson was made in London on the 19th of Nov., 1870, and the last delivery on the 21st day of July, 1871. No bonds over and above those numbered were delivered by our firm to said Collinson, under any of the beforementioned agreements. A copy of the accounts of such transfers and deliveries of said bonds to said Collinson is annexed hereto and made part of my answer, and marked Exhibit N, S. W. H., J. A. S., com'r.

Fourteenth. To the fourteenth cross-inter'ogatory he saith: All the information, statements, and publications about the fraudulent, illegal, or unconstitutional character of said bonds were as accessible to everybody as they were to our firm. We had in our possession no information that I am aware of that was not obtainable by anybody and everybody. I cannot now produce any of the published statements referring to the illegality of said bonds.

2767 Fifteenth. To the fifteenth cross-inter'ogatory he saith: I know that said bonds were offered in New York to other parties before they were offered to us. I know that they were also offered in London and that all attempts to negotiate them by our firm failed until we had come to the agreement before referred to with M. S. Littlefield, wherein we agreed to make a contract with John Collinson for the sale of the whole 4,000 bonds at one price, and to account to the said railroad company at another price; after the contract between our firm and Collinson was made the bonds were offerd to the public in Holland by means of a printed prospectus, but whether the copy annexed to the cross-inter'ogatories, and marked Appendix B, is or is not correct I am unable to say. I cannot say whether or not there was any other printed prospectus used in putting the bonds on the market.

2768 Sixteenth. To the sixteenth cross-inter'ogatory he saith: The prospectus annexed to the cross-inter'ogatories, and marked Appendix B, was printed in London, and I believe the persons named in the sixteenth cross-inter'ogatory were in some way connected with said Collinson in publishing a prospectus and placing said bonds on the market in Holland.

Seventeenth. To the seventeenth cross-inter'ogatory he saith: The governor of the State of Florida aided in the sale of said bonds by procuring the opinions of the judges of the supreme court, which, being regarded as favorable to their validity, enabled those engaged in the negotiation of said bonds to effectually meet in a satisfactory manner all the questions respecting their validity that had theretofore tended to interfere with their negotiation and sale.

2769 Eighteenth. To the eighteenth cross-inter'ogatory he saith: Some time during the month of January, 1871, one thousand bonds, numbered from 3001 to 4000, inclusive, were taken to England and subsequently delivered to our firm by Thomas B. Coddington, esq., as agent or trustee for various parties, among whom were the State of Florida, Edward Houston, and the said railroad company, from whom he had instructions respecting the disposition of the proceeds to arise from the sale thereof.

Nineteenth. To the nineteenth cross-interrogatory he saith: The 1,000 bonds taken to London by said Coddington were charged with the payments and to the persons named in this interrogatory from the proceeds of the sale thereof. The whole of the 1,000 bonds were, I believe, received by the said Coddington from the governor of the State of Florida, and I know he gave a receipt to said Houston for them, a copy of which, annexed to the cross-interrogatories, and marked Appendix C, is, I believe, correct.

2770 Twentieth. To the twentieth cross-inter'ogatory he saith: I remember that 224 out of the 1,000 bonds numbered from 3,001 to 4,000, inclusive, taken by said Collinson to England, were subsequently surrendered to the authorities of the State of Florida and cancelled. Out of the proceeds of the remaining 776 bonds, if sold at the price agreed on, there would not have been enough money to pay the sums charged against the 1,000 bond and to which they were dedicated. I know that the 1,000 bonds delivered to us by the said Coddington were received by our firm at the time subject to the same charges and conditions that were imposed upon said Coddington by his receipt given to the said Houston.

Twenty-first. To the twenty-first cross-inter'ogatory he saith: None of the bonds numbered above 2,800 were sold by our firm. Of the
2771 remaining 200 bonds to complete the 3,000, numbered from one to
three thousand inclusive, two were lost, ten were surrendered to the company, and one hundred and eighty eight were by our firm delivered up to the authorized agent of the company in the city of London under an agreement for a final settlement between our firm and said company, a verified copy of which I annex hereto, and make a copy of my answer, marked Exhibit O, S. W. H., J. A. S., com'r. Of the 1,000 bonds numbered from 3,001 to 4,000, inclusive, 224 were cancelled by the State of Florida, 568 were tied up in England in the chancery court, and the remaining two hundred and eight were delivered to said Collinson in August, 1872, under an arrangement made with him to pay one or more of the interest coupons of a certain number of said bonds or of the 2,800 bonds previously delivered to him by our firm.

Twenty-second. To the twenty-second cross inter'ogatory he saith: I remember that at the time the 1,000 bonds numbered from
2772 3,001 to 4,000 were taken from Florida by said Coddington they
were the subject of some kind of suit in one of the courts of the State, and they have ever since been the subject of litigation either in London, New York, or Florida.

Twenty-third. To the twenty-third cross-inter'ogatory he saith: Our firm never at any time received any money or proceeds of any kind from the sale, use, or appropriation of any of the bonds numbered above 2,800. The money we paid to Houston, Papy, and others, as provided in the receipt of said Coddington before referred to to be paid, was paid either out of the proceeds of the 2,800 bonds delivered by us to said Collinson or was advanced by our firm. I do not now remember which, but I do remember that no part was paid out of the proceeds realized from the sale of any of the 1,000 bonds numbered from 3,001 to 4,000, because we had not then nor have we since sold any of said 1,000 bonds.

2773 Twenty-fourth. To the twenty-fourth cross-inter'ogatory, he saith: When N. W. Woodfin was in London in 1870 he was there as the representative of a commission, of which he was a member, constituted by the legislature of the State of North Carolina, to seek the recovery of monies claimed to belong to, or to be due to, the Western Division of the Western North Carolina Railroad Company, which he claimed had been misapplied by some of its agents or officers. It was apparent that he devoted his attention pretty assiduously to the task of getting of what he claimed was due to the company he represented; and whatever he could do he did do to further the negotiation of the bonds, in order, as he said, that he might be able to collect from the proceeds whatever he could get on account of the debt which he claimed was due to the Western Division of the Western North Carolina Railroad Company.

Twenty-fifth. To the twenty-fifth cross-inter'ogatory, he saith:
2774 The said Woodfin, on his return to this country, brought a suit
against our firm in the supreme court of the first judicial district of the State of New York to recover from our firm the proceeds of 800 of said bonds, which he alleged we had sold in Europe, and the proceeds of which he claimed to be the property of the company he repre-

sented. The suit was subsequently discontinued by consent of both parties to the action. I annex hereto a pamphlet containing the record of said suit, which I make a part of my answer, and the same is marked Ex. P, S. W. H., J. A. S., com'r. I also annex hereto and make a part of my answer a pamphlet containing a record of the counter suit or bill in equity filed by the Jacksonville, Pensacola & Mobile Railroad Company against the said Western Division of the Western North Carolina Railroad Company, marked Exhibit 'Q,' S. W. H., J. A. S., com'r.

Twenty-sixth. To the twenty-sixth cross-inter'ogatory, he saith: 2775 I do not know whether the said Collinson was or was not interested with the parties in Holland, who were engaged in placing said bonds on the market there. I know nothing whatever of said Collinson's private or business arrangements with those parties or with any other parties in connection with the negotiating or marketing of the said bonds in Holland or elsewhere.

SIDNEY W. HOPKINS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 2nd day of May, 1879, before

JOHN A. SHIELDS,
Commissioner.

2776 **EXHIBIT S. W. H. *a*.**

Summons, complaints, affidavits, and orders to show cause.

Supreme court county of Kings.

SIDNEY W. HOPKINS, FRANK H. COLLINS, and Robert J. Carpenter
against
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, Aaron Barnett, Calvin Littlefield, and John B. Clark.

Sewell and Pierce plaintiffs' attorneys, 170 Broadway, New York.

At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others are complainants, and The Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced and shown to Sidney W. Hopkins, and by him deposed unto at the time of his examination before

JOHN A. SHIELDS,
Commissioner.

SIDNEY W. HOPKINS.

2777 *Summons.*

Supreme court.

SIDNEY W. HOPKINS, FRANK H. COLLINS. and Robert J. Carpenter, plaintiffs,
against
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, Aaron Barnett,, Calvin Littlefield, and John B. Clark.

To the defendants above named:

You are hereby summoned and required to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers at their office No. 178 Broadway, New York, within twenty days after the service hereof on you, exclusive of the day of such service, and if you fail to answer the said complaint, the plaintiffs herein will apply to the court for the relief demanded in the complaint.

SEWELL & PIERCE,
Plaintiff's Attorney.

NEW YORK, *September 16th*, 1871.

2778 Supreme court.

SIDNEY W. HOPKINS, FRANK H. COLLINS, AND Robert J. Carpenter
against
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, Aaron Barnett, Calvin Littlefield, and John B. Clark.

Place of trial, Kings County.

The plaintiffs, by Sewell & Pierce, their attorneys, complain of the defendants, and say:

First. The said plaintiffs are, and at the several times hereinafter mentioned were, copartners, doing business in the city of New York, and having an office in London under the name and firm of S. W. Hopkins & Co.

Second. The said defendants The Jacksonville, Pensacola & Mobile Railroad Company are, and were at the several times hereinafter mentioned, a corporation created by and under the laws of the State of Florida, and the said defendants Barnett, Littlefield and Clark claim to be, and the plaintiffs believe that they are, directors of the said railroad, and they claim that they have a right to act for the said railroad and to represent it in the city of New York.

2779 Third. Said railroad has its eastern terminus at Lake City and is completed to a point beyond Quincey, in the State of Florida, and is by its charter designed to extend westward to the State line between Florida and the State of Alabama. That under certain laws of the State of Florida the said railroad was and is entitled to receive from the said State the bonds of the State for $16,000 for each mile of completed road. That the said State under and by virtue of the said laws issued $4,000,000 of said bonds to the said railroad company, one million of which afterwards came into the possession of one Edward Houston, who claimed to have liens thereupon, which will be more particularly hereinafter mentioned.

Fourth. That, in anticipation of the issuing of the said four millions of bonds and other bonds amounting to three millions of dollars more, these plaintiffs entered into a contract in writing with the said railroad company, which bears date the 13th day of April, 1870; that annexed hereto is a copy of said contract, marked Schedule A, which forms part of this complaint.

Fifth. That some time after said contract was made the plaintiffs received 2,960 of said bonds of $1,000 each; that forty of said bonds had then been delivered by the said railroad company to another party
2780 upon some arrangement with him not material to this case, as plaintiffs have been informed and believe; and that afterwards

150 of said bonds were by the direction of the said company delivered to E. E. Burras.

Sixth. That plaintiffs opened negotiations for the sale of said bonds in Europe, and were proceeding satisfactorily therewith when the war between France and Prussia broke out, which put an end to such negotiations; that such negotiations involved the expenditure of large sums of money by these plaintiffs, and when it was found impossible to resume such negotiations some months later it was not possible to sell said bonds at a price which would net the sum at which the plaintiffs were limited by the said contract marked Schedule A; that at that time the president of the said road was in Europe and knew the facts stated, and knew that further negotiations would be attended with a large and extraordinary outlay on the part of the plaintiffs, and it was then proposed to him that the plaintiffs should themselves pay such extraordinary expenses of said negotiations and that when they sold the bonds they should account therefor to the said railroad company for one hundred pounds for each bond, and that such price as they should receive from the buyer of said bonds beyond said £100 should be
2781 their own to indemnify them against such expenses of said nego-
tiation, and that the commission of the said plaintiffs should be paid to them out of the said £100 per bond, and that said president agreed thereto. That in order to carry out that agreement or understanding a new contract was entered into, by correspondence, between the said president of the said road and these plaintiffs; that annexed hereto are the letters on that subject, one dated November 14, 1870, signed by the said president, and the other dated November 28th, 1870, signed by these plaintiffs; a copy of said letters is hereto annexed, marked Schedule B, and forms a part of this complaint. And said plaintiffs say that when they proposed to the said president to make the agreement last aforesaid the said president was informed that a negotiation was pending for a sale of said bonds at £138 1s. 10d. per bond.

Seventh. That after the agreement last aforesaid the remaining one thousand of the said bonds were delivered to these plaintiffs, and they, upon the receipt of the same, assumed to pay certain alleged liens
2782 upon the said bonds, amounting in all to the sum of $297,193.33;
that the assumption of the said liens was with the approval of the said railroad company; that the plaintiffs have paid all of said liens except $45,000 thereof, and that they are legally bound to pay the same.

Eighth. And said plaintiffs further say that on or about the 30th day of March, 1871, they entered into a new agreement with the said railroad company, designed, among other things, to ratify the said agreement marked Shedule B; that a copy of said agreement of the 30th day of March, 1871, is hereto annexed, marked Schedule C, and forms a part of this complaint.

Ninth. And said plaintiffs say that they have made contracts for the sale of all of the said bonds received by them as aforesaid from the said railroad company, which contracts contain certain options to be exercised by the buyers; and have also made a contract for the sale of the remaining three thousand bonds which it is expected said rail-
2783 road will receive; and they say that under the said contract for
the sale of the said first-mentioned bonds they have delivered 2,800 bonds of $1,000 each, and that the said railroad company are entitled to a credit for the price of said 2,800 bonds of $997,920, and no more, after deducting the commission of the said plaintiffs; and said plaintiffs say that this sum is the whole sum to which the said railroad company is entitled to a credit in the account between these plaintiffs and the said

company; and the said plaintiffs say that they have unsold of said bonds 1,010 and no more, which 1,010 does not include the said forty bonds which the said company delivered to another person and the said one hundred and fifty bonds which they delivered to E. E. Burass as before mentioned.

Tenth. And they further say that a certain railroad in North Carolina, known as the Western Division of the Western North Carolina Railroad Company, and which will be spoken of hereafter as the
2784 North Carolina Company, after the issuing of the whole or a part
of the said four thousand bonds claimed, that they were entitled to the same or the proceeds thereof, and thereupon on or about the 16th day of April, 1870, an agreement was entered into in form between the Florida Central Railroad, George W. Swepson, president, and the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, president, and Milton S. Littlefield, majority owner of the stock of said companies, and also of the stock of the Tallahassee Railroad Company of the first part, and the said North Carolina Railroad Company, represented by certain commissioners, of the second part; which agreement provided for the disposition of the proceeds of the said bonds very much for the benefit of the said North Carolina Railroad Company; that annexed hereto is a copy of said agreement, marked Schedule D. And they say that afterwards and on the 10th day of November, 1870, an agreement in place of the said last-mentioned agreement was entered into in
2785 form between the said Milton S. Littlefield and the Jacksonville,
Pensacola and Mobile Railroad Company, by Milton S. Littlefield, the president thereof, the parties of the first part, and the said North Carolina Railroad Company, acting through and represented by Nicholas W. Woodfin, chairman, etc., a copy of which said last-mentioned agreement is hereto annexed, marked Schedule E.

Eleventh. And the said plaintiffs say that it was represented to them, in substance, that the said Florida Railroad and their president had a right to dispose of the said 800 bonds mentioned in the said agreement marked E to the said North Carolina Railroad Company for the purposes mentioned in said agreement, and they say that they believed the said representations to be true. That afterwards, and on or about the 16th day of November, 1870, the said M. S. Littlefield, as president of the said Florida Railroad Company, caused to be delivered to these plaintiffs a letter or order in the words following, to wit:

2786 LONDON, *November* 16, 1870.

Messrs. S. W. HOPKINS & Co.,
58 *Old Broad Street, London, and* 71 *Broadway, New York.*

GENTLEMEN: On the 10th day of November, A. D. 1870, I made a final settlement with the Western Division of the Western North Carolina Railroad Company, represented by Nicholas W. Woodfin, chairman of the commissioners appointed by the legislature of North Carolina, to collect the money due said company.

The commissioners are N. W. Woodfin, W. G. Candler, W. W. Rollins, W. P. Welsh, and J. L. Henry.

One of the terms of said settlement was, that it should place to the order of said company any 800 of the Florida eight per cent. gold bonds my railroad contracted with you to negotiate on the 13th of April last; therefore, you will place to the order of the Western Division of the Western North Carolina Railroad Company eight hundred of said bonds, and sell or dispose of the same as the said chairman may direct, but this order is subjected to the following conditions:

First. The said bonds are to remain in your hands to sell.

Second. The proceeds of said bonds are to be transferred to your New York house, and disbursed to said company upon the orders of a majority of said commissioners.

I remain, gentlemen, your most obedient servant,

M. S. LITTLEFIELD,
President J., P. & M. R. R. Co.

2787 And they say that, having received said letter, the said plaintiffs accepted the same in a letter addressed to Nicholas W. Woodfin, esq., chairman of the commissioners, etc., on the said 16th day of November, in which the said plaintiffs said:

We are in possession of your favor of this day's date. covering order from M. S. Littlefield, president of Jacksonville, Pensacola and Mobile Railroad Company, dated November 16th, 1870, for 800 Florida bonds. We accept the said order and agree to hold the within described bonds as agents for the Western Division of the Western North Carolina Company subject to the order of the commissioners.

We remain your most obedient servants,

S. W. HOPKINS & CO.

Twelfth. And said plaintiffs say that the said 800 bonds in the said order, and the said acceptance mentioned, are a part of the said 1,010 bonds still remaining unsold as aforesaid.

Thirteenth. And the said plaintiffs further say that since they 2788 gave the said acceptance, dated November 16th, 1870, they have been advised that the said Florida road had no right to consent or agree that the said 800 bonds, or any part of them, or their proceeds, should go to the said North Carolina road, and they say that an action has been brought against them in the city of New York by the said North Carolina road ; claiming from these plaintiffs the said 800 bonds themselves, or the proceeds thereof, in which action these plaintiffs have been, by order, held to bail in the sum of $300,000; that this plaintiff, Hopkins, has been actually arrested upon the said order and has given bail in that sum.

Fourteenth. That thereupon an action was brought by the said Florida Railroad against the said North Carolina Railroad, and these plaintiffs, as defendants, and the said Woodfin and others, such commissioners and the said Milton S. Littlefield. That the plaintiff in that suit states in substance the transactions hereinbefore referred to, and claims that there was no authority in the said M. S. Littlefield or in any other 2789 person to dispose of the said 800 bonds to the said North Carolina Railroad Company, and prays an injunction against the said North Carolina Railroad and against these plaintiffs, and the other parties defendant, against consummating or carrying out the said agreement, a copy of which is hereto annexed, marked E. That the defendant in this action, Aaron Barnett, verified the said complaint as a director of the plaintiffs therein, and, in addition thereto, swore to an affidavit, which is annexed to that complaint, and the said plaintiffs say that both of the said suits hereinbefore mentioned are still pending; that a motion has been made to discharge the order of arrest in the first suit, and also a motion for an injunction in that suit, and for a receiver of the said 800 bonds, and that a motion has been made in the second suit for an injunction, and that all of said motions are undetermined.

Fifteenth. And the plaintiffs say that before the agreement was made by and with these plaintiffs for the negotiation of the said bonds,
2790 the said Florida Railroad had made an agreement for that purpose Mr. Lawrence P. Bayne, and afterwards, as Mr. Bayne claimed from them a large sum of money for the alleged breach of said agreement with him, the said Florida Railroad gave him an order on these plaintiffs for such sum as under his contract he should be entitled to, not exceeding $200,000, which order these plaintiffs accepted, payable out of the proceeds of the said bonds. That said Bayne has brought an action against the said Florida Railroad for the breach of said agreement, in which he claims the sum of $200,000 and interest, and has brought another action for $105,000 upon another transaction and has caused attachments therefor to be served on these plaintiffs, to secure and bind any property of the Florida Railroad held by these plaintiffs. That, in addition thereto, the said Bayne has brought an action against these plaintiffs in the city of New York alleging that these plaintiffs have sold a very large number of said bonds, and have received the proceeds thereof, and that they sold the same in a fiduciary character in respect to the said Bayne, and he has obtained an
2791 order of arrest in the sum of $100,000, and has caused the plaintiff Hopkins to be arrested thereupon.

Sixteenth. And said plaintiffs further say, that annexed hereto, marked F, is a true statement of the monies paid by these plaintiffs for account of the said Florida Railroad, and, also, of obligations assumed by them upon the order of and at the request of the said railroad. That said account is from the books of these plaintiffs, and is in every respect just and true, as they verily believe, and they say that by said account it appears, and such is the fact, that these plaintiffs are creditors of the said Florida Railroad, at the present time, after crediting them with the proceeds of the said bonds as aforesaid, in the sum of $945,800.03, and that the whole of the said sum is due by the said Florida Railroad to these plaintiffs at the present time, and they are not entitled to any credit whatever in reduction of said amount.

Seventeenth. And the said plaintiffs say that on the 8th day of September, instant, these plaintiffs were served with a paper signed M. S. Littlefield, president Jacksonville, Pensacola and Mobile Railroad
2792 Company (the signature being in the handwriting of the said Littlefield), which paper was in words and figures following:

JACKSONVILLE, FLA., *August* 22, 1870.

Messrs. S. W. HOPKINS & CO.,
New York:

GENTLEMEN: You are hereby notified that the (Florida) Jacksonville, Pensacola and Mobile Railroad Company have annulled all authority heretofore at any time conferred upon you, either by the said company or any one acting or pretending to act on behalf of the said company, to act on behalf of the said company as the agents thereof, in respect to any matter or thing whatever.

M. S. LITTLEFIELD,
President J., P. & M. R. R. Co.

Eighteenth. And the said plaintiffs say that the said account marked F contains the commissions of these plaintiffs on the proceeds of 2,800 bonds, and no more, and they say that they are advised and believe that they are entitled to be paid a commission on the whole 3,960 of said bonds, and that they are in addition thereto entitled to a compensation

dependent upon what shall occur hereafter in respect to the 3,000
2793 additional bonds for the breach by the said Florida Railroad of
their contract to allow these plaintiffs to sell said bonds.

Nineteenth. And they further say that they are advised, and they charge, that they have a lien upon all of the bonds remaining in their hands for the balance of their account aforesaid, or for the balance as it shall be ascertained, and that they have a lien thereupon for the said commissions that they will be entitled to upon the sale or other disposition of the said bonds in their hands, and that they are also entitled to a lien thereupon for such damages as they shall be entitled to for any breach by the said Florida road, or of their agreement or agreements with these plaintiffs.

Twentieth. And the said plaintiffs further say, that it was claimed by the counsel for the North Carolina road upon the argument of the motions hereinbefore mentioned that although it should be determined that there was no authority in the president, or otherwise, to transfer the said 800 bonds or the proceeds thereof to the North Carolina road, that nevertheless these plaintiffs were liable to the North Carolina
2794 road for a sum equal to the proceeds of the said 800 bonds (they
claiming that they had a right to the proceeds of the first 800 bonds sold), and that these plaintiffs were estopped from denying the title of the North Carolina Road, for whom they had assumed the position of agents, and that these plaintiffs were, in that view, so liable to the North Carolina Road, and, in addition thereto, were liable to the Florida Road for the same bonds or their proceeds; and they say that they have been informed and that they believe that the representatives of the said North Carolina Road have urged the said Barnett, representing or pretending to represent the Florida Road, to commence proceedings against these plaintiffs as their agents, and to claim therein that these plaintiffs were indebted to them in a very large sum of money, in $500,000 or upwards, and to sue them therefor, and to obtain an order of arrest for such large sum, and so to overwhelm them, with the hope and expectation declared that they would be unable to procure bail therefor, and would, in consequence, be compelled to go to jail. That thereafter the said Barnett, as plaintiffs are informed and believe,
2795 caused the said revocation of these plaintiffs' authority above set
forth to be delivered to them, and caused the said suit brought by the Florida Road against the North Carolina Road and others, as aforesaid, to be taken out of the hands of the attorneys who had originally brought the same, and to be put into the hands of gentlemen who had previously appeared for him, the said Barnett, to the end that the said suit may be made use of in some manner hostile to the interest and just rights of these plaintiffs; and they say that they have reason to believe, and they do believe, that the design now is, by the said Barnett and the said defendants Littlefield and Clark, acting with him, to allege and claim that these plaintiffs are indebted to the said Florida Railroad in a very large sum of money received by them upon the sale of the said 2,800 of said bonds, and to claim that they are bound to pay a sum much larger than £100 for each bond as the proceeds of such sale, and to claim that they are not entitled to the sums paid by them and assumed by them for the said Florida Railroad, and upon a
2796 statement of *of* their case by affidavit, which shall not contain
the whole truth, but only a partial statement of the facts, obtain an order for the arrest of these plaintiffs, and to hold them to bail in a very large sum of money, with the hope and expectation that from their

inability to obtain such bail they will be able to extort from these plaintiffs unreasonable and unjust terms of settlement; and the said plaintiffs say that they will be unable to give bail in any considerable sum, beyond what they have already give' as before stated, and that if the said order of arrest is obtained, and they or any of them shall be arrested thereon, they will be compelled to go to jail; and they further say that their earnest desire is to have the conflicting claims of the various parties before mentioned adjusted upon a fair and honest basis, and to pay every dollar that they owe to any of the said parties.

And they further pray that an account be taken according to the practice of this court, and the amount ascertained in which the said Florida Railroad Company is indebted to these plaintiffs; that
2797 the said commissions to which the plaintiffs are entitled upon the sale or other disposition of the bonds still held by them shall be ascertained; that it be decreed that these plaintiffs have a lien upon the bonds remaining in their hands for the balance of their account against the said Florida Railroad, and for their said commissions on the bonds still remaining in their hands, and that the said Florida Railroad be directed to pay to them such sum as shall satisfy their said lien, and that in default thereof the said bonds be sold under the direction of this court, and the proceeds thereof paid to these plaintiffs, or so much thereof as shall be necessary for that purpose, in satisfaction of their said claims; that an injunction be issued restraining the said Florida Railroad and the said other defendants, and the attorneys, counsel, and agents of the said defendants, and of each and every of them, from beginning or prosecuting any suit whatever against these plaintiffs, or either of them, to recover from these plaintiffs any alleged claim or demand due or pretended to be due by them to the Florida Railroad, and that
2798 such further or other relief be granted as shall be just.

SEWELL & PIERCE,
Plaintiffs' Attorneys, 178 *Broadway*.

Supreme court.

SIDNEY W. HOPKINS, FRANK H. COLLINS, AND
Robert J. Carpenter, plaintiffs,
against
THE JACKSONVILLE, PENSACOLA AND MOBILE
Railroad Company, Aaron Barnett, Calvin
Littlefield, and John B. Clark.

STATE OF NEW YORK,
City of Brooklyn, County of Kings, ss:

Sidney W. Hopkins, one of the plaintiffs, being duly sworn, deposes and says that he has heard read the foregoing complaint, and that the same is true to his knowledge, except as to the matters therein stated on information and belief, and as to these matters he believes it to be true.

2799 S. W. HOPKINS.

Sworn to before me this 18th day of Sept., 1871.

N. H. CLEMENT,
Notary Public.

Supreme court.

Sidney W. Hopkins, Frank H. Collins, and Robert J. Carpenter, plaintiffs,
against
The Jacksonville, Pensacola and Mobile Railroad Company, Aaron Barnett, Calvin Littlefield, and John B. Clark.

State of New York,
City of Brooklynn, County of Kings, ss:

Sidney W. Hopkins, being duly sworn, doth depose and say that he has been for many months past the agent of the defendants, the railroad company, and knows the other defendants; and that as
2800 such agent and as one of the members of the firm of the plaintiffs he has become acquainted with the material facts stated in the annexed complaint. That as to the negotiations for the sale of the bonds, they took place in London, and this deponent was not there, but he was kept apprised of what took place and has been furnished with copies of all the contracts that were made there.

That he is personally acquainted with the suits and proceedings that have been taken and which are mentioned in the said complaint, and that the said complaint in respect thereto is true.

That the defendant Barnett asserted in the office of the deponent, as deponent has been informed by one of his clerks, and believes that the design was to commence a suit against the plaintiffs on behalf of the Florida road, and to arrest them and to hold them to bail in a very large sum of money.

That annexed hereto is the affidavit of the clerk to whom the statement was made. That deponent knows that the other defendants besides the railroad company claim that they represent in the city of New York the said railroad company.

2801 That the facts in regard to the suits and proceedings by Mr. Bayne are within deponent's knowledge.

And deponent says that he verily believes that the design of the proceedings which are threatened against his said firm is simply to coerce deponent's firm into the making of a settlement which would be unjust, and which could not be obtained by any fair proceedings.

And further deponent saith not.

S. W. HOPKINS.

Sworn to before me this 18th day of Sept., 1871.

N. H. CLEMENT,
Notary Public.

Supreme court.

Sidney W. Hopkins, Frank H. Collins and Robert J. Carpenter, plaintiffs,
against
The Jacksonville, Pensacola and Mobile Railroad Company, Aaron Barnett, Calvin Littlefield, and John B. Clark.

City and County of New York, *ss:*

2802 L. Louis Spring, being duly sworn, doth depose and say that he is in the employment of the plaintiffs; that within a few days past he saw the defendant, Barnett, in the office of the plaintiffs, when said Barnett told deponent that the Jacksonville, Pensacola and Mobile Railroad Company were about to commence proceedings against said plaintiff's firm, and to arrest them and hold them to bail in a very large sum of money; and that he, said Barnett, had already made an affidavit in the case, and that the papers were all ready.

L. LOUIS SPRING.

Sworn to before me this 16th day of September, 1871.

CHAS. M. HALL,
Notary Public.

2803 **SCHEDULE A.**

This agreement, made this thirteenth day of April, one thousand eight hundred and seventy, by and between the Jacksonville, Pensacola and Mobile Railroad Company, a corporation duly created by the State of Florida and existing under the laws thereof, party of the first part, and which said party acts herein by Milton S. Littlefield, its president, duly authorized hereto by resolution of the stockholders of said company, adopted at their meeting on January 31st, 1870, and Sidney W. Hopkins, Frank H. Collins and Robert J. Carpenter, parties of the second part, witnesseth, as follows:

Whereas the party of the first part is engaged in constructing a railroad from Jacksonville, in the State of Florida, to the city of Mobile, in the State of Alabama;

And whereas the legislature of the State of Florida did, by an act passed January 28th, 1870, grant to the said party of the first part the bonds of said State to the extent of $16,000 for each mile of said railroad to be completed;

2804 And whereas a certain number of miles of said road are now completed, and said company is entitled to receive from the said State of Florida about the sum of four millions of dollars of bonds;

And whereas said company is desirous of negotiating and selling for the best possible price the four million dollars of bonds, and all others which may be issued to it as fast as it may be entitled to receive the same, and to purchase with the proceeds of said bonds when realized iron rails and equipment for said road;

And whereas the parties of the second part are willing to undertake the negotiation of said bonds upon the terms and for the consideration hereafter set forth:

Now this agreement witnesseth that in consideration of the agreement and of the services to be kept and performed by the party of the second part hereto, as hereinafter provided, the said party of the first 2805 part has made, constituted and appointed, and by these presents does make, constitute and appoint the said firm of S. W. Hopkins & Co., the parties of the second part hereto, the financial agents of the said party of the first part, in its name, place and stead to sell, negotiate and dispose of all the said four million dollars of the said bonds of the State of Florida, and all the other bonds of said State which by the act aforesaid the said company shall become entitled to, and to purchase for and on account of said party of the first part all iron and material needed by the said company for the construction and equipment of said road, and as the president of said company shall from time to time direct; but said bonds shall not be negotiated or sold for less than sixty cents on the dollar (without the permission of the party of the first part first had thereto), in currency or paper money of the United States, and all expenses of negotiation and sale are to be borne and paid by the said party of the second part.

And the said party of the first part hereby agrees to furnish
2806 and deliver to its said agents, the parties of the second part hereto,
the said four million dollars of bonds, as soon as they shall obtain the same from the State of Florida, and from time to time to deliver to its said agents all such bonds as the said party of the first part shall receive the same from the State, but the parties of the second part may at any time negotiate, contract and sell the whole amount of such bonds, to which, by the act aforesaid, the said party of the first part shall be entitled, when such road is completed, to be delivered, however, as the same may be obtained from the State.

And the party of the first part hereby agrees to pay, and the party of the second part to accept in payment for said said services to be by them performed, the following commissions upon all such sums of said bonds as they shall negotiate or sell under this contract; that is to say, on all bonds sold at sixty cents on the dollar, a commission of five per cent. on the par value of said bonds; on all sold at sixty-five cents, a commission of seven and a half per cent.; on all sold at seventy cents, a commission of ten per cent.; on all sold at seventy-five cents, a commission of eleven
and a half per cent.; on all sold at eighty cents, a commis-
2807,8 sion of thirteen per cent.; on all sold at eighty-five cents, a com-
mission of fourteen and a half per cent.; on all sold at ninety cents, a commission of sixteen per cent.; on all sold at ninety-five per cent., a commission of seventeen and a half per cent.; on all sold at 100 cents, a commission of 19 per cent.; and in case, with the consent of said company, any bonds may be sold under sixty cents on the dollar, a commission of five per cent. shall be paid thereon. And on all purchases made for said road said party of the second part shall be paid two a half per cent. commission, to be paid in gold or currency, as the special purchases shall be made in gold or currency, and all purchases made by said agents shall be made in open market and at current market rates.

And it is further agreed that when any purchase may be made by said party of the first part of said party of the second part of any iron or materials owned by them, no commission shall be paid to them by said party of the first part on such purchase.

And in consideration of the premisest he said party of the first
2809 part hereby covenants and agrees with the party of the second part,
that the said party of the second part shall have the exclusive agency of the said party of the first part for the sale of said bonds, and the purchase of all its iron and material for equipment, and that said party of the first part will not employ any other person or firm for the said purposes while *while* the said parties of the second part perform the conditions of this contract to be by them done and performed; and the said parties of the second part hereby agree that they will forthwith, upon the execution of this contract, deliver to the said party of the first part, at New York, one thousand tons of railroad iron, weighing fifty-six pounds per lineal yard, at sixty dollars, in gold, per ton, which shall be delivered on board ship at New York, at the charge of said party of the second part, the party of the first part to designate the vessels to which the same shall be delivered, and at a like price and on like conditions, deliver to the said party of the first part an additional one thou-
sand tons of railroad iron during the month of June, 1870, and
2810 also that they will, on or before April 17th inst., advance to the
said party of the first part, fifty thousand dollars, in currency,

and an additional sum of twenty-five thousand dollars at such times as may be required by the president of said company.

And it is further agreed that said party of the second part shall have a first lien upon all the bonds aforesaid, and the proceeds thereof, for the repayment to them of the price of said iron, and of the money advanced aforesaid, and of all other advances which may be made under this contract, together with interest thereon, and for all their commissions to which under the provisions of this contract they may become entitled.

In witness whereof the said parties hereto have hereunto set their hands and seals on the 13th day of April, 1870.

JACKSONVILLE, PENSACOLA AND
MOBILE RAILROAD COMPANY,
By M. S. LITTLEFIELD, [SEAL.]
President.
S. W. HOPKINS & CO., [SEAL.]

[U. S. rev. stamps, 20 cents, cancelled.]

2811 SCHEDULE B.

58 OLD BROAD STREET,
London, *Nov*. 14*th*, 1870.

Messrs. S. W. HOPKINS & Co.,
London:

GENTLEMEN: I herewith offer you four thousand (4,000) Florida State 8 per cent. gold bonds, in aid of the Jacksonville, Pensacola and Mobile Railroad Company for one thousand ($1,000) dollars, gold, each, at the price of one hundred (£100) pounds sterling for each bond, in the city of London, subject to the commission agreed as per contract dated 13th day of April, 1870, with your good selves.

I remain, gentlemen, yours faithfully,
(Signed) M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.,
Jacksonville, P. M. & M. R. R. Co.

[S. W. Hopkins & Co., Dec. 29th, 1870, New York.]

NOVEMBER 28*th*, 1870.

MILTON S. LITTLEFIELD, Esq.,
Pres. J., P. & M. R. R. Co.:

SIR: In reference to your favor dated November 14, 1870, offer-
2812 ing four thousand Florida State 8 per cent. gold bonds, for one
thousand dollars gold, each, in aid Jacksonville, Pensacola and Mobile Railroad Company, we do hereby accept the said offer at the price named, viz: one hundred pounds for each bond, with any accrued interest added in your favor of one thousand gold, each, nett, in the city of London.

We remain, sir, your obedient servants,
(Signed) S. W. HOPKINS & CO.

2813 SCHEDULE C.

This agreement, made on the thirteenth day of March, 1871, between the Jacksonville, Pensacola & Mobile Railroad Company of the first part, and Sidney W. Hopkins, Robert J. Carpenter, and Frank H. Collins, composing the firm of S. W. Hopkins & Co., parties of the second part, witnesseth:

That whereas the party of the first part heretofore by a certain contract in writing, dated on the thirteenth day of April, 1870, employed the

parties of the second part to sell certain bonds of the State of Florida
on certain terms and conditions in said agreement set forth, and where-
as in consequence of divers claims on the said bonds by parties assert-
ing title thereto, and in consequence of the action of the board of di-
rectors of the said party of the first part withdrawing said bonds from
the market, which action has since been disavowed and annulled, and
in consequence of the opposition to the negotiation of said bonds by
divers persons, it has become necessary to provide for the payment of
three half yearly installments of interest on the State bonds
2814 in said agreement mentioned in order that the credit of said bonds
may be maintained.

Now, in consideration of the premises, and of one dollar in hand paid by the party of the second part to the party of the first part, it is hereby consented and agreed by the party of the first part that the party of the second part may and are hereby empowered to make arrangements for the deposit of sufficient of the proceeds of said bonds in the hands of reliable bankers in Europe for the purpose of paying the coupons on such bonds which shall become due in July, 1871, January and July, 1872, and the parties of the second part are hereby authorized to make such deposit as aforesaid, the sums so deposited to bear interest at current *interest at current* rates where deposited.

And the agreement made with said party of the second part by the
president of said party of the first part to sell said bonds, four thou-
sand bonds of one thousand dollars each to said party of the second
part at one hundred pounds for each bond, is hereby ratified and con-
firmed, and the said party of the second part shall well and truly
2815 account with the party of the first part for the proceeds of such
bonds so sold to them after they shall have realized from the
said bonds and not before, at and after the rate and price of four hun-
dred and eighty-four dollars in American gold coin, deducting there-
from five per centum on the par value of said bonds so sold as provided
in the said agreement aforesaid, and the said monies retained from said
proceeds for interest, and the said party of the first part hereby agrees
that it will accept such accounting at the price aforesaid as a full and
final accounting, without any question as to the same.

In witness whereof the said parties hereunto interchangeably set their hands the day and year first above written.

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.
S. W. HOPKINS & Co.

In presence of—
CHAS. H. COLLINS.

2816 SCHEDULE D.

Memorandum of agreement and settlement between the Florida Central Railroad, George W. Swepson, president, and the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, president, and Milton S. Littlefield, majority owner of the stock of said companies, and also of the stock of the Tallahassee Railroad Company, of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by N. W. Woodfin, W. G. Candler, W. Pink Welch, and W. W. Rollins, commissioners appointed by an act of the legislature of North Carolina, approved by the stockholders of said corporation, of the second part, witnesseth:

That whereas George W. Swepson, late president of the Western Division of the Western North Carolina Railroad Company, made certain investments of the funds of said company in securities of and interests in the said Florida Central Railroad, Jacksonville, Pensacola and Mobile Railroad, and the Tallahassee Railroad, of the said State of Florida, as per report made by the said George W. Swepson to the said commissioners, amounting in the aggregate to the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, to bear interest from the first day of November, 1869, at the rate of eight per cent. per annum; and

Whereas the said George W. Swepson heretofore conveyed to the said Milton S. Littlefield, subject to the payment of the above-recited claim, his interest in the above recited railroads; and whereas the said Littlefield has received authority from the legislature of the State of Florida and the several railroad companies, to receive bonds to be issued by and for account of the several railroad companies, which bonds are to be exchanged for bonds of the State of Florida, to be issued for the purpose of aiding the finances of said several railroad companies all of which bonds are now in a state of preparation; and

Whereas Milton S. Littlefield has made a contract with S. W. Hopkins & Co., No. 71 Broadway, for the disposition of said bonds as the same may be issued, the proceeds of the issue of the bonds of the Florida Central Railroad Company of the said State of Florida, amounting to nine hundred and sixty thousand dollars, are to be applied to the payment of the existing liabilities of the said several railroad companies, including the sum of one hundred and fifty thousand dollars to be paid to the commissioners aforesaid for the purpose of paying existing liabilities of the said Western Division of the Western North Carolina Railroad Company.

It is understood and agreed by the parties of the first and second parts, that the proceeds of the sale of said bonds so to be issued by the said Florida railroad companies and the said State of Florida, are to be equally divided, dollar for dollar, between the Western Division of the Western North Carolina Railroad Company and the said Florida railroads; and as the commissioners aforesaid receive by this first sale of bonds only the sum of one hundred and fifty thousand dollars, it is further understood and agreed, that out of the proceeds of the
2817 sale of the issue of the bonds of the Jacksonville, Pensacola and Mobile Railroad there is first to be received by the commissioners aforesaid a sum sufficient to be equal to the amount received by and on account of the said Florida railroads, and then an equal amount is to be received by the said commissioners and the said Florida railroads, dollar for dollar, until the entire amount of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, with interest at eight per cent., as aforesaid, being the sum reported by the parties of the first part as due to the Western Division of the Western North Carolina Railroad, is fully paid.

It is further understood and agreed by the parties of the first and second parts, that all the interest owned or claimed by the said parties of the first part, both George W. Swepson and Milton S. Littlefield, or which they, as individuals, have a right to control in the said Florida railroads, are hereby pledged for the faithful fulfilment of this contract, without the right on the part of any party to interfere with our management or control of the affairs of the road.

(Signed) GEORGE W. SWEPSON,
President Florida Central Railroad Co.
M. S. LITTLEFIELD,
M. S. LITTLEFIELD,
Pvesident J., P. & M. Railroad Compy
N. W. WOODFIN,
W. W. ROLLINS,
W. G. CANDLER,
W. P. WELCH,
Commis ners.

Witnesses:
M. W. RANSOM.
R. R. SWEPSON.

2818 SCHEDULE E.

Memorandum of an agreement and final settlement made this tenth day of November, A. D. 1870, at London, England, between General Milton S. Littlefield, of the State of Florida, in the United States of America, and the Jacksonville, Pensacola and Mobile Railroad Company, by Milton S. Littlefield, the president thereof, the parties of the first part, and the Western Division of the Western North Carolina Railroad Company, acting through and represented by Colonel Nicholas W. Woodfin, chairman of the commission appointed by the general assembly of the State of North Carolina, by an act ratified the 24th day of March, A. D. 1870, to settle with George W. Swepson, and for other purposes, which act was approved by the stockholders of the said Western Division of the Western North Carolina Railroad Company, of the second part.

Whereas on the 16th day of April, A. D. 1870, at the city of Washington, in the District of Columbia, in the United States of America, a contract in writing was made and entered into by and between the Florida Railroad Company, George W. Swepson, president, General Milton S. Littlefield, the Jacksonville, Pensacola and Mobile Railroad Company, by Milton S. Littlefield, the president thereof, as parties of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by Nicholas W. Woodfin, W. G. Candler, W. W. Rollins, and W. P. Welch, commissioners appointed by the legislature of the State of North Carolina, by an act ratified the 24th day of March, 1870, which act was duly ratified, approved, adopted, and made a part of the charter of the said party of the second part, the said corporation, a copy of which contract is attached hereto, and made a part of this contract;

And whereas the said Jacksonville, Pensacola and Mobile Railroad Company have received certain bonds of the State of Florida, under sundry acts of the legislature of said State, which bonds, by the term of the laws autherizing the issue of the same, are made payable, both principal and interest, in the gold coin of the United States, and bearing interest at the rate of eight per cent. per annum;

And whereas, by reason of the present war in Europe, all financial operations are more or less restricted, which has, up to this time, prevented the negotiation for the sale of said bonds;

And whereas the said Western Division of the Western North Carolina Railroad Company, through and by its representative, N. W. Woodfin, chairman, aforesaid, is pressing the immediate payment, by the said party of the first part, of the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, with interest at the rate of eight per cent. per annum since the first day of November, A. D. 1869; to pay or settle the said claim now will cause a great sacrifice to the said party of the first part;

And whereas the said Nicholas W. Woodfin, as chairman of the said commission for the Western Division of the Western North Carolina Railroad Company, for the purpose of removing embarrassments
2819 out of the way, which, in his judgment, prevented the sale of
said bonds, and to avoid litigation, did, on the 17th of October, 1870, contract with Henry Clews & Co., bankers in the cities of New York and London, to purchase a certain claim held by them against George W. Swepson, amounting to about twenty thousand dollars, lawful money of the United States of America, which contract was made with the knowledge and approval of the said party of the first part, for the reason, it was understood by all parties to the said agreement, that this would secure the full co-operation of the said Henry Clews & Co. to aid in the sale and negotiations of the said Florida bonds.

Now, therefore, be it remembered, that for and in consideration of the premises herein stated, and for various other good and sufficient considerations, and for the further purpose of aiding the said Western Division of the Western North Carolina Railroad Company to complete their road from the junction with the main line, at Asheville, to Paint Rock, at the State line between the States of North Carolina and Tennessee, and to complete their road without delay, on the one hand, and to avoid a hasty sale and sacrifice of the said bonds on the other hand, it is agreed by and between the parties of the first and second parts, that, in full compromise, payment, satisfaction and accord of the obligation of the party of the first part to pay to the party of the second part the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, lawful money of the United States of America, with interest thereon at the rate of eight per cent. from and after the first day of November, A. D. 1869, as per terms of the said contract made and executed at the city of Washington aforesaid, and that the said party of the first part may be fully and finally discharged from all and every liability on account of the terms and conditions of the said contract, hereunto appended, the said party of the first part agree to furnish the iron to the said party of the second part sufficient to lay a single track of railroad from the junction, at Asheville, along the French Broad River, to Paint Rock, at the Tennessee State line, and into the State of Tennessee to the present terminus of the Cincinnati, Cumberland Gap and Charleston Railroad, with turn-outs and side-tracks, provided that the whole railroad shall not exceed, including turn-outs and side-tracks, fifty-three miles in length. The iron shall be of good quality of English iron, weighing not less than fifty pounds per lineal yard, with the necessary chairs and spikes to lay the same; the iron to be shipped in the quantities, and at the times and places, as follows, to wit:

To Norfolk, Virginia, on or before the tenth day of December, A. D. 1873, three hundred tons; to the same place, on or before the tenth day of January, A. D. 1871, five hundred tons; to the same place, on or before the first day of April, A. D. 1871, one thousand tons; and the rest to be shipped to New York, in the State of New York, on or before the first day of September, A. D. 1871; but the said party of the first part may ship the iron as fast as he may wish; all duties and freights on the above described iron to be paid by the party of the first part.

And it is further agreed by the party of the first part, that he will ship, in addition to the above mentioned quantity of iron, one thousand tons of the same weight and quality as the above described iron, with the necessary chairs and spikes to lay the same, to New York, duties
2820 and freight paid, on or before the first day of September, A. D.
1871, the shipping of which iron Messrs. S. W. Hopkins & Co. are to guarantee.

In addition to the shiping of iron, the said party of the first part does hereby sell and deliver to the said party of the second part, by placing to the order of the party of the second part, with Messrs. S. W. Hopkins & Co., eight hundred bonds of the State of Florida, of the denomination of one thousand dollars each, numbers of said bonds to be designated by said party of the first part; but upon the express stipulation and conditions that the said bonds are to be left with Messrs. S. W. Hopkins & Co. for sale, at such prices as the said party of the second part may direct.

And it is further agreed by the party of the first part that he will pay to the party of the second part two hundred pounds sterling, the receipt whereof is hereby acknowledged.

And it is further agreed by the party of the first part to assume and discharge the obligations of the party of the second part to Henry Clews & Co., of about twenty thousand dollars, lawful money of the United States of America.

Now, when the foregoing undertakings and agreements of the party of the first part are fully accomplished and performed, it is to be taken as a full compliance with and final discharge of the parties of the first part to this contract, as well as all parties of the first part to the said contract executed at the city of Washington aforesaid, a copy of which is hereto attached; and this shall operate as a receipt and final discharge thereof from all obligations growing out of the same.

MILTON S. LITTLEFIELD.
MILTON S. LITTLEFIELD,
President J., P. & M. Railroad Company.

N. W. WOODFIN,
Chairman of the Board of Commissioners.

2821 SCHEDULE F.

Statement of advances made by S. W. Hopkins & Co., for account of the Jacksonville, Pensacola and Mobile Railroad Company.

Iron shipped to Florida by sundry vessels, per invoice...	$153,938 05
Premium of insurance on do..........................	1,156 13
Freight on do. paid..................................	1,876 14
Drafts paid and acceptances given, as follows:	
114. James G. Gibbes..................................	155,000 00
Jennie Hunter.....................................	300 00
A. Huline..	5,000 00
F. A. Dickray......................................	5,000 00
J. P. Sanderson....................................	67,193 33
J. L. Requa..	5,000 00
A. G. Cattell......................................	735 00
J. B. Clarke.......................................	75,000 00
Balance of judgment against Penn. & Ga. Road, with in-	

terest			30,000 00
J. St. Meech			12,000 00
R. R. Swepson			50,000 00
First National Bank, Knoxville			19,684 36
B. F. Bruton			10,000 00
John Rankin			9,225 17
J. R. Campbell			1,976 87
115. W. W. Hubbard & Co			500 00
2822 W. Cummings & Co			466 61
Drew & Davis			377 53
S. B. Stevens			300 00
Grocer's Bank judgment against road			5,790 75
Forwarded			610,519 95
Amount brought forward			$610,519 95
Drafts continued, viz:			
Mrs. E. Holland			300 00
John T. Dewesse			10,000 00
Balance due on Jacksonville property			2,590 04
Gov. Reed, on account			3,500 00
D. P. Holland, on account			4,630 00
M. S. Littlefield			1,178 50
For engraving draft-book and letter-heads			35 25
T. B. Coddington, on account E. Houston's claim on one million bonds		$57,895 33	
E. Houston, account do		122,000 00	
			179,895 33
M. D. Papy do			16,000 00
Travelling expenses to and from Florida, hotel fares, telegrams, ocean cables, and other expenses while there, by S. W. H. & T. B. Coddington, and advances to R. Steward			6,216 38
J. B. Clarke for express to Florida			100 00
G. B. Carre " " "			60 00
Rollin Steward, Washington			100 00
2823 Advertising July coupons		36 90	
Legal expenses defending suits by N. W. Woodfin and L. P. Bayne		17,850 00	
The following payments made in London, viz:			
M. S. Littlefield, while in England	£4,981 18 5		
D'ft from Florida	4,433 19 3		
Forwarded	£9,415 17 8	$863,012 34	
Amount brought forward		$863,012 34	
Payments in London continued:			
	£ *s.* *d.*		
	9,416 17 9		
Baring Bro's & Co. for A. Barnett's claim	19,349 14 1		
Brokerage on iron purchased by order of M. S. Littlefield	638 7 6		

Clews, Hebicht & Co. for G. W. Swepson	3,717 1 87		
Commissioners of W. D. of N. C. R. R. Co	10,000 0 0		
	£43,151 17 9	233,020 20	
			1,096 032 54

2824 **Cr.**

For 2,800 Florida State bonds as per agreement, at		£100	
Less commission	10		
Less deposited with trustees to meet 3 coupons	24		
		34	
is £66 each bond = £184,800 0 0			997,920 00
Amount now due S. W. Hopkins & Co for actual cash advances and acceptances			98,112 54
Forwarded			98,112 54

To amount now due S. W. Hopkins & Co		98,112 54
S. W. Hopkins & Co. are obligated for the following amounts against proceeds of bonds, viz:		
R. H. Gamble	15,000 00	
F. H. Flagg	4,000	
S. B. Coddington	25,000 00	
L. P. Bayne & Co	200,000 00	
J. H. Porter	10,000 00	
D. P. Holland	17,365 00	
American Bank Note Company, for engraving bonds	2,572 49	
W. D. of W. N. C. R. R. Co	350,000 00	
Governor Harrison Reed	223,750 00	
		847,687 49
		945,800 03

2825 S. W. H. & Co. have received notice of the following claims:		
Bayne & Rogers attached	105,000 00	
R. W. Swepson, draft	21,216 00	
		126,216 00
		1,072,016 03

Errors and omissions excepted.

2826 Supreme court, King's County.

SIDNEY W. HOPKINS, FRANK H. COLLINS, AND Robert J. Carpenter,
against
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, Aaron Barnett, Calvin Littlefield, and John B. Clark.

Sufficient grounds therefor appearing to me by the verified complaint herein, and the affidavits of Sidney W. Hopkins and L. L. Spring, I do hereby order and direct that the defendants above named show cause before me, at a special term of the supreme court, to be held before me in the court-house in the city of Brooklynn, on the 21st day of September, instant, at 10 o'clock in the forenoon, why they, and each of them, and their and each of their attorneys, counsel, and agents should not be enjoined from commencing or prosecuting any action against the plaintiffs, or either of them, to enforce any claim or pretended claim of the Jacksonville, Pensacola and Mobile Railroad Company against the plaintiffs.

2827 And in the mean time, and until the hearing on this order, and until the further order of the court herein, the defendants, and each of them, and their and each of their attorneys, counsel, and agents are ordered to refrain from commencing or prosecuting any action against the plaintiffs, or either of them, on behalf of the said Jacksonville, Pensacola and Mobile Railroad Company.

C. E. PRATT, *J. S. C.*

BROOKLYNN, *September* 18th, 1871.

2828, 2829 EXHIBIT S. W. H., B.—*J. A. S., commissioner.*

Know all men by these presents, that the Jacksonville, Pensacola and Mobile Railroad, a corporation organized under the laws of the State of Florida, one of the United States of America, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Messrs. S. W. Hopkins and Co., of the city of New York, and London, England, its financial agents and true and lawful attorneys, for said company, and in its name, place, and stead, to sell, dispose of, transfer, and deliver to the purchasers thereof all or any part of the bonds of the State of Florida to which said company is now, or may hereafter become, entitled under the laws of said State, and to purchase for said company all such materials, iron, and other supplies, for the purpose of building and equipment of the railroad of said company, as said
2830 company shall from time to time direct, giving and granting unto the said S. W. Hopkins & Co., the financial agents and attorneys of said company, full power and authority to do and perform every act and thing whatsoever requisite and necessary to be done and performed, as such financial agents, as fully, to all intents and purposes, as the said company, by its board of directors and officers, could or might do, with power of substitution and revocation, hereby ratifying and confirming all that the said S. W. Hopkins & Co., or their substitute, shall lawfully do or cause to be done as such financial agents of said company by virtue hereof.

In witness whereof, the said Jacksonville, Pensacola and Mobile Railroad Company has caused these presents to be signed by its president, and the corporate seal of said company to be affixed hereto, on the 4th day of May, in the year one thousand eight hundred and seventy.

(Signed) MILTON S. LITTLEFIELD,
President Jacksonville, Pensacola & Mobile Railroad Company.

In presence of—
(Signed) ROLLIN STEWART,
(Signed) I. N. GREENE.

2831 At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others are complainants, and the Western Division of the Western

North Carolina Railroad Company and others are defendants, this paper writing was produced by and shown to Sidney W. Hopkins, and by him deposed unto before

JOHN A. SHIELDS,
Commissioner.

SIDNEY W. HOPKINS.

In the eleventh line, first page, between the words "York" and "its," the words "and London, England," were added before signing. Also on the seventeenth line, second page, the word "Florida" was erased, and the word "Mobile" was written before the signing of this instrument.

(Signed) M. S. LITTLEFIELD,
Prest. Jack., Pen. and Mobile Railroad Co.

[SEAL OF THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY.]

In presence of—
(Signed) R. STEWARD,
(Signed) J. N. GREEN.

2832 EXHIBIT S. W. H., C.—*J. A. S., Com'r.*

To the honorable governor of the State of Florida :

SIR : The Jacksonville, Pensacola and Mobile Railroad Company, having made a contract with Messrs. S. W. Hopkins & Co., of the city of New York, dated on the 13th day of April, 1870, by which Messrs. S. W. Hopkins & Co. were appointed financial agents of said railroad company, for the purpose of selling the bonds of the State of Florida to which said company is entitled by law, and purchasing and providing iron and supplies for the purpose of completing said railroad, and Messrs. S. W. Hopkins & Co. being about to furnish to said company a large amount of money, iron, and supplies for said purpose, and being by the terms of said contract entitled to receive all the bonds of the State of Florida to which this company is or may become en-
2833 titled, as well for their security for the advances so to be made as for the selling and disposing of said bonds under said contract, and said bonds being yet unexecuted, you will please deliver to said S. W. Hopkins & Co., the financial agents of said railroad company, all the bonds of the State of Florida to which said railroad company is entitled by law, and all the bonds of said State to which it may from time to time become entitled by law, accepting their receipts therefor as the financial agents of this company.

In witness whereof, the said company has caused its president to affix his signature hereto, and the corporate seal of said company, on the 6th day of May, in the year 1870.

(Signed) M. S. LITTLEFIELD,
President Jacksonville, Pensacola & Mobile Railroad Company.

[SEAL OF JACKSONVILLE, P. & M. R. CO.]

At the execution of a commission for the examination of witnesses, wherein J. Fred. Schutte, Jan Prins, Adrianus Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced by and shown to Sidney W. Hopkins, and by him deposed unto at the time of his examination before

J. A. SHIELDS,
Commissioner.

SIDNEY W. HOPKINS.

2834 EXHIBIT S. W. H., D.—*J. A. S., Com'r.*

Copy.

UNITED STATES OF AMERICA,
State of Florida:

$1,000.] [$1,000

It is hereby certified that the State of Florida justly owes to or bearer, one thousand dollars, redeemable in gold coin of the United States, at the Florida State agency, in the city of New York, on the first day of January, 1900, with interest thereon at the rate of eight per centum per annum, payable half-yearly at the said Florida State agency, in gold, on the first days of July and January in each year, from the date of this bond and until the principal be paid, on surrendering the proper coupons hereto annexed.

Tallahassee, January 1st, 1870.
[GREAT SEAL.] HARRISON REED,
Governor.

Issued in accordance with an act of the legislature of Florida, approved Jan'y 28th, 1870.

S. B. CONOVER,
Treasurer.

(On the margin:) Sidney W. Hopkins.

(Indorsed on back:)
State of Florida. Thirty year eight p'r cent. bond. $1,000. Payable January 1st, 1900. Interest payable in gold at Florida State agency in the city of New York. This bond is one of a series issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company, to the extent of sixteen thousand dollars per mile upon completed road, the State of Florida holding the first mortgage bonds of said railroad company for a like amount, as further security for the holders thereof.

HARRISON REED,
Governor of Florida.

At the execution of a commission for the examination of witness, wherein J. Fred. Schutte, Jan Prins, Adrianus Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced and shown to Sidney W. Hopkins, and by him deposed unto at the time of his examination before

JOHN A. SHIELDS,
Commissioner.

2835 EXHIBIT S. W. H., E.—*J. A. S., U. S. com'r.*

Florida 8 per cent. State loan, $4,000,000.

Memorandum of agreement made this 14th day of November, 1870, between Messrs. S. W. Hopkins and Company, of 58 Old Broad st., London, agents for the State of Florida, of the one part, and John Collinson, of 9 Victoria Chambers, London, civil engineer, of the other part:

(1.) The said John Collinson agrees to pay to the said Messrs. Hopkins and Company, against delivery, on application in London, of each State of Florida eight per cent. one thousand dollars bond, payable on the first January, one thousand nine hundred, with coupons for the 1st January, 1871, up to maturity of the bond, inclusive, attached, the price of £138 1s. 10d. for each bond, and to pay in addition such interest as shall have accrued on such bond at the date of delivery, calculated by reference to the coupon attached.

(2.) The said John Collinson shall take from said firm on Mon-
2836 day, the 21st November, 1870, one hundred and fifty of such
bonds, and shall have, for ninety days from that date, the option of taking one thousand and fifty more of such bonds. In case the said John Collinson should take within that period five hundred and twenty-five, at least, of such bonds, he shall, for a period of ninety days from the expiration of the first period, have the option of taking all or any of the remaining 525.

(3.) Should the said John Collinson, by Wednesday, November 30, 1870, apply for 500 bonds at least in the aggregate, including the first 150, then he shall, for 81 days from that date, have the option to take the entire balance, viz, 3,500 bonds; and should he, at the expiration of the 81 days, have applied for 1,750 or more of the said balance, he is to have the option for 90 days additional of taking up any part of the whole of the remainder.

(4.) The said Messrs. Hopkins and Company agree to deliver to the said John Collinson, on application in London, within the periods
2837 aforesaid, against payments aforesaid, any portion or the whole
of the bonds for four million dollars as the case may be.

(5.) The said Messrs. Hopkins & Co. agree that until all of the said options shall have lapsed by non-compliance on the part of the said John Collinson, they will not sell or part with any of the said bonds for four million dollars, excepting through him the said John Collinson.

(6.) The said John Collinson agrees, on or before the 1st day of December, 1870, to invite, through well known and respectable firms, subscriptions for the whole of the said bonds.

(7.) The said Messrs. Hopkins & Co. hereby certify, as fiscal agents for the State of Florida, that the said bonds have been duly and legally issued by the said State, and that they have full authority to negotiate them in manner and upon the terms herein provided.

(Signed) S. W. HOPKINS & CO.
(Signed) JOHN COLLINSON.

(On the margin:) Sidney W. Hopkins.

At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jans Prins, Adrianus Prins, and others
2838 are complainants, and The Western Division of the Western
North Carolina Railroad Company and others are defendants, this paper writing was produced by and shown to Sidney W. Hopkins and by him deposed to at the time of his examination before.

JOHN A. SHIELDS,
Commissioner.

EXHIBIT S. W. H., E.—*J. A. S*, *com'r.*

Memorandum of agreement made the 28th day of December, 1870, between Messrs. S. W. Hopkins and Company, of 58 Old Broad st., London, of the one part, and John Collinson, of 9 Victoria Chambers, London, of the other part.

Since the agreement between the same parties, dated the 14th day of

November, 1870, was signed, a question has been raised by Mr. Collinson whether the issue of the bonds which are the subject of such agreement is not invalid as being unconstitutional. Messrs. S. W. Hopkins & Comp'y, although not admitting that there can be any doubt
2839 as to the validity of such bonds, have nevertheless agreed with Mr. Collinson as follows: It is therefore agreed between the parties that Mr. Collinson, in lieu of paying the Messrs. S. W. Hopkins & Comp'y against delivery on application of each of such bonds the sum of one hundred and thirty-eight pounds one shilling and ten pence, shall pay to them one hundred and twenty-four pounds five shillings and ten pence, and that the difference, videlicet, thirteen pounds sixteen shillings, shall, at the risk of Messrs. Hopkins & Comp'y, be paid to the joint account of Frank Howard Collins and John Collinson, with Messrs. Drake, Kleinwort and Cohen, bankers, of Frenchurch st., London. Messrs. Hopkins & Comp'y engage forthwith to take steps for obtaining, and to produce to Mr. Collinson, duly certified by the proper officers of the State, the decision of the supreme court of the State of Florida upon the question so as aforesaid raised by Mr. Collinson.

In the event of the decision of such supreme court being in
2840 favor of the validity of the bonds, the amount in the hands of Messrs. Drake, Kleinwort & Cohen shall, upon the production to Mr. Collinson, his executors or administrators, of the official copy of such decision, duly certified as aforesaid, belong and be paid to Messrs. Hopkins & Comp. In the event of the decision being adverse to the validity of the bonds, such amount as aforesaid shall belong and be paid to the said John Collinson, his executors or administrators, as representing the bondholders. In either case such interest as Messrs. Drake and Co. may allow shall be paid to Messrs. Hopkins & Co. In other respects the agreement of the 14th day of November, 1870, shall remain in full force and nothing herein contained shall prejudice the claims of Mr. Collinson or any bondholder against the State of Florida or the Jacksonville, Pensacola and Mobile Railroad Company.

As witness the hands of the parties hereto the day & year first above written.

S. N. HOPKINS.
JOHN COLLINSON.

Witness to the signature of S. W. Hopkins & John Collinson:
ADAM F. BLANDY.
(On the margin:) Sidney W. Hopkins.

2841 At the execution of a commission for the examination of witnesses, wherein J. Fred. Schutte, Jan Prins, Adrianus Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced by and shown to Sidney W. Hopkins, and by him deposed unto at the time of his examination before

JOHN A. SHIELDS,
Commissioner.

EXHIBIT S. W. H., G.—*J. A. S., com'r.*

Florida State loan for 3,283 *bonds.*

Memorandum of an agreement made the 23rd day of March, 1871, between Messrs. S. W. Hopkins & Co., of 58 Old Broad street, London, of the one part, and John Collinson, of 50 Old Broad street, London, of the other part:

(1.) The requisite cash to pay three coupons on all bonds taken,
2842 to be deducted from account due S. W. Hopkins & Co. by John
Collinson, in respect thereof and placed for the purpose of paying
coupons due 1st July, 1871. 1st January, 1872, and 1st July, 1872, with Messrs. Drake, Kleinwort & Cohen, to the order of John Collinson and Frank Howard Collins, their executors or assigns, as trustees. The said deductions are to be made and deposited as each bond is taken by the said John Collinson. This also is to apply to all bonds taken previously, any interest that may arise from said deposits to belong to S. W. Hopkins & Co.

(2.) It is also agreed that the said John Collinson and Frank Howard Collins, their executors or assigns, shall, fifteen days before the maturity of each of the three coupons, respectively, authorize Messrs. Drak, Kleinwort & Cohen to hand over to Messrs. S. W. Hopkins & Co., three days before the maturity thereof, a corresponding portion of the funds so deposited with Messrs. Drake, Kleinwort & Cohen for payment of such coupons.

(3.) The said S. W. Hopkins & Co. to give their personal guar-
2843 antee for the payment of all other coupons, if any fall due, on all
bonds already taken, or to be taken, by the said John Collinson,
until the railroad is completed to the western Florida State line, supposed to be a total mileage of four hundred and fifty miles, provided sixteen hundred and forty-one (1641) bonds are taken and paid for by the said John Collinson or the bondholders against the State of Florida, or the Jacksonville, Pensacola and Mobile Railroad Company.

(4.) The said S. W. Hopkins and Co. to notify, officially, the said John Collinson, every three months, the gross receipts and expenses of the said railroad.

(5.) The said S. W. Hopkins and Co. to furnish the said John Collinson monthly with the certificate of the government engineer or inspector showing the mileage of railroad opened and working.

(6.) Provided the said John Collinson shall, on or before the 1st of
August, 1871, have applied and paid for 1,642 bonds of the said issue,
then the said S. W. Hopkins and Co. shall furnish the said John
2844 Collinson, until two months after that date, with any or all of the
remaining 1,642 bonds of the said issue, subject to the following
conditions, viz: The purchase money, as heretofore agreed upon in respect of the last 1,642 bonds, shall be lodged in the hands of Messrs. Drake, Kleinwort & Cohen, to the joint order of the said Frank Howard Collins and John Collinson, their executors or assigns, subject to the following conditions, viz: Whenever each section of ten miles, in addition to the present two hundred and fifty miles, shall be completed and opened, against the certificate of the government engineer or inspector the said Frank Howard Collins and John Collinson shall pay over to the said S. W. Hopkins & Co. one-tenth of the proceeds of the above $1,642,000 (one million six hundred and forty two thousand dollars), less the three coupons referred to.

(7.) But if at the expiration of one year three hundred and fifty miles
in all of the said railroad shall not have been completed, then the said
John Collinson shall have the option either to return the balance
2845 of the bonds which may not be covered by the certificates in
respect of the proceeds of the said one million six hundred and
forty-two thousand dollars ($1,642,000) deposited with Messrs. Drake, Kleinwort and Cohen, and the said John Collinson shall then become possessed of the balance of the said principal and interest lodged as aforesaid, which shall be returned to the purchasers of the bonds in lieu thereof.

(8.) In case the said S. W. Hopkins & Co. shall receive other State or railroad bonds of the Jacksonville, Pensacola & Mobile Railroad Company, they undertake not to offer them for sale during the terms of the options set forth in the agreement and extensions hereof between the said S. W. Hopkins & Co. and John Collinson, excepting through the agency of the said John Collison, and provided the said John Collinson purchases all the three millions two hundred and eighty-three thousand dollars ($3,283,000). Any other bond in aid of the Jacksonville, Pensacola and Mobile Railroad Company shall be offered on reasonable terms to the said John Collinson before the said S. W. Hopkins & Co. offer to any other party. 2846

(Signed) S. W. HOPKINS & CO.
JOHN COLLINSON.

(On the margin:) Sidney W. Hopkins.

At the execution of a commission for the examination of witnesses wherein J. Fred Schutte, Jans Prins, Adrianus Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced by and shown to Sidney W. Hopkins, and by him deposed unto at the time of his examination before.

JOHN A. SHIELDS,
Commissioner.

EXHIBIT S. W. H., H.—*J. A. S., com'r.*

Florida State loan.

It is hereby agreed this 26th day of May, 1871, between Messrs. S. W. Hopkins & Co., of 58 Old Broad street, London, and John Collinson, of 50 Old Broad street, London, that clauses six and seven of the agreement made between them on the 23d day of March, 1871, for Florida State loan for 3,283 bonds, be altered and amended so as to read as follows: 2847

CLAUSE SIX. Provided the said John Collinson shall on or before the 1st August, 1871, have applied and paid for 1,642 bonds of the said issue, then the said S. W. Hopkins & Co. shall furnish the said John Collinson, until two months after that date, with any or all of the remaining 1,642 bonds of the said issue, subject to the following conditions, viz: The purchase money as heretofore agreed upon in respect of the last 1,200 bonds should be lodged in the hands of Messrs. Drake, Kleinwort & Cohen, to the joint order of the said Frank Howard Collins and John Collinson, their executors or assigns, subject to the following conditions, viz: Whenever each section of ten miles, in addition to the present two hundred and fifty miles, shall be completed and opened, against the certificate of the government engineer or inspector, the said Frank Howard Collins and John Collinson shall pay over to the said S. W. Hopkins & Co. one-tenth of the proceeds of the above $1,200,000 (one million two hundred thousand dollars), less the three coupons referred to.

CLAUSE SEVEN. But if at the expiration of one year 350 miles in all of the said railroad shall not have been completed, then the said J. Collinson shall have the option either to return the balance of the bonds which may not be covered by certificates in respect of the proceeds of the said one million two hundred thousand dollars ($1,200,000) deposited with Messrs. Drake, Kleinwort & Cohen, and the 2848 said John Collinson shall then become possessed of the balance of said principal and interest lodged as aforesaid, which shall be returned to the purchasers of the bonds in lieu thereof.

In witness whereof the said parties hereto have hereunto set their hands the day and year first above written.

S. W. HOPKINS & CO.
(Signed) P. p. JOHN COLLINSON.
D. J. BRUCE GARDYNE.

(On the margin :) Sidney W. Hopkins.

At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced by shown to Sidney W. Hopkins, and by him deposed unto at the time of his examination before.

JOHN A. SHIELDS,
Commissioner.

2849 EXHIBIT S. W. H., J.—*J. A. S., com'r.*

Florida State loan for 3,000 *bonds.*

Memorandum of an agreement, entered into this 26th day of May, 1871, between Messrs. S. W. Hopkins & Co., of 58 Old Broad street, London, parties of the first part, and John Collinson, of 50 Old Broad street, London, party of the second part, witnesseth :

That whereas, by a letter dated the 6th day of May, 1870, signed by M. S. Littlefield, president of the Jacksonville, Pensacola and Mobile Railroad Company, the governor of the State of Florida has been instructed to deliver to Messrs. S. W. Hopkins & Co. three million dollars of the bonds of the said company when they shall become due, in respect of completed portions of the said railroad, in addition to the four million dollars already received; and whereas, by a document signed by Harrison Reed, governor of the State of Florida, dated the 6th day of May, 1870, the said governor has consented and undertaken to deliver to Messrs. S. W. Hopkins & Co. the said additional bonds as they shall become due, it is now mutually agreed between the parties to these presents, as follows:

2850 (1.) As the parties of the first part received the said three million dollars of bonds, and subject to and dependent on such receipt, they shall sell and deliver the same, or any portion of same, to the party of the second part, during the periods of six months from the date of their being in a position, in accordance with the constitution of the State and the act of the legislature, to deliver the same, or any portion of same, provided that the party of the second part shall, on or before the 1st day of October, 1871, have taken and paid for four thousand bonds in all (previously contracted for between the parties hereto) of the State of Florida, in aid of the said railroad.

(2.) The party of the second part shall pay to the parties of the first part £143, 0*s.* 0*d.* and accrued interest (less the amount which as hereafter provided shall be deducted on account of coupons) per 1,000 dollar bond for every bond of the said three million dollars so taken by him.

2851 (3.) There shall be deducted from the amount payable to the parties of the first part, under the preceding clause of this agreement, sufficient cash to pay three coupons on all bonds taken, until 350 miles in all of the Jacksonville, Pensacola & Mobile Railroad shall have been completed; and from and after such completion, the requisite cost to pay two coupons, until 400 miles of the said railroad shall have been completed; as soon as 400 miles shall have been completed, then the requisite cost to pay one coupon; and the moneys so deducted shall be deposited for the purpose of paying coupons on the said bonds, with Messrs. Drake, Kleinwort & Cohen, to the order of John Collinson and Frank Howard Collins, their executors, administrators, or assigns, as trustees. Such deductions shall be made and deposited as each bond is taken by the party of the second part. Any interest which may arise from such deposits shall belong to the parties of the first part.

2852 (4.) Fifteen days before the maturity of each of the coupons deposited under the preceding clause of this agreement, the said party of the second part and the said Frank Howard Collins, their executors, administrators, or assigns, shall authorize Messrs. Drak, Kleinwort & Cohen to hand over to the parties of the first part a sufficient portion for the payment thereof of the funds so deposited.

(5.) Nothing herein contained shall prejudice the claims of the parties hereto, respectively, under their agreement of the 23rd day of March, 1871.

In witness whereof the said parties hereto have hereunto set their hands the day and year first above written.

(Signed)
S. W. HOPKINS & CO.
P. P. JOHN COLLINSON.
D. G. BRUCE GARDYNE.

(On the margin:) Sidney W. Hopkins.

At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced by and shown to Sidney W. Hopkins, and by him deposed unto at the time of his examination before

JOHN A. SHIELDS,
Commissioner.

2853 EXHIBIT S. W. H., K.—J. A. S., *com'r.*

This agreement, made the fourteenth day of June, in the year one thousand eight hundred and seventy-one, between John Collinson, of 50 Old Broad street, London, in England, party of the first part, and S. W. Hopkins & Co., of 71 Broadway, in the city of New York, of the second part, witnesseth:

Whereas the parties of the second part, heretofore and during the year one thousand eight hundred and seventy, and in the beginning of the year one thousand eight hundred and seventy-one, acting fot and in behalf of the Jacksonville, Pensacola and Mobile Railroad Company, a corporation chartered under the laws of Florida, and as the fiscal agents of the said corporation, made certain contracts and agreements in writing with the said party of the first part in relation to the sale and negotiation of certain bonds of the said corporation, amounting in the aggregate to the principal sum of seven millions of dollars, as by reference to the said contracts will more fully appear;

2854 And whereas at the time of the negotiation of the said bonds it was represented and alleged that two hundred and fifty miles of said railway of said corporation had been completely built and finished, and were then in actual running condition and operation;

And whereas it appears to the said party of the first part that the said railroad should have been built to the Chattahoochie River, to form a portion of the said two hundred and fifty miles; and whereas, upon such representation the said party of the first part has already purchased a portion of said bonds and made and entered into the aforesaid contracts; and whereas it now appears that the said road from near Quincy to the Chattahoochie River was not and is not complete:

2855 Now, therefore, this agreement witnesseth that the said parties of the second part, in consideration of the premises and of the sum of one dollar to him in hand paid by the party of the first part, have agreed and do hereby covenant and agree with the party of the first part, that they will, from and out of the proceeds of such of the said bonds as have already been so purchased and negotiated to and by him, as aforesaid, fully complete and put in running and working order that portion of the said railway from near Quincy to the Chattahoochie River aforesaid, with proper and usual sidings and turn-outs for the accommodation of freight and business of all kinds, on or before the first day of August next, and that this agreement shall be added to and form a part of the aforesaid contracts so made with the party of the first part for the sale and negotiation of the said bonds.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above mentioned.

JOHN COLLINSON. [L. S.]
S. W. HOPKINS & CO. [L. S.]

Sealed and delivered in the presence of—
AARON BARNETT.
W. H. GLEASON.

(On the margin:) Sidney W. Hopkins.

At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced by and shown to Sidney W. Hopkins and by him deposed unto at the time of his examination before

JOHN A. SHIELDS,
Commissioner.

2856 EXHIBIT S. W. H., L.—J. A. S., *com'r.*

58 OLD BROAD STREET, LONDON, E. C.,
February 17, 1871.

JOHN COLLINSON, Esq.,
50 *Old Broad street, E. C.:*

DEAR SIR: We have this day received cable advices from our New York house, stating that the supreme court of the State of Florida has declared the four million 8 per cent. gold bonds issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company constitutional.

The decision is unanimous. We also give you herewith copies of cable messages received from Florida State officials, with reference to same. The originals are subjected to your inspection.

We are, dear sir, yours faithfully,

S. W. HOPKINS & CO.

(On the margin:) Sidney W. Hopkins.

Copy of cable message from Tallahassee.

From Tallahassee, February 16, to Hopkins, London:

Unanimous opinion supreme court this day declared is that railroads are public works within terms State constitution, and legislature may authorize issuing State bonds for purpose perfecting them.

(Signed) CHAS. H. FOSTER,
Clerk Supreme Court.
JAS. B. C. DREW,
Attorney-Gen. Florida.

2857 Copy cable message from Tallahassee.

From Harrison Reed, governor State of Florida, Tallahassee, Feb'ry 16, to Hopkins, London.

Supreme Court this day unanimously decided railroads are public works, and that the State bonds issued in aid thereof are, therefore, constitutional.

At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others, are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced and shown to Sidney W. Hopkins, and by him deposed unto at the time of his examination before—

JOHN A. SHIELDS,
Commissioner.

2858 EXHIBIT S. W. H. M.—*J. A. S., Com'r.*

To all whom these presents may concern:

Know ye that S. W. Hopkins & Co., 71 Broadway, New York, and 58 Old Broad street, London, England, are hereby constituted and appointed fiscal agents of the State of Florida for the payment of the interest on the bonds of said State issued in accordance with the act of the legislature, entitled "An act to alter and amend the act entitled 'an act to perfect the public works of the State,'" approved January 28, 1870.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this sixth day of May, A. D. 1870.

{ GREAT SEAL OF THE STATE OF FLORIDA—IN GOD WE TRUST. } (Signed) HARRISON REED,
Governor.

By the governor's attest:
(Signed) JONATHAN S. GIBBS,
Secretary of State.
(Signed) Per GEO. W. DRIGGS,
Ass't Secretary of State.

(On the margin:) Sidney W. Hopkins.

At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper-writing was produced by and shown to Sidney W. Hopkins, and by him deposed unto at the time of his examination before—

JOHN A. SHIELDS,
Commissioner.

2859 EXHIBIT S. W. H. N.—*J. A. S., Com.*

Date of payments.		Number of bonds purchased.	Amount paid to S. W. Hopkins & Co.			Amount paid to Drake, Kleinwert & Cohen for interest account.			Total amount paid.		
			£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
1870.											
Nov.	19	150	21.666	17	6	....			*21,666	17	6
Dec.	29	350	41,400	9	1	....			41,400	9	1
1871.											
Febr.	20	....	6,900			....			6,900		
	24	20	2,811	5	0	....			2,811	5	0
	27	197	10,000	0	0	....			10,000	0	0
April	1	155	40,000	0	0	....			40,000	0	0
	17	24	"	"	"	3,428	5	0	3,428	5	0
	22	10	"	"	"	1,430	13	7	1,430	13	7
	24	30	"	"	"	4,294	18	0	4,294	18	0
	25	40	"	"	"	5,728	6	6	5,728	6	6
	26 & 27	22	277	15	"	2,797	17	5	3,075	13	4
April	26	23	"	"	"	3,294	16	5	3,294	16	5
	28	35	68	4	5	4,948	15	7	5,017	0	0
	28	15	1,781	10	9	368	12	0	2,150	2	9
	29	20	2,376	5	11	491	9	2	2,867	15	1
May	1	10	1,189	5	1	245	9	2	1,434	14	3
	2	70	8,327	18	8	1,718	4	2	10,046	2	10
	3	40	4,760	12	3	981	16	8	5,742	8	11
	4	20	2,381	4	1	490	18	4	2,872	2	5
	6	60	7.146	6	0	1,472	15	0	8,619	1	0
	6	50	5,955	5	0	1,227	5	10	7,182	10	10
	6	30	3,574	9	11	736	7	6	4,310	17	5
May	8	70	8,346	15	3	1,718	4	2	10,064	19	5
	9	70	8,349	18	0	1,718	4	2	10,068	2	2
	10	100	11,932	18	4	2,454	11	8	14,387	10	0
	11	100	11,941	14	0	2,448	19	2	14,390	13	2
	12	40	4,778	9	4	919	11	8	5,758	1	0
	13	120	14,340	15	6	2,938	15	0	17.279	10	6
	15	65	7,773	14	9	1,591	16	5	9,365	11	2
	15	65	7,773	14	9	1,591	16	5	9,365	11	2
	17	50	5,984	5	4	1,224	9	7	728	14	11
	18	80	9,578	8	2	1,959	3	4	11,537	11	6
	20	120	14,378	7	0	2,938	15	0	17,317	2	0
	23	20	2,399	9	5	489	5	0	2,888	14	5
	25	30	3,601	5	11	734	13	9	4,335	19	8
	27	40	4,802	14	7	980	13	4	5,783	7	11
	27	30	3,604	11	5	733	17	6	4,338	8	11
June	1	20	2,407	10	4	489	5	0	2,896	15	4
	3	30	3.613	19	1	733	17	6	4,347	16	7
	5	20	2,411	1	9	489	5	0	2,900	6	9
	7	10	1,206	8	9	244	12	6	1,451	1	3
	8	10	1,206	13	10	244	17	11	1,451	11	9
	9 & 10	40	4,827	16	2	980	13	4	5,808	9	6
June	19	100	12,116	3	0	2,448	19	2	14,565	2	2
	20	50	6,059	7	9	1,225	16	8	7,285	4	5
	23	15	1.820	7	7	366	18	9	2,187	6	4
July	3 & 5	12	1,708	8	9	195	5	0	1,903	13	9
July	5	8	729	8	1	130	3	4	859	11	5
	6	65	7,932	16	10	1,057	12	1	8,990	8	11
	7	9	1,098	9	3	146	15	6	1,245	4	9
	10	10	1,402	10	4	163	1	8	1,565	12	0
	14	5	430	17	9	81	12	8	512	10	5
	17	6	628	11	10	97	19	3	832	16	10
	19		106	5	9						
	21	19	2,329	13	6	310	4	3	2,639	17	9
		2,800	332,241	1	8	67,566	6	1	399,807	7	9

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*£6,900 additional, being £13 16s. per bond, was placed in trust with Drake, Kleinwert & Cohen, in accordance with agreement of 28th December, 1870, and paid to S. W. Hopkins & Co. February 20, 1871.

(On the margin:) Sidney W. Hopkins.

At the execution of a commission for the examination of witnesses, wherein J. Fred. Schutte, Jan Prins, Adrianus Prins, and others are complainants, and The Western Division of the Western North Carolina Railroad Company and others are defendants, this paper-writing was produced by and shown to Sidney W. Hopkins, and by him deposed unto at the time of his examination before—

JOHN A. SHIELDS,
Commissioner.

2860 EXHIBIT S. W. H. O.—*J. A. S., com'r.*

An agreement made this seventeenth day of June, 1872, between the Jacksonville, Pensacola and Mobile Railroad Company by Converse L. Chase, their attorney, thereto duly authorized by a power of attorney, of which a copy is hereto annexed, of the first part, L. P. Bayne & Co. and L. P. Bayne, of the second part, Sidney W. Hopkins, Frank H. Collins, and Robert J. Carpenter, lately composing the firm of S. W. Hopkins & Co., of the third part, Francis H. Flagg and Converse L. Chase, trustees under deed of trust executed by the parties of the first part to them, bearing date the second day of October, 1871, (D. G. Ambler, named in said trust deed having declined to act as trustee,) of the fourth part, and Henry J. Rogers of the fifth.

Whereas divers disagreements and differences have for a long time existed between the said railroad company and the said S. W. Hopkins & Co., in reference to the accounts existing between them, each party claiming a large balance from the other, and disputing the items and claims made or set up by the other, and said S. W. Hopkins & Co., among other things, claiming a lien for a large amount in the 1,200 Florida 2861 bonds hereinafter mentioned; and divers litigations are pending in New York, Brooklyn, and in England, in respect to the said disagreements and differences, and the said railroad company and the said S. W. Hopkins & Co. have come to a final settlement and adjustment in the premises, as is hereinafter contained; now this agreement witnesseth that the said parties of the third part (S. W. Hopkins & Co.,) in consideration of the premises, and of one dollar to them paid by the said railroad company, the receipt whereof is hereby acknowledged, hereby relinquish and release to the said railroad company all and singular the liens, claims, and demands of the said parties of the third part, (S. W. Hopkins & Co.,) on or upon said 1,200 bonds of the State of Florida, being eight per cent. bonds for $1,000 each, and now being the subject of controversy between John Collinson and the said railroad company and others, subject, however, to the injunctions in the suits of said Collinson, and in the suits of the Western Division of the Western North Carolina Railroad Company, except as to 190 of said bonds, and also subject to such trusts, if any, as may have been 2862 heretofore imposed on 1,000 of the said bonds by the said Jacksonville, Pensacola and Mobile Railroad Company, or by the resolutions of the stockholders and directors of the Florida Central Railroad Company of Florida, and also release and forever discharge the said railroad company from all indebtedness, claims, demands, causes of action, and controversies which they have against the said railroad company, and also in consideration aforesaid, have simultaneously herewith executed an assignment to Milton S. Littlefield, or order, of certain rights, stock, mortgage, bonds, &c., in the hands of M. D. Papy, as per his written acknowledgment, of which and of said assignment endorsed thereon a copy is hereto annexed, marked A, and have delivered said acknowledgment and assignment to the said Henry J. Rogers, and have also, simultaneously herewith, assigned and set over to said Littlefield the certificates of thirty shares of stock, mentioned in Schedule B, hereto annexed, which assignment and transfer and certificates 2863 have been delivered to the said Rogers.

And the said parties of the first part. the said railroad company, in consideration of the premises, and of the foregoing, and of one dollar to them paid by the said parties of the third part, the receipt whereof is hereby acknowledged, hereby release and forever discharge the said parties of the third part from all indebtedness, claims, demands, controversies and causes of action which they have against them, the parties of the third part, or either of them.

And the said parties of the fourth part, the said trustees, in consideration of the premises, and of one dollar to them paid by the said parties of the third part, the receipt whereof is hereby acknowledged, hereby release and forever discharge them, the parties of the third part, from all indebtedness, claims, demands, controversies and causes of action, which they, said trustees, have against them, the parties of the third part, or against either of them.

2864 And whereas divers disagreements and differences have, for a long time, existed between the parties of the first part and the said L. P. Bayne, in reference to his accounts against the said railroad company, he claiming that the said railroad company are indebted to him in the sum of $200,000 and interest, and also that he, the said L. P. Bayne, has a lien on the said 1,200 bonds to the full extent of the amount of his said claim, namely, $200,000 and interest, the said company disputing a portion of the said claim, and divers litigations are pending in respect to the same, and the parties of the first part and the said L. P. Bayne have come to a final settlement and adjustment, whereby his said claim is hereby adjusted and settled at the sum of $150,000, and interest from this date, and his said lien to that amount admitted.

Now this agreement further witnesseth that the parties of the first part, the said railroad company, in consideration of the premises 2865 and of the sum of one dollar to them paid by the parties of the second part, the receipt whereof is hereby acknowledged, hereby admit and adjust the said claim of the said L. P. Bayne at said sum of $150,000, and interest, and agree that the said L. P. Bayne has and shall have a lien upon said 1,200 bonds for the amount of his said claim of $150,000, and interest from this date.

And the parties of the second part, in consideration of the premises, and for the sum of one dollar to them paid by the parties of the third part, release and discharge them, said parties of the third part, and each of them, of and from all claims, demands, and causes of action which they, the parties of the second part, or either of them, have against the parties of the third part, or either of them; provided, however, that one hundred and ninety of the said Florida bonds, or in case there shall not be so many subject to the order hereinafter mentioned, then not less than one hundred and eighty-eight of said bonds shall be delivered to Converse L. Chase, or his order, within two months from the date hereof, in pursuance of an order for that purpose 2866 now delivered by L. Louis Spring to said Chase or otherwise; but in case any arrangement shall be made with the concurrence of the said Bayne within two months from this date with the said John Collinson by the said Jacksonville, Pensacola and Mobile Railroad Company, or by said trustees, or on behalf of either of them, or by any

other person, whereby the said twelve hundred bonds or any large portion thereof not less than five hundred, shall be delivered to the said John Collinson or sold under some arrangement hereafter made with the said Collinson, with the concurrence of the said Bayne, then the above condition of said release shall be deemed complied with, and the said release shall thereupon become operative; but in case no such arrangement shall be made, or in case said bonds shall not be delivered under the said order within the said time limited, then he is to return said order to the said Spring, and the release of L. P. Bayne and Co.
and L. P. Bayne will not take effect or become operative; and
2867 the said parties of the first part, however, expressly agreeing with
the said parties of the second part, respectively, that the above release to S. W. Hopkins & Co., when it shall take effect, shall, in no way, affect or impair the rights, claims, and causes of action of the parties of the second part, respectively, against the said railroad company, but that the same shall remain unimpaired, with the like effect as if such release had not been given.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY. [L. S.]
By CONVERSE L. CHASE, *Attorney.*
F. H. FLAGG, [L. S.]
(By C. L. CHASE),
CONVERSE L. CHASE, [L. S.]
Trustees.

L. P. BAYNE & CO. [L. S.]
L. P. BAYNE. [L. S.]
S. W. HOPKINS. [L. S.]
FRANK H. COLLINS, [L. S]
By CHARLES W. COLLINS,
Att'y.
R. J. CARPENTER. [L. S.]
HENRY I. ROGERS. [L. S.]

Sealed and delivered in presence of—the words "of which a copy is," interlined on first page; thirty-seven words interlined on third page, and "declared" stricken out and "delivered" interlined, and the words "and certificates" interlined on fourth page before execution; also seven words on seventh page and twelve words on eight page interlined before execution; also the words "Converse L. Chase" and "Chase" interlined, and the words "the said Bayne" and "Bayne" stricken out on seventh page; and the said words "to the said L. P. Bayne" stricken out and the words "under the said order" interlined on eighth page before execution—

JOHN J. LINES.

(On the margin:) Sidney W. Hopkins.

2868 *Schedule A, referred to in the foregoing agreement.*

I acknowledge to have deposited with me, by virtue of an agreement between Edward Houston and S. W. Hopkins & Co., certificates of stock in the Florida Central Railroad Company, in the aggregate calling for four thousand three hundred and seventy shares, and which certificates are numbered 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 57, 58, 59,

79, and 80; also one hundred and three thousand dollars of the first mortgage bonds of the Pensacola and Georgia Railroad Company and of the Tallahassee Railroad Company, which, by said agreement, are not to be delivered by me, unless directed to do so by M. S. Littlefield and S. W. Hopkins jointly, or unless directed to be delivered to M. S. Littlefield by said S. W. Hopkins, or directed to be delivered to S. W. Hopkins by M. S. Littlefield, and unless, in addition thereto, the suit instituted in New York against said Edward Houston and others, by the Western Division of the Western North Carolina Railroad Company and the suits brought against said Houston by T. L.
2869 Clingman, in Pennsylvania and New Jersey, and by Rogers and
Bayne and L. P. Bayne, in New York, shall have been dismissed.

I also acknowledge to have deposited with me, by virtue of the agreement aforesaid, for drafts of Geo. W. Swepson on M. S. Littlefield, accepted by said Littlefield, amounting, in the aggregate, to the sum of one hundred and nine thousand one and forty dollars, exclusive of interest thereon, and which are not to be delivered to said M. S. Littlefield unless and until directed to do so by said S. W. Hopkins.

May 19th, 1871.

(Sig'd) M. D. PAPY.

2870 We, Sidney W. Hopkins, Frank H. Collins and Robert J. Carpenter, co-partners composing the late firm of S. W. Hopkins & Co., mentioned in the foregoing acknowledgment or agreement, in consideration of one dollar, and other considerations, to us paid by Milton S. Littlefield, therein mentioned, the receipt whereof is hereby acknowledged, hereby assign, release, and set over to the said Milton S. Littlefield all and singular the rights, title and interest which we acquired under and by virtue of the said acknowledgment or agreement, and under and in virtue of the agreement therein mentioned, between Edward Houston and S. W. Hopkins & Co., of, in, and to the four thousand three hundred and seventy shares of the stock of the Florida Central Railroad Company, and of, in, and to the certificates thereof, and also of, in, and to the one hundred and three thousand dollars of the first mortgage bonds also mentioned in the said acknowledgment
and agreements, and we do hereby direct M. D. Papy to deliver
2871 all of the said certificates of stock and all of the said mortgage
bonds to the said Littlefield, or order, upon the discontinuance and dismissal of the suits mentioned in the said acknowledgment; and the said Sidney W. Hopkins hereby, in consideration aforesaid, directs the *the* said Papy to deliver to the said Littlefield, or order, the four drafts amounting in the aggregate to one hundred and nine thousand one hundred and forty dollars, mentioned in the said acknowledgement.

In witness whereof we have hereunto set our hands and seals this fourteenth day of June, 1872.

Sealed and delivered in the presence of—

2872 SCHEDULE B. Refer'ed to in the foregoing agreement.

We, S. W. Hopkins & Co., in consideration of the sum of one dollar, to us paid by M. S. Littlefield, the receipt whereof is hereby acknowledged, hereby assign to him the three annexed certificates, numbered 18, 19 and 20, for ten shares each of the capital stock of the Jacksonville, Pensacola and Mobile Railroad Company, one in the name of S. W. Hopkins, with power of attorney thereon in blank, executed by him, another in the name of Charles H. Collins, with power of attorney thereon in blank, executed by the said Collins, and the other in the name of Edwin A. Hopkins, with power of attorney thereon in blank, executed by the said Edwin A. Hopkins.

This assignment being made as part and parcel of an agreement between the said railroad company of the first part, L. P. Bayne & Co. and L. P. Bayne of the second part, Sidney W. Hopkins, Frank H. Collins, and Robert J. Carpenter, of the third part, Francis H. Flagg 2873 and Converse L. Chase, trustees, of the fourth part, and Henry J. Rogers, of the fifth part, to which agreement reference is hereby made bearing even date herewith.

Dated New York, June 17th, 1872.

S. W. HOPKINS & CO.
S. W. HOPKINS.
FRANK H. COLLINS,
By CHAS. W. COLLINS, *Att'y.*
R. J. CARPENTER.

2874 UNITED STATES OF AMERICA,
State of Florida, Duval County:

Be it remembered that at a meeting of the directors of the Jacksonville, Pensacola and Mobile Railroad Company, held in pursuance to a call made therefor, at their office in the city of Jacksonville, in the State of Florida, on the twelfth day of April, A. D. one thousand eight hundred and seventy-two, there was adopted the following resolutions, which had been previously adopted by a majority vote of all of the capital stock of the stockholders of the said The Jacksonville, Pensacola and Mobile Railroad Company, a resolution of said stockholders in the words and figures following, *i. e.:*

"Resolved by the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company, That the president of the said company be, and he is hereby, authorized and directed to cause to be made, executed, and delivered to 2875 Converse L. Chase, esquire, a power of attorney, constituting him, the said Converse L. Chase, the attorney-in-fact of the said Jacksonville, Pensacola and Mobile Railroad Company, with full power and authority to proceed to the city of New York and the State of New York, or wherever else may be necessary for the purpose, and for and on account of the said Jacksonville, Pensacola and Mobile Railroad Company to consider any proposition for settlement & adjustment of any and all disagreements and differences between the said The Jacksonville, Pensacola and Mobile Railroad Company and all parties, persons, and corporations, or associations, and particularly with the firm of S. W. Hopkins & Co., of New York and London, and in his discretion, for and in the name of the said The Jacksonville, Pensacola and Mobile Railroad Company, to reject or accept any and every, or either, such settlements or adjustments, with powers to alter or modify the same for and on account of the said company, which said power of attorney shall be duly attested under the 2876 corporate seal of the company and certified by the secretary thereof.

"Resolved, further, That we do hereby ratify and approve all that our said attorney shall lawfully do by virtue hereof."

Now, therefore, know all men by these presents, that under and by virtue of the foregoing resolutions of the stockholders thereof, the said Jacksonville, Pensacola and Mobile Railroad Company does hereby constitute and appoint the said Converse L. Chase attorney of the said

Jacksonville, Pensacola and Mobile Railroad Company, for it and its name, place, and stead, to settle and adjust all and every the difference and disagreements of the said company aforesaid with all and every person, parties, corporations, or associations, and particularly with S. W. Hopkins and Co., of New York and London, and generally to do and exercise all and singular the power and authority contemplated in the foregoing resolutions; hereby ratifying and allowing all that our said attorney shall lawfully do by virtue hereof.

2877 In witness whereof the said the president of the said the Jacksonville, Pensacola and Mobile Railroad Company, and the said F. H. Flagg, the secretary thereof, have hereto attached their names and affixed the corporate seal of the said company.

Done at Jacksonville, Fl'a, this the 13th day of April, A. D. 1872.

[CORPORATE SEAL.] M. S. LITTLEFIELD,
President J., P. and Mobile R. R. Co.

F. H. FLAGG, *Secretary.*

Attest:

AUGUSTUS SHERMAN.

(50c. U. S. int. rev. stamp cancelled.)

STATE OF FLORIDA,
Duvall County, ss:

I, Augustus Sherman, a commissioner for the State of New York, residing in the city of Jacksonville, Duvall County, and State of Florida, do certify that on the 13th day of April, in the year one thousand eight hundred and seventy-two, personally appeared before me in the city of Jacksonville, Duvall County, aforesaid, Milton S. Littlefield, who is personally known to me to be the individual described in and who 2878 has executed the foregoing instrument as the president of the Jacksonville, Pensacola and Mobile Railroad Company, and he then and there acknowledged to me that he executed the said instrument as such president of said company; and I do further certify that I know said Milton S. Littlefield to be president of said railroad company.

In witness whereof I have hereunto set my hand and official seal, at the city of Jacksonville, in the county and State aforesaid, this 13th day of April, one thousand eight hundred and seventy-two.

[SEAL OF COMMISSIONER.] AUGUSTUS SHERMAN,
A Commissioner for the State of New York.

LONDON, *July 1st*, 1872.

Received of Mr. L. H. Pierce, 188 (say one hundred and eighty-eight), 8 p. c. gold bonds, of $1,000 each, of the State of Florida, issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company, numbered as at foot; said bonds delivered under order from Mr. L. Louis Spring, being dated New York, June 17, 1872.

C. L. CHASE.

2879 Nos. bonds: 527, 529, 532–4, 547, 549, 552–6, 559–60, 567, 570–2, 577–9, 587–9, 591, 596, 600, 611, 614, 616, 618, 620–1, 624, 627–8, 631, 636–7, 641, 643, 650, 660, 676–7, 685, 689–90, 692, 716, 719, 748, 785, 788, 796, 799, 802, 899, 901–11, 913–16,

955–905	67	bonds.
1738–1775	38	"
1638–1719	32	"
1437–1486	50	"
2766	1	"
Total	188	bonds.

STATE OF NEW YORK,
City & County of New York, ss:

I, William J. Underwood, jr., a notary public duly commissioned and sworn, and residing in the city, county, and State of New York, and duly authorized to take acknowledgements and make certificates within the city, county, and State of New York, do hereby certify that I have compared the foregoing matter, consisting of twelve pages, with the original thereof in the possession of Sidney W. Hopkins; that the same is in all respects a true and accurate copy of said original papers.

2880 In witness whereof I have hereunto set my hand and official seal this 28th day of April, one thousand eight hundred and seventy-nine, at the city of New York, county and State aforesaid.

[NOTARIAL SEAL.] W. S. UNDERWOOD (5),
Notary Public City and County of New York.

At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced by and shown to Sidney W. Hopkins, and by him deposed unto at the time of his examination before—

JOHN A. SHIELDS,
Commissioner.

2881 EXHIBIT S. W. H., P.

Complaint, answer, reply, affidavits to hold to bail and on motion of injunction, supplemental complaint and supplemental answer, &c.

Supreme Court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiff,
against
SIDNEY W. HOPKINS AND OTHERS, DEFENDANTS.

Algernon S. Sullivan, plaintiff's att'y; James C. Carter, of counsel; Sewell and Pierce, defendants' att'y; E. W. Stoughton, of counsel.

At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others are complainants, and The Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced by and shown to Sidney W. Hopkins, and by him deposed unto at the time of his examination before—

JOHN A. SHIELDS,
Commissioner.

(On the margin:) Sidney W. Hopkins.

2882 *Summons for relief.*

Supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiff, *against* SIDNEY W. HOPKINS, FRANK A. COLLINS, and Robert J. Carpenter, defendants.

Place of trial, city and county of New York.

To the defendants above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber at his office, number 32 Chambers street, in the city of New York (district attorney's office), within twenty days after the service of this summons on you, exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated June 19th, 1871.

ALGERNON S. SULLIVAN,
Plaintiff's Attorney, 32 Chambers st.

2883 Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company *against* SIDNEY W. HOPKINS, FRANK A. COLLINS, & Robert J. Carpenter.

The complaint of the Western Division of the Western North Carolina Railroad Company, plaintiff in the above entitled action, against Sidney W. Hopkins, Frank A. Collins, & Robert J. Carpenter, the defendants therein.

The said plaintiff, by Algernon S. Sullivan, their attorney, respectfully show to this court that they are a body corporate and politic, created and existing under and by virtue of an act of the legislature of the State of North Carolina, passed on the fifteenth day of February, in the year 1855, entitled "An act to incorporate the Western 2884 North Carolina Railroad Company," and another act of the legislature of the same State, passed the nineteenth day of August, in the year 1868, entitled "An act to amend the charter of the Western North Carolina Railroad Company;" and that the defendants, at and during the times of the transactions hereinafter mentioned, were and from thence hitherto have been and still are, copartners together, doing business in the cities of New York, and London, England, under the firm name & style of S. W. Hopkins and Company.

That on or about the tenth day of November, in the year 1870, at the said city of London, by virtue of an agreement between the owners and holders of the bonds hereinafter mentioned and the said plaintiffs and said defendants, eight hundred instruments for the payment of money or bonds of the State of Florida, commonly called Florida bonds, each of said bonds being for the sum of one thousand dollars, payable in the gold coin of the United States, with interest thereon at the rate of eight per cent. per annum, and then being in the possession of said defendants, were assigned and transferred to said defendants to be held 2885 as the property of the plaintiffs, and to be sold on account of said plaintiffs, and the proceeds of the sale thereof to be paid over to said plaintiffs, and said defendants thereupon acknowledged to said plaintiffs in writing that they held said bonds for sale as the agents of said plaintiffs.

And said plaintiffs further allege that said defendants have since sold a large amount of said bonds, if not the whole thereof, and have received a large amount of money, to wit, not less than four hundred thousand dollars in the gold coin aforesaid, on account of the sales thereof; and that they have paid over to the plaintiffs on account of such sales the sum of $53,776.66 and a further sum of $1,000, and no more; that said plaintiffs have, since such sales were made of such bonds, frequently and from time to time demanded of the said defendants that they account for and pay over to them the residue of the moneys so received by them as aforesaid on account of such sales, but that said defendants have refused and still refuse to account for or pay over the same.

And the said plaintiffs further say that by reason of the refusal 2886 to account as aforesaid, they are not certainly informed as to whether said defendants have in fact sold all of said bonds; but they allege that the said defendants have fraudulently, for a long time prior to the bringing of this action, made use of said bonds and the proceeds thereof for their own private schemes and enterprises, and that they fraudulently and in violation of their trust in the premises design and intend to continue to so use said bonds if any remain unsold in their hands, and the proceeds of such as may have been sold, and that the personal credit of said defendants is very low, and their personal pecuniary responsibility wholly insufficient to furnish any sufficient protection in the premises to the plaintiffs; and that the said plaintiffs will be without adequate remedy in the premises as to any of their said bonds remaining unsold, unless the benefit is vouchsafed to them by this court of its orders and judgment by way of injunction and specific relief.

Wherefore the said plaintiffs demand judgment that the said 2887 defendants account to them in respect of the said bonds and the sales thereof and the moneys or other proceeds of such sales, and that they pay over and deliver to said plaintiffs the amount of moneys or other proceeds so received by them, with interest, and that as to any of said bonds which remain unsold they surrender and deliver up the same.

W. W. ROLLINS.

ALGERNON S. SULLIVAN,
Att'y for Pl't'ffs.

CITY & COUNTY OF NEW YORK, *ss:*

William W. Rollins, being duly sworn, says that he is the president of the Western Division of the Western North Carolina Railroad Company, the plaintiff in the above action; that the facts stated in the foregoing complaint is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

W. W. ROLLINS.

Sworn to before me this 19th day of June, 1871.

GEO. A. BLACK,
Com'r of Deeds, N. Y. City.

2888 Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
against
SIDNEY W. HOPKINS, FRANK A. COLLINS, AND Robert J. Carpenter.

Sufficient cause having been shown to me by the verified complaint herein and by affidavit, I do hereby order and direct that Sidney W. Hopkins, Frank A. Collins, and Robert J. Carpenter, the defendants in the above entitled action, and each of them and their and each of their agents, attorneys, or servants, be and they and each of them hereby are enjoined and restrained, and ordered to refrain from, selling, assigning, transferring, or any manner parting with or disposing of any of a certain parcel of eight hundred instruments in writing for the payment of money or bonds of the State of Florida, commonly called or known as Florida bonds, at any time held by said defendants as the agents of the Western Division of the Western North Carolina Railroad Company, and which may not have been sold by said defendants, and 2889 from in any manner parting with or disposing of the proceeds of any of said eight hundred bonds as may have been sold; and that the said defendant's show cause on the complaint and affidavits served herewith, before one of the judges of the court, at a special term thereof, to be holden at the chambers of said court, at the City Hall in the city of New York, on the first Monday in July next, at twelve o'clock, noon, why this injunction should not be continued until the trial of this action, and why the plaintiffs therein should not have such further order or relief by way of the appointment of a receiver or otherwise as may be just.

Dated June 20th, 1871.

GEORGE G. BARNARD, *J. S. C.*

2890 *Order to arrest and hold to bail.*

Supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiff,
against
SIDNEY W. HOPKINS, FRANK A. COLLINS, AND Robert J. Carpenter, defendants.

To the sheriff of the city and county of New York:

It having been made to appear to me by affidavit that the plaintiff above named has a sufficient cause of action against Sidney W. Hopkins, Frank A. Collins, and Robert J. Carpenter, you are required forthwith to arrest Sidney W. Hopkins, Frank A. Collins, and Robert J. Carpenter, the defendants in this action, for the cause aforesaid, and hold each of them to bail in the sum of three hundred thousand dollars, and to return this order to Algernon S. Sullivan, plaintiff's attorney, at his office, No. 32 Chambers Street (dist. att'y's office), New York City, on the first Monday of July, one thousand eight hundred and seventy-one.

Dated June , 1871.

GEORGE G. BARNARD, *J. S. C.*

A. S. SULLIVAN,
Plaintiff's Attorney,
No. 32 Chambers Steeet (Dist. Att'y's Office).

2891 Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiff,
against
SIDNEY W. HOPKINS, FRANK A. COLLINS, and Robert J. Carpenter, defendants.

CITY AND COUNTY OF NEW YORK, *ss.:*

Nicholas W. Woodfin, being duly sworn, deposes and says that he is a citizen and resident of the State of North Carolina, and one of the commissioners appointed by an act of the legislature of said State, passed the 24th of March, 1871, entitled "An act to provide funds for the completion of the Western Division of the Western North Carolina Railroad Company," which said act was afterwards and prior to any of the transactions hereinafter mentioned with the defendants above named duly accepted, ratified and approved by the stockholders, and afterwards by the board of directors of the Western Division of the Western North Carolina Railroad Company, the plaintiffs above named, and that by the provision of the said act, and the acceptance, ratification and 2892 approval thereof, as aforesaid, this deponent, together with the other persons named in said act as commissioners, have power and are charged with the duty of recovering and receiving certain of the debts, dues, claims, and assets of the said company, including among other things the eight hundred bonds hereinafter mentioned of the State of Florida and the proceeds thereof.

And this deponent further says, that the said Western Division of the Western North Carolina Railroad Company is a body politic and corporate of the said State of North Carolina by virtue of a certain act of the legislature of that State, passed on the 15th day of February, in the year 1855, entitled "An act to incorporate the Western North Carolina Railroad Company," and a certain other act of the said legislature, passed the 19th day of August, in the year 1868, entitled "An act to amend the charter of the Western North Carolina Railroad Company," and divers other acts of the same legislature amendatory of the said two above mentioned acts, and that Sidney W. Hopkins, Frank A. Collins, and Robert J. Carpenter, the defendants above named, were at and during the time of the transactions herein stated to have been had with them, and from thence hitherto have been and still are, as the deponent is informed and verily believes, merchants and bankers, and co-2893 partners in business, having their principal office or place of business in the city of New York, where they carry on their business under the firm-name of S. W. Hopkins & Company, and another office or place of business, or branch house in London, England, where they carry on their business under the like firm-name. And this deponent further says that, for a long time prior to the 10th day of November, 1870, he, together with others of said commissioners, had diligently engaged in efforts to recover, as far as possible, a large portion of the funds and property of said company, which had been, by certain officers of said company, improperly and in violation of their official duty and trusts diverted from the uses of said company and misapplied or squandered in divers ways, and that such efforts had, prior to the day last mentioned, been so far successful that deponent and others of said commissioners associated with him had procured an agreement bearing date at Washington, D. C., the 16th day of April, 1870, to be executed by and between certain railroad companies, bodies corporate of the State

of Florida, and one M. S. Littlefield, and George W. Swepson, of the
first part, and deponent and others of said commissioners of the second
part, whereby it was agreed in substance that the proceeds of
2894 certain bonds for the payment of money of the said State of
Florida, then about to be issued, and delivered to or for said
parties of the first part, and by them upon the issue thereof, to be placed
in the hands of the said firm of S. W. Hopkins & Company for sale,
should be divided and paid over as the same were received, one half
to said Florida railroads, and the other half to the said commissioners
for the use and benefit of the said Western Division of the Western
North Carolina Railroad Company, until the sum of one million two
hundred and eighty-seven thousand and thirty-six dollars, with interest
at the rate of eight per cent. from the date of the agreement last mentioned,
should be received by said commissioners, which agreement was
based by way of consideration upon the fact conceded by all the parties
thereto; that the said Florida railroad companys had received to the
extent of the sum last mentioned the moneys and funds of the said
Western Division of the Western North Carolina Railroad Company
wrongfully diverted as aforesaid, and that it was represented by and on
the part of the parties to the said agreement before the execution thereof
that the amount of bonds of the said State of Florida so to be
issued, as aforesaid, was four millions of dollars. And this deponent
further says, that after the making of the agreement last men-
2895 tioned and prior to the said 10th day of November, 1870, bonds
of the said State of Florida of the character aforesaid, to the
amount of three millions of dollars or thereabouts, were in fact issued
and delivered to the said Florida railroad companies, and were afterwards
and before said 10th day of November, 1870, and in accordance
with the contemplation of the parties to the said last mentioned agreement
placed in the hands of the said firm of S. W. Hopkins and Company,
in the city of New York, for sale, and that at or about the time
when the said bonds were so placed in the hands of the said firm for
sale, the said firm and the several members thereof had, as deponent has
reason to believe and does believe, due knowledge and notice of the
agreement last above mentioned and of the rights of the said Western
Division of the Western North Carolina Railroad Company.

And this deponent further says that afterwards, and in the month of
August, in the year 1870, M. S. Littlefield, hereinbefore named, who had
the principal management of the financial affairs of the said Florida
railroads, and to whom the said three millions dollars of bonds last
mentioned had been delivered on the issue thereof, and by whom the
same had been placed in the hands of the defendants for sale as above
mentioned, wrote a letter addressed to S. W. Hopkins &
2896 Company, a copy of which is annexed hereto marked Exhibit A,
which letter this deponent received from said Littlefield, and in
the month last aforesaid delivered to the defendant Sidney W. Hopkins,
in the city of New York, and at the same time asked him if he
would recognize and accept the order contained in said letter; that said
Hopkins put this deponent off upon the pretence that he desired to consult
with his counsel, and said that as soon as he could so consult he
would give this deponent and answer; but that deponent upon calling
the next day at the office of said firm of S. W. Hopkins & Company,
in the city of New York, assertained that said S. W. Hopkins had gone
to one of the Western States, and he could obtain from no one else at
said office a satisfactory answer as to whether said firm would recognize
and accept the order contained in the said letter of said Littlefield,

and thereupon he wrote and left with the defendants at their said office in the city of New York a letter of which a copy is annexed hereto marked Exhibit B, to which deponent received from said defendants an answer, a copy whereof is annexed hereto marked Exhibit C.; that such answer not being satisfactory to deponent, he again visited the office of said S. W. Hopkins & Company, and say the writer of
2897 said letter, one L. L. Spring, who appeared to have charge as partner or otherwise of the business of said firm, and remonstrated with him concerning the unsatisfactory character of said answer, and insisted that he, deponent, was entitled to an express recognition and acceptance of the order contained in said letter of said Littlefield; and afterwards again visited said office together with his counsel, Algernon S. Sullivan, esq., who explained to said Spring that deponent was entitled to such express recognition and acceptance, but that deponent could obtain no such recognition or acceptance, and no satisfaction in the premises.

And deponent further says, that before he received said letter from said Littlefield, he had received information that said Littlefield designed in a very short time to leave New York, where he then was, and go to Europe without the knowledge of deponent, which was the reason why deponent desired to obtain from him such a letter, and that when he applied to said Littlefield and requested him to give him, deponent, such a letter, said Littlefield at first refused so to do, upon divers pretexts, but that deponent insisted that he should give such a letter and
2898 threatened that unless he did, he, deponent, would take legal proceedings to protect the interest of the said Western Division of the Western North Carolina Railroad Company in the said Florida bonds, and that thereupon the said Littlefield wrote said letter, and almost immediately thereafter embarked for Europe, and that said Littlefield for several days prior to the departure of said Sidney W. Hopkins for the West, as aforesaid, was in the habit of frequent and confidential communication with said Sidney W. Hopkins; and deponent says that from the circumstance hereinbefore stated he had reason to apprehend, and did apprehend, that said Littlefield and said Sidney W. Hopkins were in collusion with each other, and that it had been arranged and understood between them that the order contained in said letter of said Littlefield should not be recognized or accepted by said firm of S. W. Hopkins & Company, and that some fraudulent scheme was in contemplation by said Littlefield and said Hopkins, prejudicial to the rights and interest represented by deponent, and having been informed prior to that time that said bonds had been some time in July, 1870, transmitted by said firm of S. W. Hopkins &
2899 Company to their branch house aforesaid in London, he deemed it expedient and necessary, in order to protect the right and interests aforesaid, to proceed himself with all possible dispatch to London, England, with the view of there taking suitable measures to secure such rights and interests and that he did accordingly forthwith embark for England, and arrived in London on or about the 29th of August, 1870; that he there ascertained that the said Littlefield was on the continent of Europe, in company with the defendant Collins, and deponent remained in London awaiting his return, and while so awaiting was very frequently at the office or place of business of said branch house of the defendants in London, where he saw and frequently conferred, from time to time, with the defendants Collins (who returned to London before said Littlefield) and Carpenter in reference to the transactions hereinbefore mentioned; that deponent soon

after his arrival in London, as aforesaid, exhibited to said defendant Carpenter copies of the said letter of said Exhibits A, B, and C, but learned from him that he had alread' received copies of the same from the said firm of S. W. Hopkins & Company, New York, and deponent demanded of said Collins and Littlefield that the order contained
2900 in said letter of Littlefield should then be recognized and accepted, which they at first refused to do, but at a later period, and after deponent had declared to them his determination to take such legal measures as should seem best calculated to secure the right and interest he represented, they informed deponent they would recognize and accept said order in any manner deponent might desire, provided deponent would return to New York, where, as they pretended, deponent might with advantage attend to the interest connected with the negotiation of said Florida bonds, but that deponent refused to accede to such terms, being then determined to remain until he could see said Littlefield, and, if possible, better secure the rights and interests he, deponent, represented. And deponent says that he also learned from said defendant Carpenter, on his arrival in London, that the said Florida bonds, so issued and placed with said S. W. Hopkins, as hereinbefore mentioned, had been received by said S. W. Hopkins & Company, in London; but the said Carpenter pretended and represented that the same had been taken by the said Littlefield and the defendant Collins to the continent of Europe, for purposes connected with negotiation thereof.

2901 And deponent further says that some weeks after his arrival in London aforesaid the said Littlefield returned from the continent to that city, and that thereupon deponent had frequent interviews with him, both alone and together with said Collins and Carpenter, and that after divers negotiations between all those parties last mentioned a mode of satisfying the agreement hereinbefore mentioned was arranged and agreed upon by and between this deponent, the said Littlefield, and said firm of S. W. Hopkins & Company, and thereupon a new agreement in writing was drawn up and executed by the said Littlefield, acting on behalf of himself and as the president of and on behalf of the Jacksonville, Pensacola and Mobile Railroad Company, a corporate body then recently created, as was stated and represented by said Littlefield, under the laws of the State of Florida, by an amalgamation of the Florida railroad companies hereinbefore mentioned, and into which the said first-mentioned Florida railroad companies had become merged, as the party of the first part, and by deponent, acting on the part and behalf of said Western Division of the Western North Carolina Railroad Company, as the party of the second part therein; and that the said firm of S. W. Hopkins & Company, in pursuance of the arrangement and understanding under which the said last-mentioned
2902 agreement was drawn and executed as aforesaid, endorsed upon the back thereof their undertaking and guarantee, in writing, guaranteeing the performance of the obligations assumed by the parties therein of the first part, in respect of furnishing and delivering railroad iron to and for the parties therein of the second part, which agreement, with the guaranty aforesaid endorsed thereon, was afterwards duly delivered, and that a copy of said agreement and guaranty is annexed hereto, marked Exhibit D; and that at the same time the said firm of S. W. Hopkins & Company delivered to deponent a written acknowledgment to the effect that said firm held the eight hundred of said Florida bonds mentioned in said last-mentioned agreement as the agent of said last-mentioned railroad company, a copy of which said

written acknowledgment is annexed hereto, marked Exhibit E; and deponent says that at that time, as was stated and represented by said Littlefield, Collins, and Carpenter, said firm held the whole of said three millions dollars of said Florida bonds, which said bonds were three thousand in number, each for the sum of one thousand dollars, 2903 payable in the gold coin of the United States, with interest at the rate of eight per cent.; and immediately afterwards deponent executed in writing, and delivered to said firm of S. W. Hopkins & Company, a letter of instructions concerning the sale of said eight hundred of said bonds, of which last-mentioned letter a copy is annexed hereto, marked Exhibit F.

And this deponent further says that thereupon he returned to the city of New York, where he arrived on or about the 30th of November, 1870, and upon his arrival visited several times the place of business of said defendants in said last mentioned city, and there had several interviews with the defendant, Sidney W. Hopkins, and conferred with him concerning the agreement which had been made as last above mentioned; that on the first of the visits last mentioned the said Sidney W. Hopkins informed him that he had, the day before, received from the branch house of his said firm in London a telegram apprising him of a sale of a large amount of the said bonds, including the said eight hundred belonging to the said last-mentioned railroad company, and produced the said telegram and read the same to deponent, and that it was, as read 2904 by said last-mentioned defendant, in substance and in the very words, or nearly so, as follows: "Satisfactory sale of fifteen hundred bonds; eight hundred for Woodfin, seven hundred for us; private; tell Woodfin only; contract by mail by City of Paris."

And deponent further says that on the following day he went to the said office of S. W. Hopkins & Company with William W. Rollins, one of the commissioners hereinbefore mentioned, associated with deponent, and also the president of the said last mentioned railroad company, and stated to said Sidney W. Hopkins that said Rollins was such president, and that he could keep no secret from him concerning said company, and wished the said Hopkins to read the said telegram, which he, the said Hopkins, then did.

And deponent further says that, being then about to go to Raleigh, North Carolina, where the legislature was then in session, the said Sidney W. Hopkins earnestly requested him, upon some pretense that it would be detrimental to negotiations connected with said bonds if the agreement made in London, as hereinbefore mentioned, were known, not to make the same public; and with the view of enabling depo- 2905 nent to furnish some reason therefore to those who had the right to call upon him for an account of his doings in the premises, gave deponent a letter to be exhibited to such persons as he thought fit, a copy of which letter is annexed hereto, marked Exhibit G.

And deponent further says that at this time the said Sidney W. Hopkins faithfully promised to obtain, as soon as possible, all the particulars concerning the sale mentioned in the telegram aforesaid, and to communicate promptly and fully to deponent and to said Rollins, and by letter, if they should not be in New York, all the information he should at any time receive concerning the said eight hundred bonds, and any sale thereof; and that prior to his departure from London, as hereinbefore mentioned, the defendant Collins had, in like manner, promised to keep deponent fully informed concerning the last-mentioned bonds, and concerning everything which might happen effecting the same.

And deponent further says that he thereupon left the city of New York, together with said Rollins, and went to North Carolina, where he remained until about the middle of March, 1871, when, having received no communication from said defendants, or any of them, concerning said Florida bonds, and no iron having arrived in accordance 2906 with the said agreement in London, deponent again came to the city of New York for the sole purpose of learning what had been done with said eight hundred bonds and the proceeds thereof, and attending generally to the interest of said last mentioned railroad involved in the agreements hereinbefore mentioned, and the transactions connected therewith, and that a few days after his arrival in New York he was there joined by said Rollins and James L. Henry, another of said commissioners associated with deponent, who visited New York for the same purpose. That upon this visit deponent and said Rollins remained about three weeks and the said Henry about two weeks, and during the period of about ten days after their arrival they, the three persons last named, were almost daily at the office of said defendant, where they saw, from time to time, said Sidney W. Hopkins and said Carpenter. That at this time, in answer to the inquiries of deponent and his said associates concerning said bonds, said Hopkins and Carpenter stated that the sale mentioned in the telegram hereinbefore mentioned had not been consummated, but that the completion thereof was awaiting the furnishing of evidences to be procured from Florida 2907 touching the regularity and validity of said bonds, and further stated on divers occasions thereafter, and during the same visit of deponent and his said associates, that the sale of said Florida bonds was proceeding in London slowly, and professed to be unable to furnish deponent and his associates with the particulars of *of* such sales or any other more definite information in respect thereto.

And deponent further says that he also made inquiries during the visit last mentioned concerning the iron mentioned in the last abovementioned agreement, and which was to be furnished by said Littlefield. In answer to which said Sidney W. Hopkins informed deponent that such iron had not been shipped in consequence of the slow sale of said Florida bonds. That during the visit last mentioned the inquiries of deponent and his said associates concerning the premises were made almost daily of said Sidney W. Hopkins or said Carpenter, and it was represented to them by said Hopkins and Carpenter that they were in daily expectation of receiving advice from London of sales of said bonds, and of remittances of money on account thereof; and that as soon as any such remittances were received, payment should be made to deponent and his associates. That after deponent and his said associates had remained in New York about ten days, said 2908 Hopkins and Carpenter announced their intention of going to the West, but stated that they would be absent but for a few days; that deponent and his associates remonstrated against their both leaving New York while communications and remittances from London were from day to day expected, and it was finally agreed that said Carpenter should not go, but should remain in New York; but that notwithstanding they did both leave New York together, and were absent about nine or ten days; during which time deponent and said Rollins were obliged to remain in New York awaiting the expected remittances from London; that upon the return of said Hopkins and Carpenter deponent could obtain no satisfactory intelligence from them as to what was being done in London in reference to said bonds or the shipment of said iron, and said Hopkins pretended that it was necessary for him to proceed at

once to Florida upon business in some way connected with said Florida
bonds, and told deponent that he was then able to pay over ten thousand
pound sterling, and in a very short time would be able to pay over
at least one hundred and fifty thousand dollars more, or thereabouts,
and probably indeed the whole amount of the proceeds of the sale of
said eight hundred bonds; that he accordingly did pay over
2909 to deponent and his associates, on or about April 3d, 1871, the
sum of fifty-three thousand seven hundred and seventy-six dollars
and sixty-six cents ($53,776.66), for which amount he requested deponent
and his associates to draw on said firm of S. W. Hopkins &
Company, and at the same time to sign a letter addressed to said firm
respecting the same. That deponent objected to so drawing such draft
and signing such letter, for the reason that it would appear as if he and
his associates were borrowing money instead of receiving the proceeds
of bonds sold; but said Hopkins represented to deponent that it was
important that the business should be put in that shape for the reason
that he did not wish one Houstoun, who also had bonds of a similar
description in the hands of said firm for sale, to know that he was receiving
and paying over proceeds of the sales of said bonds, and that
deponent and his said associates accordingly drew the draft, as desired
by said Hopkins, and signed a letter in form as drawn by him, a copy
of which letter is hereto annexed, marke' Exhibit H. But deponent
says that the said Hopkins did not pretend that the said money so paid
over by him was in fact an advance, but paid it over as and for
2910 so much proceeds of sales of said eight hundred bonds, and the
same was so received by deponent and his said associates, who
afterwards applied the same to the use of said company.

And deponent further says that at this time that the said Hopkins further stated to deponent that he was in daily expectation of receiving advices from London of the purchase and shipment of iron pursuant to the terms of said agreement made in London; and upon deponent's representing to him the pressing need of said iron for the uses of the said company represented by him, said Hopkins promised that in any event the said defendant would ship from New York to Norfolk for said company five hundred tons of railroad iron within thirty days; and further promised to keep deponent fully informed concerning sales of said bonds or anything that might happen affecting the same, and thereupon deponent and said Rollins returned to North Carolina.

And deponent further says that afterwards and about the 7th of May,
1871, he and the said Rollins—no further communications having been
received from said defendants concerning said bonds or shipments of
iron, and the shipment of iron from New York, as promised by said
2911 Hopkins, not having been made—again visited New York for the
sole purpose of attending to the business connected with said
agreements hereinbefore mentioned, but were informed, upon inquiry at
the office of said defendants, that said Hopkins was in Florida and said
Carpenter in Michigan, and the only information they were able to obtain
was given to them by one Spring, who had charge of the business
of said defendants and held their power of attorney for that purpose,
which was to the effect that sales of said bonds were proceeding in London
slowly, but at rather better prices.

And deponent further says that on the 12th of June he and said Rollins again visited New York on the same business, and upon going on that day to the office of said defendants were told by said Spring that although said Hopkins had returned to New York on the Saturday previous he had not been at the office that morning. That on the next day deponent and said Rollins again visited said office about one o'clock p. m., and were told by said Spring that said Hopkins had not been to the office that day, but that he was expected momentarily; that after the lapse of an hour or thereabouts deponent and said Rollins again called at said office and were told by said Spring that said Hopkins was 2912 then in but engaged upon very important business, but was very anxious to see deponent and proposed to meet him, deponent, at his, deponent's, hotel between 9 and 10 o'clock the next day; that deponent accordingly remained at his hotel the next day from nine o'clock a. m. until about three o'clock p. m., sending in the meantime to said Hopkins a telegram to which no answer was received, and about four o'clock p. m. of the same day deponent and the said Rollins again visited the office of the defendants and were told by said Spring that Hopkins was in, but that he declined seeing deponent or having any further interview with him or said Rollins.

And deponent further says that from the facts and circumstances hereinbefore mentioned, and from diligent inquiry made by him from all other sources of information known to him, he verily believes and charges that sales have been made by said defendants of all or nearly all of said eight hundred Florida bonds, and that said defendants have received the proceeds thereof to a very large amount, if not to the whole amount thereof; that the rates at which said bonds have been so sold, as deponent is informed and believes from his knowledge derived 2913 during his visit to London and at other times and from the quotations of the value thereof in Europe, are from fifty to seventy cents on the dollar in gold, and that the said defendants, as deponent verily believes, have received in money for or on account of sales of said eight hundred of said bonds not less than four hundred thousand dollars in the gold coin of the United States or its equivalent.

And this deponent further says that the said defendants have not paid over to deponent or his associates or the said company represented by him any other moneys except the said sum of fifty three thousand seven hundred and seventy-six dollars and sixty-six cents, and the sum of one thousand dollars ($1,000) paid in March, 1871, and nineteen pounds sterling, being the passage money on deponent's return from Europe on his visit aforesaid to London, and that they have never shipped any iron whatever in accordance with said agreement made in London or performed with the exception aforesaid any of their promises in the premises, but that they have from the outset, and ever since the making of the agreement made in London as aforesaid, behaved towards deponent and his associates and the company represented by them in 2914 an utterly faithless manner, and have continually delayed, postponed, and put them off by false pretenses, excuses, and pretexts almost without number.

And deponent further says that said defendants, as deponent is informed and believes, are themselves largely interested with said Littlefield in the Florida railroad enterprises with which the issue of said Florida bonds is connected, as well as with other railroad enterprises in some Western State, and that they are contemplating and striving to enrich themselves therefrom; and that as deponent verily believes they are and have been from the outset dealing in the most shameless manner with the property and interest of said last mentioned railroad company which have been placed in their hands and under their control, and that they are in conjunction with said Littlefield now using and design and continue to use the moneys they have received on account of sale of said eight hundred bonds so far as they have sold the same, and the said bonds themselves which remain unsold, if any, in order to advance their own private schemes and enterprises, in utter violation of the rights of the railroad company last mentioned.

2915 And said deponent further says that he has reason to believe and does believe that unless the most stringent methods and means of redress and security which the law affords are vouchsafed to said company last mentioned, the said defendants will deal with the moneys received by them on account of sales of said eight hundred bonds and with such of the bonds themselves, if any, which remain unsold, in such manner as to utterly and forever deprive said last mentioned company of the benefit thereof.

N. W. WOODFIN.

Sworn to before me this 19th day of June, 1871.

GEO. A. BLACK,
Com'r of deeds, N. Y. City.

(Copy.)

EXHIBIT A.

NEW YORK, *August*, 1870.

Messrs. S. W. HOPKINS & Co.,
70 *Broadway, N. Y.*:

GENTLEMEN: You will please pay the money which may come into your hands from the sale of any bonds which I have placed with you over to G. M. Roberts, esq., treasurer of the Western Division of Western North Carolina Railroad Company, according to the terms of
2916 a contract made and entered into between the commissioners appointed by the legislature of the State of North Carolina, George W. Swepson, and myself, dated Washington, D. C., April, 1870, upon your receiving orders signed by the board of directors of the said Western Division of the Western North Carolina R. R. Co., and the board of commissioner' hereinbefore named.

Very respectfully,
(Signed) M. S. LITTLEFIELD.

(Copy.)

EXHIBIT B.

NEW YORK, *Aug. 11th*, '70.

Messrs. S. W. HOPKINS & Co.:

GENTLEMEN: On yesterday I delivered to you a copy of the contract made between the Western Division of the Western North Carolina Railroad Company by the commissioners appointed by the legislature of the State of North Carolina and approved by the said corporation on the one part, and M. S. Littlefield, acting for himself and as president of the Jacksonville, Pensacola and Mobile Railroad, and George W. Swepson, president of the Florida Central Railroad Co., of the other part, dated the 16th of April, 1870, by which it was stipulated
2917 that said Western Division of the Western North Carolina Railroad Co. should receive one-half of the proceeds of the sales of certain State bonds which were to be placed in your hands to sell, and at the same time I handed you a letter from Gen. M. S. Littlefield, di-

recting you to pay over to G. M. Roberts, esq., treasurer of said West. Division West. North Carolina Railroad Co., the part of the proceeds of the sales of said bonds when received, to which said corporation will be entitled according to said contract. It only remains for me to request of you the favor to acknowledge the receipt of said letter and copy of contract and to comply therewith, as the money may be received by you.

Respectfully,

(Signed) N. W. WOODFIN,
For the W. D. W. N. C. R. R.

(Copy.)

EXHIBIT C.

[S. W. Hopkins & Co., 71 Broadway, New York; 58 Old Broad st., London.]

NEW YORK, *August* 11*th*, 1870.

N. W. WOODFIN, Esq.,
Comm'r &c.:

2918 DEAR SIR: Acknowledging the receipt of your favor of 11th inst., would say that the letter and contract mentioned therein have been received and placed on file, and shall have the consideration and attention to which they are entitled.

We remain, dear sir, very respectfully,

S. W. HOPKINS & CO.,
P'r L. L. S.

2919 EXHIBIT D.

Memorandum of an agreement and final settlement made this tenth day of November, A. D. 1870, at London, England, between General Milton S. Littlefield, of the State of Florida, in the United States of America, and the Jacksonville, Pensacola and Mobile Railroad Company, by Milton S. Littlefield, the president thereof, the parties of the first part, and the Western Division of the Western North Carolina Railroad Company, acting through and represented by Colonel Nicholas W. Woodfin, chairman of the commission appointed by the general assembly of the State of North Carolina, by an act ratified the 24th day of March, A. D. 1870, to settle with George W. Swepson, and for other purposes, which act was approved by the stockholders of the said Western Division of the Western North Carolina Railroad Company of the second part.

Whereas, on the 16th day of April, A. D. 1870, at the city of Washington, in the District of Columbia, in the United States of America, a contract in writing was made and entered into by and between The Florida Railroad Company, George W. Swepson, president, General Milton S. Littlefield; The Jacksonville, Pensacola and Mobile Railroad Company by Milton S. Littlefield, the president thereof, as parties of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by Nicholas W. Woodfin, W. G. Candler, W. W. Rollins, and W. P. Welsh, commissioners appointed by the legislature of the State of North Carolina, by an act ratified the 24th day of March, 1870, which act was duly ratified, approved, adopted, and made a part of the charter of the said party of the second part, the said corporation, a copy of which contract is attached hereto and made a part of this contract; and

Whereas the said Jacksonville, Pensacola and Mobile Railroad Company have received certain bonds of the State of Florida, under sundry acts of the legislature of said State, which bonds by the term of the laws authorizing the issue of the same are made payable, both principal and interest, in the gold coin of the United States and bearing interest at the rate of eight per cent. per annum; and

Whereas by reason of the present war in Europe all financial operations are more or less restricted, which has up to this time prevented the negotiation for the sale of said bonds; and

Whereas the said Western Division of the Western North Carolina Railroad Company, through and by its representative, N. W. Woodfin, chairman as aforesaid, is pressing the immediate payment by the said party of the first part of the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, with interest at the rate of eight per cent. per annum since the first day of November, A. D. 1869; to pay or settle the said claim now will cause a great sacrifice to the said party of the first part; and

Whereas the said Nicholas W. Woodfin, as chairman of the said commission for the Western Division of the Western North Carolina Railroad Company, for the purpose of removing embarrassments out of 2920 the way, which, in his judgment, prevented the sale of said bonds, and to avoid litigation, did, on the 17th of October, 1870, contract with Henry Clews & Co., bankers in the cities of New York and London, to purchase a certain claim held by them against George W. Swepson, amounting to about twenty thousand dollars lawful money of the United States of America, which contract was made with the knowledge and approval of the said party of the first part, for the reason, it was understood by all parties to the said agreement that, this would secure the full co-operation of the said Henry Clews & Co. to aid in the sale and negotiations of the said Florida bonds:

Now, therefore, be it remembered, that for and in consideration of the premises herein stated, and for various other good and sufficient considerations, and for the further purpose of aiding the said Western Division of the Western North Carolina Railroad Company to complete their road from the junction with the main line at Asheville to Paint Rock, at the State line between the States of North Carolina and Tennessee, and to complete their road without delay on the one hand, and to avoid a hasty sale and sacrifice of the said bonds on the other hand, it is agreed, by and between the parties of the first and second parts, that in full compromise, payment, satisfaction, and accord of the obligation of the party of the first part to pay to the party of the second part the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, lawful money of the United States of America, with interest thereon at the rate of eight per cent. from and after the first day of November, A. D. 1869, as portions of the said contract made and executed at the city of Washington aforesaid, and that the said party of the first part may be fully and finally discharged from all and every liability on account of the terms and conditions of the said contract, hereunto appended, the said party of the first part agree to furnish the iron to the said party of the second part sufficient to lay a single track of railroad from the junction at Asheville, along the French Broad River, to Paint Rock, at the Tennessee State line, and into the State of Tennessee to the present terminus of the Cincinnati, Cumberland Gap and Charleston Railroad, with turn outs and side-tracks, provided that the whole railroad shall not exceed, including turn-outs and side-tracks, fifty-three miles in length. The iron shall be of good quality of English iron, weighing not less than fifty pounds per lineal yard, with the necessary chairs and spikes to lay the same, the iron to be shipped in the quantities and at the terms and places as follows, to wit:

To Norfok, Virginia, on or before the tenth day of December, A. D. 1873, three hundred tons; to the same place, on or before the tenth day of January, A. D. 1871, five hundred tons; to the same place, on or before the first day of April, A. D. 1871, one thousand tons, and the rest to be shipped to New York, in the State of New York, on or before the first day of September, A. D. 1871, but the said party of the first part may ship the iron as fast as he may wish, all duties and freights on the above-described iron to be paid by the party of the first part.

And it is further agreed by the party of the first part that he will ship, in addition to the above-mentioned quantity of iron, one thousand tons of the same weight and quality as the above-described iron, with
the necessary chairs and spikes to lay the same, to New York,
2921 duties and freight paid, on or before the first day of September,
A. D. 1871, the shipping of which iron Messrs. S. W. Hopkins
& Co. are to guarantee.

In addition to the shipment of the iron, the said party of the first part does hereby sell and deliver to the said party of the second part, by placing to the order of the party of the second part, with Messrs. S. W. Hopkins & Co., eight hundred bonds of the State of Florida, of the denomination of one thousand dollars each, numbers of said bonds to be designated by said party of the first part, but upon the express stipulation and conditions that the said bonds are to be left with Messrs. S. W. Hopkins & Co. for sale at such prices as the said party of the second part may direct.

And it is further agreed by the party of the first part that he will pay to the party of the second part two hundred pounds sterling, the receipt whereof is hereby acknowledged.

And it is further agreed by the party of the first part to assume and discharge the obligations of the party of the second part to Henry Clews & Co. of about twenty thousand dollars lawful money of the United States of America.

Now, when the foregoing undertakings and agreements of the party of the first part are fully accomplished and performed, it is to be taken as a full compliance with and final discharge of the parties of the first part to this contract, as well as all parties of the first part to the said contract executed at the city of Washington aforesaid, a copy of which is hereunto annexed, and this shall operate as a receipt and final discharge thereof from all obligations growing out of the same.

MILTON S. LITTLEFIELD.
MILTON S. LITTLEFIELD,
President J., P. & M. Railroad Company.
N. W. WOODFIN,
Chairman of the Board of Commissioners.

2922 Memorandum of agreement and settlement between the Florida Central Railroad Company, George W. Swepson, president, and the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, president, and Milton S. Littlefield, majority owner of the stock of said companies, and also of the stock of the Tallahassee Railroad Company, of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by N. W. Woodfin, W. G. Candler, W. Pink Welch, and W. W. Rollins, commissioners appointed by an act of the legislature of North Carolina, approved by the stockholders of said corporation, of the second part, witnesseth:

That whereas George W. Swepson, late president of the Western Division of the Western North Carolina Railroad Company, made certain investments of the funds of said company in securities of and interests in the said Florida Central Railroad, Jacksonville, Pensacola and Mobile Railroad, and the Tallahassee Railroad, of the said State of Florida, as per report made by the said George W. Swepson to the said commissioners, amounting in the aggregate to the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, to bear interest from the first day of November, 1869, at the rate of eight per cent. per annum;

And whereas the said George W. Swepson heretofore conveyed to the said Milton S. Littlefield, subject to the payment of the above recited claim, his interest in the above recited railroads;

And whereas the said Littlefield has received authority from the legislature of the State of Florida, and the several railroad companies, to receive bonds to be issued by and for account of the several railroad companies, which bonds are to be exchanged for bonds of the State of Florida, to be issued for the purpose of aiding the finances of said several railroad companies—all of which bonds are now in a state of preparation;

And whereas the said Milton S. Littlefield has made a contract with S. W. Hopkins & Co., No. 71 Broadway, for the disposition of said bonds, as the same may be issued, the proceeds of the issue of the bonds of the Florida Central Railroad Company of the State of Florida, amounting to nine hundred and sixty dollars, are to be applied to the payment of the existing liabilities of the said several railroad companies, including the sum of one hundred and fifty thousand dollars, to be paid to the commissioners aforesaid, for the purpose of paying existing liabilities of the said Western Division of the Western North Carolina Railroad Company.

It is understood and agreed by the parties of the first and second parts that the proceeds of the sale of said bonds so to be issued by the said Florida railroad companies and the said State of Florida are to be equally divided, dollar for dollar, between the Western Division of the Western North Carolina Railroad Company and the said Florida railroads; and as the commissioners aforesaid receive by this first sale of bonds only the sum of one hundred and fifty thousand dollars, it is further understood and agreed that out of the proceeds of the sale of the
2923 issue of the bonds of the Jacksonville, Pensacola and Mobile Railroad, there is first to be received by the commissioners aforesaid a sum sufficient to be equal to the amount received by and on account of the said Florida railroads, and then an equal amount is to be received by the said commissioners and the said Florida railroads, dollar for dollar, until the entire amount of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three

cents, with interest at eight per cent., as aforesaid, being the sum reported by the parties of the first part as due to the Western Division of the Western North Carolina Railroad, is fully paid.

It is further understood and agreed by the parties of the first and second parts that all the interest owned or claimed by the said parties of the first part, George W. Swepson and Milton S. Littlefield, or which they, as individuals, have a right to control in the said Florida railroads, are hereby pledged for the faithful fulfilment of this contract, without the right on the part of any party to interfere with our management or control of the affairs of the road.

(Signed) GEORGE W. SWEPSON,
President Florida Central Railroad Co.
M. S. LITTLEFIELD.
M. S. LITTLEFIELD,
President J., P. & M. Railroad Company.

Witnesses:
M. W. RANSOM.
R. R. SWEPSON.

N. W. WOODFIN,
W. W. ROLLINS,
W. G. CANDLER,
W. P. WELCH,
Commissioners.

Correct copy of the original.

M. S. LITTLEFIELD.
N. W. WOODFIN.

(Endorsement:)

LONDON, *Nov.* 16, '70.

We hereby agree to perform all the stipulations relating to the shipping of iron required of us by the terms of the within contract.

S. W. HOPKINS & CO.

(Endorsement:)
We approve and ratify the within contract.

W. G. CANDLER,
W. W. ROLLINS,
J. L. HENRY,
Comm's.

2924 **EXHIBIT E.**

[S. W. Hopkins & Co., 51 Old Broad street.]

LONDON, *Nov.* 16*th*, 1870, E. C.

NICHOLAS W. WOODFIN, Esq.,
Chairman of the Commissioners of the Western Division of the Western North Carolina R. R. Co.:

SIR: We are in possession of your favor of this day's date, covering order from Messrs. Littlefield, president Jacksonville, Pensacola and Mobile Railroad Company, dated November 16th, 1870, for eight hundred Florida bonds. We accept the said order, and agree to hold the within described bonds as agents for the Western Division of the Western North Carolina Railroad Company, subject to the order of the commissioners.

We remain, your most obedient serv'ts,

S. W. HOPKINS & CO.

EXHIBIT F.

LONDON, *Nov. 16th*, 1870.

Messrs. S. W. HOPKINS & Co.,
London:

GENTLEMEN: I do hereby authorize and instruct you to sell or dispose of the eight hundred bonds of the State of Florida, eight per
2925 cent. gold given in aid of the Jacksonville, Pensacola and Mobile
Railroad Company, now lodged with you, at not lower than £60 for each bond. However, I leave the price to your own good judgment; if you think it impossible to sell at £60 for each bond, then you are hereby authorized to sell at the best price you can get.

I remain, gentlemen, your obedient servant,

N. W. WOODFIN,
Chairman.

EXHIBIT G.

[S. W. Hopkins & Co., 71 Broadway, near Wall street.]

NEW YORK, *Dec'r 2d*, 1870.

N. W. WOODFIN, Esq.,
Asheville, N. C.

DEAR SIR: We have received per steamer City of Brussels a copy of the new contract entered into between yourself on the part of the commissioners of North Carolina and Gen. M. S. Littlefield on the part of the Jacksonville, Pensacola and Mobile Railroad Company. This contract is certainly very advantageous to those you represent. Any apparent concessions you have made being more than compensated by the security of your present position, and the definite period fixed for the fulfillment, but we beg to suggest that its provisions, and in
2926 fact its existence should not for the present be made public, as
you are aware how delicate a matter is the negotiation of a security, and how easily the efforts of the enemies may prove fatal to its success.

Very truly yours,

S. W. HOPKINS & CO.

EXHIBIT H.

NEW YORK, *April 3d*, 1871.

Messrs. S. W. HOPKINS & Co.,
58 Old Broad street, London:

GENTLEMEN: We have this day (by our chairman, N. W. Woodfin, esq.) drawn on you at sixty days' sight for (£10,000) ten thousand pounds sterling, as an advance against eight hundred (800) Florida State eight per cent. gold bonds, held by you for negotiation for account of the commissioners of the Western Division of Western North Carolina Railroad Co.

We are, gentlemen, yours respectfully,

(Signed) N. W. WOODFIN.
(Signed) W. W. ROLLINS.
(Signed) J. L. HENRY.

2927 Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiffs,
against
SIDNEY W. HOPKINS, FRANK A. COLLINS, AND Robert J. Carpenter, defendants.

CITY AND COUNTY OF NEW YORK, *ss:*

William W. Rollins being duly sworn deposes and says that he is a citizen and resident of the State of North Carolina; that he has read the affidavit of Nicholas W. Woodfin annexed hereto, and that he is one of the commissioners associated with said Woodfin, appointed as stated in said affidavit, and that he is president of the company named in the above title; that he has knowledge of and participated in the efforts mentioned in the said affidavit to recover the funds and the property of the Western Division of the Western North Carolina Railroad Company, and the agreement dated at Washington, D. C., April 15th, 1870, mentioned in said affidavit.

2928 Deponent further says that upon the return of said Woodfin from his visit to London, England, as mentioned in said affidavit, he met the said Woodfin in the city of New York and had an interview, togetherwith said Woodfin, with Sidney W. Hopkins, one of the defendants above named. at one of which said Hopkins read the telegram mentioned in said affidavit, and that said telegram was read in the words stated by said Woodfin in his said affidavit.

Deponent further says that in the months of March and April, 1871, he was with the said Woodfin in the city of New York for the purpose of attending to the business of said railroad company, growing out of and connected with the agreement made in London, and the guarantee in respect thereof of the said defendants as stated in said affidavit of said Woodfin, and that the statements in said affidavit of said Woodfin relating to the statements and admissions and representations of said Hopkins and Robert Carpenter concerning sales of Florida bonds, and concerning railroad iron, and promises by said Sidney W. Hopkins, are true as therein stated.

2929 Deponent further says that he accompanied said Woodfin upon the two subsequent visits made by him to New York, as mentioned in said affidavit, and that the statements of said Woodfin therein of the various calls at the office of said defendants upon such two last mentioned visit, and of what took place and was said on the occasions of such calls, are true to the knowledge of deponent.

Deponent further says that he visited the city of New York in the month of February, 1871, and remained in said city nearly two weeks upon the same business and was frequently at the office of said defendants, and was postponed, baffled, and put off in a similar manner as deponent and said Woodfin were on other occasions when they were in New York together, as described by said Woodfin in his said affidavit.

And deponent further says that he has reason to believe and does believe from the facts within his knowledge as hereinbefore mentioned, and from the information which he has derived by diligent inquiry from other sources of imformation, that said defendants have sold the whole or nearly the whole of the eight hundred Florida bonds held by them for the said railroad company, and have received the proceeds
2930 thereof to the amount of not less than four hundred thousand dollars in the gold coin of the United States, or its equivalent, and

he says that it is impossible to obtain from them without the aid of legal proceedings the moneys so received by them or any amount in respect thereof.

Deponent further says that as he has learned from said Hopkins and Carpenter themselves, and from other sources, the said defendants are largely interested and involved with said Littlefield and others in railroad enterprizes in Florida, which require the use of large amounts of money, and that he verily believes that said defendants are now and have for a long time, in violation of their trust, been using the moneys received by them on account of sales of said eight hundred bonds, or portions thereof, for their own purposes, and in order to enable themselves to carry on the enterprizes in which they are so engaged, and that they fraudulently design and intend to continue to so use said moneys and also to use such, if any, of said eight hundred bonds as still remain in their hands unsold; and deponent says that by reason of the premises the said railroad company has a just cause of action against said defendants to compel them to account for and pay over to said company the amount of money so received by them as aforesaid, and also to compell to deliver up to said company such of said eight hundred 2931 bond as remain in their hands unsold.

W. W. ROLLINS.

Sworn to before me this 19th day of June, 1871.

GEO. A. BLACK,
Com'r of Deeds N. Y. City.

Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
agst.
SIDNEY W. HOPKINS AND OTHERS.

CITY AND COUNTY OF NEW YORK, *ss:*

Before me personally came Robert W. Pulliam, of Asheville, North Carolina, who having first been duly sworn, makes oath and says that he was well acquainted in and prior to the year 1869 with Mr. George W. Swepson, also of North Carolina.

Affiant further says that said Swepson was president of the 2932 plaintiffs herein, and by virtue of his office held bonds of the State of North Carolina to the amount of nearly six millions of dollars, said bonds having been furnished by said State to said plaintiffs to be used solely for the purpose of contracting their railway.

Affiant further says that said Swepson, to this affiant's personal knowledge, arranged to purchase in his own name a large amount of mortgage bonds of the Pensacola and Georgia Railroad Company, whose railroad was in the State of Florida; and in order to obtain the money wherewith to purchase said bonds said Swepson pledged and used the North Carolina State bonds above described and which belonged to the plaintiffs in the above-entitled action.

Affiant further says that said Swepson used of said money in and about said purchase about seven hundred thousand dollars, with which he purchased about one million of dollars in said Florida railroad bonds.

Affiant further states that he was present when the said Swepson made the arrangements of said purchase.

Affiant further says that subsequently said Swepson was displaced from the presidency of the plaintiffs, and was succeeded in that office by General Milton S. Littlefield; and in order to reimburse and 2933 secure as far as practicable the said plaintiffs the value of their bonds thus misapplied, as above stated, the said Swepson assigned and transferred to said Littlefield in trust for said plaintiffs all the bonds, stocks, claims, and interest which he said Swepson had acquired in said Pensacola and Georgia Railroad Company, and in any other Florida railroad companies.

Affiant further says that he was president of the Raleigh National Bank, and by reason of his position he had constant intercourse with the parties above named during the period occupied in the transactions above referred to; and affiant was then cognizant of the details of said transactions.

And affiant further states that to his knowledge and information and belief the affidavit made herein by George W. Swepson, on the 9th instant, is correct and true.

R. W. PULLIAM.

Subscribed and sworn to before me this eleventh day of September, A. D. 1871.

D. KLEIN,
Notary Public.

2934 Supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
ag'st
SIDNEY W. HOPKINS AND OTHERS.

On the annexed affidavit and all other papers and proceedings in this action, let the plaintiffs or their attorney show cause before me at chambers, at the new court-house, in the city of New York, on Friday, the 30th instant, at 10 o'clock in the forenoon, why the order of arrest in this action should not be discharged, or why the bail should not be reduced, or why such further or other order should not be made as shall be just.

New York, June 28th, 1871.

GEORGE G. BERNARD,
J. S. C.

2935 Supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
ag'st
SIDNEY W. HOPKINS AND OTHERS.

CITY AND COUNTY OF NEW YORK, *ss:*

Sidney W. Hopkins, being duly sworn, doth depose and say that he is the defendant Hopkins in this action mentioned, and he further says as follows:

First. That whatever claim the plaintiffs had for which they have claimed a right to receive any of the Florida bonds mentioned in this action, or the proceeds thereof, was against George W. Swepson, individually, in the first instance, and no other person whatever, and was afterwards against Milton S. Littlefield, individually, and was not against the Florida railroads mentioned in the affidavits in this action, or any of them. That critical examination of the copy of the original agreements annexed to the affidavits on the part of the plaintiffs in this action will show this averment to be true.

2936 Said agreement recites, "That whereas George W. Swepson, late president of the Western Division of the Western North Carolina Railroad Company, made certain investments of the funds of said company in securities of and interest in the said Florida Central Railroad, Jacksonville, Pensacola and Mobile, and the Tallahassee Railroad, of the said State of Florida, as per report made by the said George W. Swepson to the said commissioners, amounting in the aggregate to the sum of $1,287,436.03, to bear interest from the first day of November, 1869, at the rate of eight per cent. per annum; and whereas the said George W. Swepson heretofore conveyed to the said Milton S. Littlefield, subject to the payment of the above-recited claim, his interest in the above-recited railroads." And said agreement also contains the clause: "It is further understood and agreed by the parties of the first and second part, that all the interests owned or claimed by the said parties of the first part, both George W. Swepson and Milton S. Littlefield, or which they as individuals have a right to control in the said Florida railroads, are hereby pledged for the faithful fulfillment of this contract."

2937 And deponent doth further say, as further evidence of the truth of the above allegations, that the plaintiff in this action recently began a suit in this court against one E. Houstoun and Milton S. Littlefield, in which the said plaintiffs aver the fraudulent misapplication by the said George W. Swepson of the funds of the said plaintiffs, and allege, in substance, that in order to reimburse them for their property and funds taken and misappropriated by and on account of the said Swepson, he, said Swepson, transferred to said Littlefield a large amount of property (meaning the stock of the Florida railroads), and in which they further allege that said Littlefield has never accounted to the plaintiffs for any of said property, "and said Littlefield is largely indebted to plaintiffs therefor." And they in said complaint further aver that he, said Littlefield, had expressly pledged to the plaintiffs the whole of the interests and rights held by him, said Littlefield, of every kind, in said Florida Central Railroad Company, and in any and all other railroads in Florida, to secure said plaintiffs all moneys due to them by George W. Swepson or by said defendant Littlefield, as will more fully appear by reference to said complaint.

2938 Second. That it was represented to this deponent's firm by Nicholas W. Woodfin, chairman of the commission mentioned in the affidavits on behalf of the plaintiffs in this action, and otherwise, that the plaintiffs in this action had a valid claim upon the Jacksonville, Pensacola and Mobile Railroad Company for the whole or a large part of the four thousand bond issued by the State of Florida, and it was upon the faith of these representations that the house of the defendant, S. W. Hopkins & Co., was induced to sign and deliver the letter dated London, November 16th, 1870, more particularly hereinafter mentioned; and deponent says that, under the circumstances before mentioned, he is advised, and charges, that said letter of acceptance is void against these defendants, as being a fraud upon them.

Third. And deponent doth further say that the said letter of acceptance was in the words and figures following:

LONDON, *November 16th*, 1870.

NICHOLAS W. WOODFIN, Esq.,
Chairman of the Commissionr of the
Western Division of the Western North Carolina R. R. Co.:

SIR: We are in possession of your favor of this day's date, covering order from M. S. Littlefield, president Jacksonville, Pensa-
2939 cola and Mobile Railroad Company, dated November 16th, 1870, for 800 Florida bonds. We accept the said order, and agree to hold the within-described bonds as agents for the Western Division of the Western North Carolina Railroad Company, subject to the order of the commissioners.

We remain, sir, your most obedient servants,

S. W. HOPKINS & CO.

And deponent says that the order referred to in the words in said letter, "we accept the said order," was in the words and figures following:

LONDON, *November 16th*, 1870.

MESSRS. S. W. HOPKINS & CO.,
58 *Old Broad street, London, and* 71 *Broadway, New York:*

GENTLEMEN: On the 10th day of November, A. D. 1870, I made a final settlement with the Western Division of the Western North Carolina Railroad Company, represented by Mr. Nicholas W. Woodfin, chairman of the commissioners appointed by the legislature of the State of North Carolina to collect the moneys due said company. The commissioners are N. W. Woodfin, W. G. Candler, W. W. Rollins, W. P. Welsh, and J. L. Henry. One of the terms of said settlement
2940 were, that it should place to the order of said company any 800 of the Florida 8 per cent. gold bonds my railroad contracted with you to negotiate on the 13th day of April last; therefore you will place to the order of the Western Division of the Western North Carolina Railroad Company 800 of said bonds, and sell or dispose of the same as the said chairman may direct; but this order is subject to the following conditions:

First. The said bonds are to remain in your hands to sell.

Second. The proceeds of said bonds are to be transferred to your New York house and disbursed to said company upon the order of a majority of said commissioners.

I remain, gentlemen, your most obedient servant,

M. S. LITTLEFIELD,
Pres. T., P. & M. R. R. Co.

That the above copies of said acceptance and said order are from press copies thereof in the hands of deponent, sent to him by his London office.

That the contract referred to in said order as dated the "13th day of April last" was a contract in writing between the Jacksonville, Pensacola and Mobile Railroad Company and S. W. Hopkins & Co.,
2941 which, among other things, recites: "Whereas a certain number of miles of said road are now completed, and said company is entitled to receive from the said State of Florida about the sum of four million dollars of bonds." Said agreement, among other things, constituted the said S. W. Hopkins & Co. financial agents to sell, negotiate, and dis-

pose of all the said four million dollars of the said bonds of the State of Florida.

And said deponent says that his firm has received the said four million of bonds, and has contracted to sell the same, and they have delivered a large number of said bonds, but they have in their possession undelivered many more than eight hundred of said bonds upon which they have not yet received any payment whatever.

Fourth. And deponent doth further say that by the terms of the said agreement, a copy of which is annexed to the affidavits on the part of the plaintiffs and dated the 10th day of November, 1870, it is provided that the numbers of the 800 *hundred* bonds mentioned in said agreement were to be designated by the said party of the first part to the
said agreement, "but upon the express stipulations and condi-
2942 tions that the said bonds are to be left with S. W. Hopkins &
Co. for sale"; and deponent says that the numbers of said 800 bonds have never been designated by the said party of the first part nor otherwise, to the knowledge or belief of deponent.

Fifth. And deponent doth further say that an action has just been begun in this court in favor of the Jacksonville, Pensacola and Mobile Railroad Company against the plaintiffs in this action, this deponent and his partners, the commissioners mentioned in the papers of the plaintiffs herein, and Milton S. Littlefield, a copy of the complaint in which action is hereunto annexed as a part of the affidavit.

That said complaint is verified, as appears by said annexed copy, and has attached thereto the affidavit of Aaron Barnett, a copy of which said last-mentioned affidavit is also hereto annexed, and deponent says that he is informed and believes that every averment in the said complaint and in the affidavit of verification and the other affidavit thereto annexed is true. Deponent says that he has been served with a copy of said complaint and with a notice of motion for an injunction as prayed
in said complaint.
2943 Sixth. And deponent doth further say that he denies, upon
information and belief, that there was any other consideration for the agreement mentioned in the ninth folio of the affidavit of Nicholas W. Woodfin sworn on the 19th day of June, 1871, than the claim of the plaintiffs in this action against said Swepson and said Littlefield individually.

And deponent says that the sale of the Florida bonds mentioned in the 32d folio of the affidavit of the said Woodfin afterwards fell through and was never completed, and in confirmation thereof deponent refers to a letter dated London, 27th March, 1871, signed George Richardson, in the possession of deponent and ready to be produced if required, and he says that the fact that said sale had fallen through was well known to the said Woodfin when he made his affidavits.

And deponent further says that the £10,000 sterling referred to in folios 44 & 45 of the affidavit of said Woodfin was what it purported to be, an advance and not a payment.

And deponent doth further say that his firm are not interested with said Littlefield in the Florida railroad enterprizes, as stated in the affidavit of the said Woodfin, except so far as they, said S. W. Hopkins & Co, have undertaken the negotiation of bonds and the sale of iron
and that they are not connected with the said Littlefield in othe
2944 railroad enterprises in some Western State or any other railroa
enterprises whatever, and he admits that his firm has endeavore
to ake a reasonable profit out of their business transactions, but the have not otherwise striven to enrich themselves, and he denies that

they design or intend to use any of the moneys whatever or the bonds in question in this action or any of them in order to advance their own private schemes and enterprises in violations of the rights of any railroad or any person whatever, and he denies all the allegations to the contrary thereof in folios 60, 61, 62, and 63 of the affidavit of the said Woodfin.

And deponent doth further say that he denies each and every allegation in the affidavits made on the part of the plaintiffs in this action and in the complaint herein inconsistent with the statement of this affidavit, and deponent doth further say that his firm are entirely unembarrassed in their pecuniary affairs and abundently able to pay all the damages claimed in this action, and further saith not.

S. W. HOPKINS.

Sworn to before me this 28th day of June, 1871.

EDMUND T. DAVIS,
Notary Public, New York City.

2945 *Amended answer.*

Supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
ag'st
SIDNEY W. HOPKINS, FRANK H. COLLINS, AND Robert J. Carpenter.

And the said defendants by Sewell & Pierce, their attorneys, for answer to the complaint of the plaintiff, show:

They admit that the plaintiff is a body corporate created under the laws of the State of North Carolina as in the complaint alleged, and that the defendants are and were at the times in said complaint set forth partners doing business in New York and London under the firm name of S. W. Hopkins & Co.

And said defendants, further answering, say that on the 10th day of November, 1870, these defendants as the financial agents of the Jacksonville, Pensacola and Mobile Railroad Company, a corporation created under the laws of the State of Florida for the purpose of perfecting the public works of that State, were engaged in negotiating 2946 for the sale of four thousand bonds of the State of Florida which before that time had been issued to the said Jacksonville, Pensacola and Mobile Railroad Company, to aid in the construction of a railroad within said State of Florida, from Quincy towards Mobile, a large proportion of which said bonds were then in the possession of the said defendants in the city of London and which said bonds were of the denomination of one thousand dollars each, payable in the gold coin of the United States, with interest at eight per cent. per annum; that said bonds were so placed in the hands of said defendants by the Jacksonville, Pensacola and Mobile Railroad Company for the purpose of negotiating the sale thereof for said company and for the purchase, with the proceeds, of materials for the construction of said railroad.

That on the day aforesaid and prior thereto one Nicholas W. Woodfin represented to the defendants that he and certain other persons had been appointed by the legislature of the State of North Carolina a commission invested with full power to settle certain claims which the plaintiffs herein had against the said Jacksonville, Pensacola and Mobile Rail-

road Company amounting to over one million of dollars, and falsely
2947 and fraudulently represented to these defendants that the said
Jacksonville, Pensacola and Mobile Railroad Company was in
truth indebted to the plaintiff herein in the sum aforesaid, by reason of the fact that the said Jacksonville, Pensacola and Mobile Railroad Company had received from one George W. Swepson, a former president of the plaintiff, the aforesaid sum of over one million dollars, the property of the plaintiff, which said sum the said Jacksonville, Pensacola and Mobile Railroad Company had expended for its own use and had had the benefit of, and that Milton S. Littlefield, the president of said Jacksonville, Pensacola and Mobile Railroad Company, had full power and authority from the board of directors of said last-named company to settle with the said commission, on behalf of the plaintiff, the said claim, and for that purpose to transfer to the plaintiff such amount of the bonds aforesaid in the hands of the defendant as would be sufficient to liquidate the said claim.

That after making the representations aforesaid the said Woodfin did
present to the defendants in London an order signed by said Littlefield
as the president of said Jacksonville, Pensacola and Mobile Rail-
2948 road Company directing these defendants to hold for the plain-
tiffs any eight hundred of the said bonds and when the same
should be sold to transfer the proceeds to the said commissioners for the plaintiff.

That these defendants believing the representations of the said Woodfin to be true, and relying upon them, did agree with said Woodfin to hold any eight hundred of said bonds, and when the same should be sold to deliver the proceeds to the plaintiff, and defendants allege that there was no other consideration whatever for said agreement, but that the same was made in the belief that the plaintiff had a valid claim on said Jacksonville, Pensacola and Mobile Railroad Company as stated by said Woodfin, and that said Littlefield had full authority from the board of directors of said company to order said transfer. That said representations so made by the said Woodfin were false in this, that the plaintiff had no valid claim against said Jacksonville, Pensacola and Mobile Railroad Company; that said last named
company never received any money from George W. Swepson, or any
other person, the property of the plaintiffs, and never expended
2949 or had the benefit of any moneys of the plaintiffs, and said Little-
field had no authority whatever from the board of directors of
said Jacksonville, Pensacola and Mobile Railroad Company to transfer any of the said bonds to the plaintiffs or to divert any of the proceeds thereof from the purpose for which the same were issued. That all of the aforesaid facts were well known to said Woodfin, but that said Woodfin made the aforesaid false and fraudulent representations with the intent of deceiving the defendants and of fraudulently obtaining from them the said eight hundred bonds or the proceeds thereof.

That the said pretended claim against the said Jacksonville, Pensacola and Mobile Railroad Company, is in fact a claim for money misappropriated by said Swepson, when president of the plaintiffs, which claim was assumed by said Littlefield, and that in executing and delivering to the plaintiffs the said order for said bonds directed to these defendants, the said Littlefield, was attempting to pay a private individual indebtedness of his own with the bonds of said company which the said Woodfin at the time well knew, and these defendants deny that they have sold the said 800 bonds or any part of them, or received the proceeds thereof.

2950 And these defendants deny each and every allegation in the complaint contained not hereinbefore specifically admitted, denied, or answered.

II. And for a second and separate answer and counter-claim, the defendants show all the allegations, matters, and things which in their first answer hereto they have shown, with the same effect as if the same was repeated verbatim in this second and separate answer, and further show, that relying upon the said representations of the said Woodfin and believing the same to be true, these defendants on the 5th day of April, 1871, advanced and paid to the plaintiffs the sum of fifty-three thousand seven hundred and seventy-six dollars and sixty-six cents by way of a loan upon the security of said bonds, no part of which has been paid.

Wherefore the defendants demand judgment.

First. That the acceptance by the defendants of said order of said Littlefield, signed by him as president of the Jacksonville, Pensacola and Mobile Railroad Company, be declared to be void and of no effect and that the same be delivered up and cancelled.

2951 Second. That defendants have judgment against the plaintiffs for fifty-three thousand seven hundred and seventy-six dollars and sixty-six cents with interest from said 5th April, 1871, and costs.

SEWELL & PIERCE,
Def'ts' Atty's.

City and County of New York, *ss:*

Sidney W. Hopkins, one of the defendants above named, being duly sworn, deposes and says: That the foregoing answer is true of his own knowledge except as to those matters therein stated on information and belief, and as to these matters he believes it to be true.

S. W. HOPKINS.

Sworn to before me this 19th day of July, 1871.

ELEAZAR MILLER,
Notary Public, New York County.

2952 Supreme court, city and county of New York.

The Western Division of the Western North Carolina Railroad Company
against
Sidney W. Hopkins, Frank H. Collins, and Robert J. Carpenter.

The reply of the Western Division of the Western North Carolina Railroad Company, the plaintiffs in this action, to so much of the answer of the defendants therein as seeks to set up a counter-claim:

The said plaintiffs, by Algernon S. Sullivan, their attorney, deny that Nicohalas W. Woodfin, named in said answer, at the time or times in that behalf mentioned in the said answer or at any other time, made the representations or any of the representations alleged in the said answer to have been made by him, and they further deny that the order mentioned in said answer as having been presented by said Woodfin to said defendants is correctly described in said answer.

2953 And said plaintiffs further replying say that prior to the tenth day of November, 1870, the said plaintiffs had a good and valid

equitable lien upon the four thousand Florida State bonds mentioned in the said answer for a much larger sum than the entire value of eight hundred of said bonds, and that at the same time the said defendants by reason of certain contracts to which they were parties in respect of said bonds, and the proceeds thereof and in other ways had an interest in the settlement of said lien and were very desirous of reducing the same to as low an amount as possible, and that accordingly on or about the day last mentioned a conditional settlement of the lien, rights, and claims of the said plaintiffs in respect to the said four thousand bonds was made by an agreement between the Jacksonville, Pensacola and Mobile Railroad Company and one Milton S. Littlefield, the president thereof therein named, as parties of the first part, and the plaintiffs herein named as parties of the second part, whereby it was, among other things, agreed by said parties of the first part that eight hundred of the said bonds should be and the same were thereby sold absolutely to the said plaintiffs, and in pursuance thereof the order was deliv-
2954 ered to said Woodfin, the agent of said plaintiffs, and the same was thereupon duly accepted by said defendants.

And the said plaintiffs say that said last-mentioned agreement was made with the full knowledge of said defendants and in pursuance in part of their express wishes and request, and was entered into on the part of the plaintiffs upon the faith and in part in consideration that the said defendants would faithfully perform all the obligations which by the terms of said agreement would devolve upon them, which said defendants before the making of said agreement promised the said plaintiffs to do.

And the said plaintiffs further say that by the terms of said agreement the said parties of the first part had the privilege of designating out of the said four thousand bonds the particular eight hundred which should pass to the plaintiffs under the agreement aforesaid, which said privilege the said parties of the first part, a few days after the day last mentioned, waived, of which waiver the said defendants had at the time thereof due notice. And the said plaintiffs say that on or about the 16th day of November aforesaid the said defendants duly accepted the said above-mentioned order, but the said plaintiffs deny that they,
2955 the said defendants, accepted the same or agreed with said Woodfin to hold said or any eight hundred of said Florida bonds, relying upon any representations of said Woodfin; on the contrary the said plaintiffs allege that the said defendants accepted said order with full knowledge of the premises hereinbefore in this behalf stated, and because they were especially desirous that the agreement aforesaid should be made, and that the said Woodfin should be made to believe that the same would be carried out and performed in good faith.

And the said plaintiffs further replying deny the allegations, and each of them, in said answer, that the plaintiffs had no valid claim against the Jacksonville, Pensacola and Mobile Railroad Company, and that the said company never had the benefit of any moneys of the plaintiffs, and that said Littlefield had no authority whatever from the board of directors of said last-mentioned company to transfer any of said bonds to the plaintiffs, or that the facts alleged in the said answer, and herein denied, or any of them, were ever known to said Woodfin, and they deny that said Woodfin ever made any statement or representa-
2956 tion whatever alleged in said answer to be false or fraudulent, or any representations whatever with any false or fraudulent intent or with any intent to deceive said defendants or to obtain from them the

said eight hundred bonds, or any of them, or the proceeds thereof or any thereof.

And said plaintiffs further deny that their claim, in respect to any of the said four thousand bonds, was a claim merely for money misappropriated by George W. Swepson, named in said answer, or that the said Littlefield, in executing or delivering the said order, directed to the said defendants, for said eight hundred bonds, was attempting to pay a mere private individual indebtedness of his own with the bonds of said Jacksonville, Pensacola and Mobile Railroad Company.

And the said plaintiffs further replying, deny the allegations, and each of them, contained in that part of said answer beginning with the words "that relying," in the twelfth folio thereof, and ending with the words "has been paid," in the same folio.

ALGERNON S. SULLIVAN,
Plaintiff's Attorney.

CITY AND COUNTY OF NEW YORK, *ss.:*

W. W. Rollins, being duly sworn, deposes and says, that he is
2957 the president of the Western Division of the Western North Car-
olina Railroad Company, the plaintiffs named in the foregoing reply, and that he has heard the said reply read and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

W. W. ROLLINS.

Sworn to before me, this 19th day of July, 1871.

GEORGE S. McKAY,
Notary Public, New York County.

2958 Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiffs,
ag'st
SIDNEY W. HOPKINS, FRANK A. COLLINS, and Robert J. Carpenter; Aaron Barnett, Curtis Woodruff, Jeremiah P. Robinson, and the Jacksonville, Pensacola & Mobile Railroad Company, defendants.

The supplemental complaint of the Western Division of the Western North Carolina Railroad Company, against Sidney W. Hopkins and the other defendants above named.

The said plaintiffs, by Algernon S. Sullivan, their attorney, respectfully show to this court, that on or about the 19th day of June, in the
year 1871, they made and served their original complaint, and
2959 brought an action in this court against the defendants above
named, Sidney W. Hopkins, Frank H. Collins, and Robert J. Carpenter; and that a copy of their said original complaint is annexed hereto and made a part of their supplemental complaint, and marked A.

And said plaintiffs further show, that at the time of bringing of the said action they, said plaintiffs, procured from a judge of this court, upon the said original bill and the affidavit of Nicholas W. Woodfin and William W. Rollins, an order of arrest directing the sheriff of the city and county of New York to hold the said three last-named defendants to bail in the sum of three hundred thousand dollars, and also an injunction order enjoining and restraining the three last-named defendants from parting with the proceeds, or any of the proceeds, of any of the said eight hundred bonds mentioned in said original complaint which had been sold or disposed of by said three last-named defendants, and also from parting with any of the said eight hundred bonds which had not been sold by them.

2960 And the said plaintiffs further show that the said Sidney W. Hopkins having been duly served with the summons and complaint in the said action, and also with the said injunction, he afterwards gave bail, and the said three last named defendants duly appeared in said action, and put in their joint answer to said original complaint, by which said answer the said three last named defendants not denying that the said eight hundred bonds were transferred and assigned to the plaintiffs, as alleged in said original complaint, nor denying that they thereupon acknowledged to the plaintiffs in writing that they held the same for sale, as the agents of the plaintiffs, but denying that they had sold the greater part or any of said eight hundred bonds, and denying that they had received four hundred thousand dollars in gold coin, on account thereof, pretended by way of defence to said original action that they had been led to give the said written acknowledgment in consequence of pretended fraudulent representations; and further pretended that the said eight hundred bonds were really the property of the Jacksonville, Pensacola and Mobile Railroad Company, one of the defendants above named.

2961 And the said plaintiffs further allege that more than twenty days have elapsed since the service of said answer, and that testimony has been taken in said action.

And the said plaintiffs further show that they have lately and since the bringing of said action discovered, as the fact is, that the said defendants, Hopkins, Collins & Carpenter, composing the firm of S. W. Hopkins & Company did, after the bringing of said action aforesaid and the making of the said original complaint, purchase in city of New York a large amount, to wit, two thousand pounds and upwards of iron rails or bars, for the laying of railroad track, and that they paid for the same, as the plaintiffs are informed and believe, with the proceeds of a part of the four thousand Florida State bonds mentioned in the complaint, and that as the plaintiffs have discovered with certainty since the 18th day of August, 1871, of the said four thousand bonds they, the said S. W. Hopkins & Company, have sold and disposed of twenty-eight hundred, of which two thousand at least were so sold and disposed of by them prior the bringing of this action, and that they have re-
2962 ceived for all the bonds so sold not less than one million five hundred thousand dollars.

And the said plaintiffs further show that at the time the said bonds were assigned and transferred to the said plaintiffs as alleged in said original complaint there was not nor was there at any time thereafter any setting apart or designation of said particular eight hundred bonds.

And the said plaintiffs further allege that they have discovered within a few days past, and the fact is, as they are informed and believe, that the said S. W. Hopkins & Company, at the time of the purchase by them of the said iron rails or bars aforesaid, purchased the same in order to send them to the said Jacksonville, Pensacola and Mobile Railroad Company, and as a fulfillment in part of an obligation on their part under an agreement between them and the said last-mentioned railroad company, respecting the sale of the said four thousand bonds, and the disposition of the proceeds thereof, and that soon after said

purchase they, the said S. W. Hopkins & Company, made a con-
2963 tract for the shipment of all the said two thousand tons of iron
rails or bars, to Jacksonville, in the State of Florida, for the said last-mentioned railroad company, and proceed to ship and have already shipped to Jacksonville a large amount of said iron.

And said plaintiffs further show that the agreement mentioned in the complaint under which the 800 bonds aforesaid were signed and transferred to the plaintiffs, was an agreement to which the said Jacksonville, Pensacola and Mobile Railroad Company was a party, and that the same was for the purpose of satisfying prior obligations of a larger amount on the part of said railroad companies to these plaintiffs; and they say that by reason thereof and of the facts set forth in the original complaint and in this supplemental complaint these plaintiffs have, as they are advised and believe, a priority over the said last-mentioned railroad company, and the right to receive the proceeds of the said four thousand bonds to the extent of eight hundred thereof before the
2964 said railroad company receives any of such proceeds, but that at all
events they have the right to share in the proceeds of the sale of the said bonds, as the same are and have been sold, to the extent of their interest therein, and they say that as they are informed and believe the said Jacksonville, Pensacola, Mobile Railroad Company has already received from the proceeds of the sales of said four thousand bonds very large sums of money, so that, if an accounting were had, in respect of the said railroad iron, the said plaintiffs would be found to be entitled to the whole thereof, even without giving them the benefit of said priority.

And the said plaintiffs further allege that the said railroad iron, or all of the same which remains unshipped, is now in possession of defendants Curtis, Woodruff, and Jeremiah P. Robinson, who are storekeepers under the firm of Woodruff and Robinson.

And said plaintiffs further allege that the defendant Aaron Barnett claims to have purchased the said railroad iron from said
2965 S. W. Hopkins & Co., on or about the 8th day of August, 1871,
but they say the said Barnett is a director of the said last-mentioned railroad company, and has at all times had due notice and knowledge of the rights of the plaintiffs in the premises, and that his claim is fraudulently set forth by him in collusion with said S. W. Hopkins & Co., and the said last-mentioned railroad company, in order to defeat the rights of the plaintiffs and others.

And the said plaintiffs further show that the said S. W. Hopkins & Co. have in their hands, as plaintiffs are informed and believe, a very large amount of the proceeds of the sales of the said four thousand bonds which belonged to these plaintiffs and to other parties interested therein, and that they intend to conceal and fraudulently retain such proceeds to their own use, and to that end the defendants Sidney W. Hopkins and Robert J. Carpenter are keeping themselves out of the reach of the process of law in this State by absenting themselves there-
2966 from at times, and at other times lurking and concealing them-
selves therein, and that, as plaintiffs believe and are advised, their principal if not their only means of securing their rights in the premises is to invoke the equitable interposition of this court in respect to the proceeds of said bonds in whatever form the same may be found.

And the plaintiffs further say that the said Jacksonville, Pensacola and Mobile Railroad Company are a corporate body created by and existing under the laws of the State of Florida.

Wherefore the said plaintiffs demand judgment that this complaint be allowed as supplemental to the said original complaint, and that it be adjudged that the whole of said railroad iron is in equity the property of the said plaintiffs by virtue of their right of priority as hereinbefore mentioned; or if not this relief, then that an accounting be had between said last-mentioned railroad company and the plaintiffs in respect of the proceeds of the sales of said bonds, to the end that it be ascertained how much of the proceeds of the same, represented by the said iron, 2967 belong to the plaintiffs and how much to the said last-mentioned railroad company, and that the said iron be sold and the proceeds thereof be distributed according to the result of such accounting, and that in the meantime any removal or disposition of said iron be prevented by an injunction order, and that a receiver thereof be appointed with the usual powers, and that the plaintiffs have such further or such other relief as may be just, with their costs.

ALGERNON S. SULLIVAN,
Plaintiff's Attorney.

CITY & COUNTY OF NEW YORK, *ss:*

Nicholas W. Woodfin, being duly sworn, deposes and says, that he is a resident of the State of North Carolina, and that he is charged by the plaintiffs in the foregoing entitled action with the duty of attending to the bringing and prosecution of the original action mentioned in the foregoing supplemental complaint, and of this supplemental action.

Deponent further says that he has read the foregoing supplemental complaint, and knows the contents thereof, and that the 2968 same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

N. W. WOODFIN

Sworn to before me this 21st day of August, 1871.

GEORGE A. BLACK,
Comm'r of Deeds, N. Y. City.

(Endorsed:) Filed Aug. 24th, 1871.

2969 *Supplemental action.*

Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
ag'st
SIDNEY W. HOPKINS AND OTHERS.

CITY AND COUNTY OF NEW YORK, *ss:*

Nicholas W. Woodfin, being duly sworn, deposes and says: That he is a citizen and resident of North Carolina, and has been by the legislature of that State and by the plaintiffs above named charged with the duty of seeking to recover for said plaintiffs very large sums of money belonging to said plaintiffs which had been wrongfully misappropriated, and that he has been actively engaged for the greater part of the time during a year past in endeavors to recover such moneys, and in the course of such endeavors has attended to the bringing and prosecution of the action mentioned in the supplemental complaint to which this affidavit is annexed.

2970 And he further says that, as was his duty, he has made himself
very familiar with the matters stated and set forth in the original complaint mentioned in said supplemental complaint as well as those set forth in said supplemental complaint, and that a large part of said matters are within his personal knowledge, and are true to his personal knowledge, and that all the rest of such matters are, as he verily believes, true.

And this deponent further says, that at the time of the bringing of the original action mentioned in said supplemental complaint, the defendant, Sidney W. Hopkins, was arrested and held to bail by the order of one of the judges of this court in the sum of three hundred thousand dollars, and an order to show cause was granted on the said original complaint, and the affidavits of William W. Rollins and this deponent,
of which the affidavit of this deponent was the principal and most
2971 material one, why the defendants in the said original action
should not be restrained from parting with the proceeds of the eight hundred bonds mentioned in said complaints, received by them, and with such of said eight hundred bonds as remained undisposed of, with an interim injunction order. That said last-mentioned defendant moved to vacate said order of arrest, and said motion to vacate, as well as the motion for an injunction, have been argued with great fullness before Mr. Justice Cardozo, who has not as yet rendered his decision thereon.

And said deponent further says, that on the argument of said motion, the said defendants last mentioned, not having then put in their answer, did not deny, by their affidavits or otherwise, the allegations of the plaintiffs that they had sold the greater part of said eight hundred bonds, and received as the proceeds of such sales the sum at least of
four hundred thousand dollars in gold coin, but put their case
2972 upon the pretense that the written acknowledgment mentioned
in said original complaint, that they held said eight hundred bonds as the agents of the plaintiffs, was obtained from them upon certain statements made by this deponent, which statements they alleged were untrue, although they did not presume to charge deponent with any fraud or deceit in the making of them, and upon the further pretence that the said eight hundred bonds were in fact originally the property of the Jacksonville, Pensacola and Mobile Railroad Company, a Florida corporation, and that the transfer and assignment thereof to the plaintiffs was without the authority of said company. But as these pretences would not of themselves be sufficient to defend them, the said defendants, against their written acknowledgment aforesaid, they, said defendants, collusively procured, as deponent has the best information
and reasons for believing, a pretended action to be brought
2973 against themselves, and said plaintiffs, by the said Florida cor-
poration, for the pretended purpose of setting up the claim of said Florida corporation to said eight hundred bonds, and the proceeds thereof, and of enjoining said defendants from parting with the same

And deponent further says that Sidney W. Hopkins, one of said defendants in said original action, was arrested a few days before the 28th day of June, 1871, under the order of arrest aforesaid, and that his affidavit, on which he moved to vacate his order, set forth the bringing of said pretended action, and that said last mentioned affidavit and the complaint in said pretended action against himself were both sworn to on the same 28th day of June, and before the same notary public, the said complaint being verified by Aaron Barnett, one of the defendants herein, and the

summons in said pretended action was dated the same day, and the attorneys of record for said Florida corporation in said pretended
2974 action were the counsel for said Sidney W. Hopkins and the other defendants in said original action who prepared the affidavit aforesaid of said Hopkins.

And deponent further says that in said pretended action notice of motion was given for an injunction restraining the defendants therein, the said Hopkins and his copartners, Collins and Carpenter, composing the firm of S. W. Hopkins & Company, from parting with said bonds and their proceeds, and also restraining the plaintiffs in said original action from prosecuting the same against said S. W. Hopkins & Company, and such motion was argued at the same time with the other motions hereinbefore mentioned, and that on such argument the same counsel appeared and argued for the said S. W. Hopkins & Company and the said Florida corporation.

And deponent further says that after the argument of said motions said S. W. Hopkins & Company put in their joint answer to the said original action of the plaintiff, but that in such answer they made
2975 no pretence by way of defence; that the said Florida corporation made the claim and brought the pretended action aforesaid.

And deponent further says that after the said original action of the plaintiff was at issue, and on or about the 20th of July last, he gained information which led him to believe that the said S. W. Hopkins & Company had purchased the railroad iron mentioned in said supplemental complaint, and that they designed the same for said Florida Railroad corporation; and they had made such purchase with part of the proceeds of the four thousand bonds mentioned in said supplemental complaint; but such information was not sufficient to enable him to act thereon; but he says that shortly thereafter the firm of L. P. Bayne & Company, of the city of New York, creditors of the said Florida corporation, caused the said iron to be attached as being the property of said corporation; whereupon said S. W. Hopkins & Company
2976 claimed the same, which claim was tried on or about the 7th day of August, 1871, before the sheriff of King's County and a jury, and the title found in said S. W. Hopkins & Company; that said L. P. Bayne & Company thereupon indemnified the said sheriff who had executed the attachment, and thereupon Aaron Barnett, one of the defendants herein, who is one of the directors of said Florida corporation, and the same person who verified the complaint in the pretended action aforesaid, appeared and made another claim in his own name to said property, pretending to have purchased the same; and that upon the trial of the claim last mentioned, before the same sheriff and a jury, the 19th day of August, the said Barnett produced a pretended receipted invoice of the said iron from said S. W. Hopkins & Company to himself, dated the 17th day of July last, and certain orders for the
2977 delivery of said iron to him, dated the 8th day of said August, but he did not pretend that he had taken possession of said iron until after the trial of the claim first aforesaid, nor would he undertake to swear, although pressed upon this point, that said invoice was received by him before said 7th of August, but stated that he did not know when he received it.

Deponent further says that he has within a few days last past learned from one Mr. Gleason, late lieut. governor of Florida, who is one of a committee constituted by said Florida corporation, for the purpose, among other things, of attending to its financial concerns with S. W. Hopkins & Company; that said firm, prior to the month of July last,

made out an account and statement of the disposition made by them of said four thousand bonds and the proceeds thereof, and delivered the same to said corporation; and that it appears by the same that
2978 said S. W. Hopkins & Company had, prior to the third of June, 1870, out of the proceeds of the said four thousand bonds, and said S. W. Hopkins & Company so claim, paid over to or for said Florida corporation the sum of nine hundred and five thousand one hundred and nineteen 77-100 dollars, without including the sum paid for said railroad iron, and that after the purchase of said railroad iron the said S. W. Hopkins & Company charged the same on the foot of said account or statement to said Florida corporation at the sum of $150,000.

And deponent further says that, as he is informed by said Gleason, and verily believes, the said account or statement with the last mentioned charge thereon was in the possession of said Barnett prior to the 17th day of July last.

Deponent further says that the testimony of John Collinson has been taken in said original action de bene esse, and that in such testi-
2979 mony he stated that he was the party who had agreed to buy the said four thousand bonds of said S. W. Hopkins & Company, and that he had paid the said firm on account thereof in full for 2,800 of the same at the rate of one hundred and thirty-eight pounds sterling for each bond, less a deduction of the amount of three coupons for each bond, each of said coupons being four per cent. and the bonds being each for $1,000 in gold. Deponent further says that said iron will, as he is informed and believes, be shipped to Florida in a very few days, unless such removal is enjoined by this court.

And this deponent further says that, as he verily believes, the said plaintiffs will not be able by any judgment and execution against the dfendants Hopkins, Collins, and Carpenter, personally to recover the amount of the proceeds of the sale of said Florida bonds which belong to the said plaintiffs, and that the interposition of the equitable
2980 powers of this court is absolutely necessary in order to prevent an irreparable injury to the rights of the plaintiffs.

N. W. WOODFIN.

Sworn to before me this 21st day of August, 1871.

GEO. A. BLACK,
Comm'r of Deeds, N. Y. City.

Injunction by order.

Supreme court, city and county of New York.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, plaintiffs,
against
SIDNEY W. HOPKINS, FRANK A. COLLINS, Robert J. Carpenter, Aaron Barnett, Custis Woodruff, Jeremiah P. Robinson, and the Jacksonville, Pensacola and Mobile Railroad Company, defendants.

It appearing satisfactorily to me by the affidavit of Nicholas W. Woodfin and the verified supplemental complaint that sufficient ground for an order of injunction exist', I do hereby order
2981 that the defendants in the above entitled action show cause before me at the chamber of the judges of the

supreme court, in the City-Hall, in the city of New York, on the first Thursday of September, 1871, at 10½ o'clock a. m., why an order should not be made restraining the defendants Aaron Barnett, Curtis Woodruff, Jeremiah P. Robinson, and the Jacksonville, Pensacola and Mobile Railroad Company, and each of them, from selling, removing, or in any manner disposing of or interfering with the railroad iron or any part thereof, consisting of iron rails, bars, &c., now in the custody of Woodruff and Robinson, storekeepers in Brooklyn, and now or lately held by them on account of or subject to the order of Aaron Barnett or Barnett & Company, and why a receiver should not be appointed thereof, &c. And in the meantime and until the hearing and decision on the motion, I hereby order that the said last named defendants, and each of them and their and each of their officers, agents, servants, or clerks, do absolutely refrain from selling, removing, or in any manner disposing of or interfering with the said railroad iron or any part thereof, and 2982 from aiding and assisting in any removal of or interference with the same or any part thereof until the further order of this court, and in case of disobedience to this order you will be liable to the punishment therefor prescribed by law.

Dated August 21, 1871.

ALBERT CARDOZO.
J. S. C.

2983 Supreme court.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
against
SIDNEY W. HOPKINS, FRANK H. COLLINS, AND Robert J. Carpenter, impleaded.

The answer of the above named defendants to the supplemental complaint of the plaintiffs by Favell & Pierce, their attorneys, shows:

First. That the defendants herein answer as before they have answered to the complaint in this action and make their said answer a part of this their supplemental answer, and ask that the same be taken to be a part hereof, with the same force and effect as if the contents thereof were herein repeated verbatim, and they also refer to said 2984 answer as to what they admitted and what they denied of the allegations in the complaint.

Second. The defendants deny that after the bringing of this action, which was brought on or about the 21st day of June, 1871, they purchased two thousand tons of iron, as set up in said supplemental complaint, but allege that they purchased the same before the commencement of this action in the regular course of their business, and that the said iron was the property of these defendants, and say that said iron or a part of it was purchased with the intent that the same should be sold by them to the Jacksonville, Pensacola and Mobile Railroad Company, and they deny that after such purchase they made a contract with the said company for the shipment of said iron. And defendants admit that they have sold 2,800 of the 4,000 bonds mentioned in the 2985 complaint and have received a large amount of money therefor, to wit, the sum of $997,920, after deducting the commissions and allowances to which they were entitled, which sum they have duly credited said railroad company in account and a large part of which sum had been advanced by these defendants to said company before the sale of said bonds.

Third. And defendants show that after crediting said company with the said sum, the said company is indebted to defendants to a large amount, to wit, in the sum of several hundred thousand dollars, including obligations of these defendants for said company.

Fourth. And defendants say that the proceeds of said bonds were paid into the office of these defendants in London, at divers different 2986 times, and that during the period of time covered by such payments divers other large sums of money were paid into their said London office, the proceeds of other and different business, and that all the moneys so received were mingled together, and that remittances were made by the London office to the New York house from time to time, in round amounts, without any reference to a specification of the sources from which the same was derived, and such remittances went into the general funds of the New York house, and said iron, as well as other iron, was paid for and other payments were made from the said general funds, and the proceeds of the sale of said bonds were not kept separately, wherefore the defendants deny that the iron in the complaint mentioned was purchased with the proceeds or a part of the proceeds of said bonds.

2987 And defendants deny that the assignment or transfer of the said eight hundred bonds to the plaintiffs was made to satisfy prior or other obligations of the said Jacksonville, Pensacola & Mobile Railroad Company to the plaintiffs, but, as defendants are informed and believe, was unlawfully made for the purpose of satisfying an obligation of Milton S. Littlefield to the plaintiffs, and for which said company was not liable.

Sixth. And defendants deny that they have any of the proceeds of said 4,000 bonds, or of any of them, in their hands, and deny that they intend to conceal or fraudulently retain the same or any part thereof to their own use, and deny that Hopkins or Carpenter are keeping themselves absent from the State or lurking and concealing themselves 2988 therein, but, on the contrary thereof, allege that all of said defendants are pursuing the ordinary business of their mercantile establishment, and that the defendant Hopkins has at all times since the commencement of this action been daily at his office, in the city of New York, excepting for a short period in the month of August, when his business required his presence in a Western State, and that his absence at that time was only for about ten days.

Wherefore the defendants pray that the complaint and supplemental complaint may be dismissed with costs.

SEWELL & PIERCE,
Def't's Att'ys.

2989 CITY AND COUNTY OF NEW YORK:

Sidney W. Hopkins, being duly sworn, deposes that he has heard read the foregoing answer; that he is one of the defendants named therein; that the same is true of his own knowledge, excepting as to those matters therein stated on information and belief, and as to those matters he believes it be true.

S. W. HOPKINS.

Sworn to before me this 13th day of Oct., 1871.

RICH'D STACPOOLE,
Notary Public.

2990 EXHIBIT S. W. H., Q.

Complaint, answers, affidavit, and order to show cause.

Supreme court, city and county of New York.

THE JACKSONVILLE, PENSACOLA AND MOBILE
Railroad Company
against
THE WESTERN DIVISION OF THE WESTERN
North Carolina Railroad Company and others.

Martin & Smith, plaintiff's attorneys; Algernon S. Sullivan, attorney for W. D. W. N. C. R. R. Co., W. W. Rollins, and N. W. Woodfin; Sewell & Pierce, attorneys for S. W. Hopkins & Co.

At the execution of a commission for the examination of witnesses, wherein J. Fred. Schutte, Jan Prins, Adrianus Prins, and others are complainants, and The Western Division of the Western North Carolina Railroad Company and others are defendants, this paper writing was produced by and shown to Sidney W. Hopkins, and by him deposed unto at the time of this examination before,

JOHN A. SHIELDS,
Commissioner.

(On the margin:) Sidney W. Hopkins.

2991 Supreme court.

THE JACKSONVILLE, PENSACOLA AND MOBILE
Railroad Company
against
THE WESTERN DIVISION OF THE WESTERN
North Carolina Railroad Company and others.

On reading the complaint in this action, and the affidavits thereto annexed, it is ordered that the defendants in this action show cause before one of the justices of this court, at special term, to be held at the chambers of this court, at the new court house in the city of New York, on Monday, the third day of July, 1871, at twelve o'clock noon, why the injunction prayed for in said complaint should not be granted, or why such further or other order should not be made as shall be just, and upon the facts stated in the annexed papers, let the papers be served upon any one of said commissioners who can be found in the city of New York; and if such service cannot be made, then let service 2992 be made upon Algernon S. Sullivan, esquire, attorney for the railroad company, defendants, and let service also be made on one of the firm of S. W. Hopkins & Co.

New York, June 28th, 1871.

GEORGE G. BARNARD,
J. S. C.

Supreme court, city and county of New York.

THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, plaintiffs,
against
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, Sidney W. Hopkins, Frank H. Collins, and Robert J. Carpenter, who compose the firm of S. W. Hopkins & Co.; Nicholas W. Woodfin, W. G. Candler, W. P. Welsh, William W. Rollins, and James L. Henry, commissioners appointed by an act of the legislature of North Carolina, and Milton S. Littlefield, defendants.

CITY AND COUNTY OF NEW YORK, *ss.:*

The said plaintiffs, by Martin & Smith, their attorneys, complain and show to this court as follows:

2993 First. Said plaintiffs are a corporation created by and under a law of the State of Florida, approved June 24th, 1869, and which law is entitled "An act to perfect the public works of the State."

Section 1 of said act is in part as follows:

"In order to secure the speedy completion, equipping, and the maintenance of a connection, by railroad, between Jacksonville, on the Atlantic coast, and Pensacola, on the Gulf coast, and Mobile in Alabama, running through the State of Florida," &c., as will more fully appear by reference to said act.

Second. By section 14 of the said act it was among other things provided:

"That it shall be lawful for the several companies owning the roads or parts of roads from Quincy to Jacksonville, from Tallahassee to St. Mark's, and the branch to Monticello, or either of said companies, by a vote of the owners of a majority of the stock in interest, and with the consent of the owners of a majority of the stock in interest of the Jacksonville, Pensacola and Mobile Railroad Company, to consolidate with the latter company so as to become one corporation under its name on such terms as may be agreed on," as will more fully appear by the act in question, to which reference is made for greater certainty.

And the said plaintiffs further say that the said last mentioned act was amended by a law approved January 28, 1870, and that section 2 of said amended act is, in part, as follows:

"In order to aid said Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvem
of the State, the governor of the State is hereby directed to deliver
2994 to the president of the said company coupon bonds of the State to
an amount equal to sixteen thousand dollars per mile for the whole line of road and length of railroad owned by, or belonging to, said Jacksonville, Pensacola and Mobile Railroad Company, in exchange for first mortgage bonds of said railroad company, of the denomination of one thousand dollars, when the president thereof shall certify upon his oath that the road or parts of roads for which he asks for the exchange of bonds is completed and is in good running order."

And they say that section 4 of said act was, in part, as follows:

"That the governor shall, for the purpose of further aiding said Jacksonville, Pensacola and Mobile Railroad Company in the speedy construction of its railroad, deliver to the president of said company coupon bonds of this State, of the same character as those above described in this act, to the amount of sixteen thousand dollars per mile, upon receiving for and from the president of said company first mortgage bonds of like amount, on any part or portion of the road between Quincy and Jacksonville," as will more fully appear by reference to said act.

Fourth. And the said plaintiffs further say that Jacksonville is upon the St. John's River, and is the eastern terminus of a line of railroads running and designed to run from said Jacksonville to Pensacola, on the Gulf, and which is designed to be extended to reach Mobile in the State of Alabama; that the first link in the line from Jacksonville is the Florida Central Railroad Company, running from Jacksonville to Lake City, about sixty miles, and is a railroad already completed; that the second link in said line extends from Lake City to Quincy, about one hundred and twenty-five or one hundred and thirty miles; that said last mentioned link passes through the city of Tallahassee, 2995 about twenty-three miles before reaching Quincy, from which last mentioned point there is a railroad to St. Mark's, on the St. Mark's River; that said railroad from Lake City to Quincy, and from Tallahassee to St. Mark's was, before the consolidation hereinafter mentioned, known as the Tallahassee Railroad, and was a railroad already completed; that the third link is designed to extend from Quincy aforesaid to Pensacola and to Mobile, but the same is now under construction, and no part of the same is completed; that previous to the consolidation hereinafter mentioned, the said link, extending from Quincy westward, was known as the Jacksonville, Pensacola and Mobile Railroad Company.

Fifth. And said plaintiffs further say that in or about the months of May or June, 1870, the said railroad, extending from Lake City to Quincy, with its branch from Tallahassee to St. Mark's, which, together, were known as the Tallahassee Railroad, and the said railroad in process of construction from Quincy westward, known as the Jacksonville, Pensacola and Mobile Railroad Company, were, under section fourteen of said original act, as before in part quoted, consolidated under the name of the last-mentioned road, to wit, under the name of the Jacksonville, Pensacola and Mobile Railroad Company.

Sixth. And the said plaintiffs further say that the principal object of the consolidation was to facilitate and accomplish the construction of the said railroad extending westward from Quincy, and for that purpose to obtain from the State of Florida the bonds of said State for sixteen thousand dollars per mile upon the said completed railroad extending from Lake City to Quincy, and from Tallahassee to St. Mark's, to be used in such construction.

2996 Seventh. And the said plaintiffs further say that after the said consolidation, the governor of the State of Florida issued to these plaintiffs, in exchange for three thousand of their own bonds and one thousand of the bonds of the Florida Central Railroad Company, of one thousand dollars each, four thousand of the bonds of the State of Florida for one thousand dollars each, for the purposes mentioned in the said amended act, as above quoted.

Eighth. And the said plaintiffs further say that the said four millions of the bonds of the State of Florida so obtained by them as aforesaid, and for the purposes aforesaid, was placed by them in the hands of the defendants, Hopkins, Collins and Carpenter, who are bankers, in company, under the name of S. W. Hopkins & Co., doing business in th city of New York, and having an office in London, for the purpose an under an agreement that the said S. W. Hopkins & Co. should dispose of said bonds for the benefit of said plaintiffs, in order that the proceeds thereof should be applied to the exclusive benefit of the said plaintiffs in the construction of the said railroad extending westward from Quincy as aforesaid; and they further say that the said S. W. Hopkins & Co. have made a contract for the disposition of said four thousand bonds in Europe, at a price satisfactory to these plaintiffs, and have delivered, upon such last-mentioned contract, some of said bonds, as plaintiffs are informed and believe, and that they still have in their hands, as said plaintiffs are informed and believe, a large number of said bonds, and many more than eight hundred of said bonds under contract as aforesaid, but not delivered, and upon which no part of the price has, as yet, been received by the said S. W. Hopkins & Co.; and the said plaintiffs further say that the money to be received for the said bonds, still in the hands of the said S. W. Hopkins & Co., is absolutely necessary to carry out the object for which the said bonds were issued, namely, to proceed with the construction of the said railroad westward of Quincy as aforesaid, and that if these plaintiffs are deprived 2997 of the said bonds temporarily or permanently, or are prevented temporarily or permanently from receiving the price thereof, it will greatly embarrass them, and greatly delay and possibly defeat the construction of the said road, and will produce an irreparable injury.

Ninth. And the said plaintiffs further say that they are informed and believe that the defendants, the Western Division of the Western North Carolina Railroad Company, to be called hereafter in this complaint the North Carolina Railroad Company, are a corporation created by and under the laws of the State of North Carolina; that previous to October, 1867, they had as their president George W. Swepson, and from that time for a considerable period had as their president the defendant, Milton S. Littlefield; that the said Milton S. Littlefield is one of the defendants herein, and for some time past has been the president of the plaintiffs, and the plaintiffs further say that it is claimed by the said North Carolina Railroad Company that the said Swepson, when president of their road, misapplied a very large amount of the proceeds of North Carolina State bonds, which had been issued to enable said company to build their road, and that he had purchased with such funds, among other things, a large number of shares of the said railroad extending from Jacksonville to Lake City, known as the Florida Central Railroad Company, and also the bonds of the road extending from Lake City to Quincy, and from Tallahassee to St. Mark's, then respectively known as the Pensacola and Georgia Railroad Company, and the Tallahassee Railroad Company; and they claim further that when the said two last-mentioned railroads were sold, by authority of the State of Florida, that said Swepson, either at the time of such sale, or shortly afterwards, surrendered the said last-mentioned bonds, and became interested in the stock of the said two last-mentioned roads, which were reorganized under the name of the Tallahassee Railroad Company; and they claim further that the said Swepson after that time sold 2998 out all his interest in the stock of the said Florida Central Railroad and in the stock of the said last-mentioned Tallahassee Railroad, to the said defendant Littlefield, and that the said Littlefield became liable to the said North Carolina Railroad Company in the same manner as they claimed the said Swepson had theretofore been liable, or in some other manner; and they claim further that they, the said North Carolina Railroad Company, were entitled to all of the said stock in the said Florida Central Railroad Company and the said Tallahassee Railroad Company, purchased as aforesaid by the said Swepson.

And the said plaintiffs further say that they are informed and believe that the said North Carolina Railroad Company claim, in addition, that they had, because of their said claims against the said Swepson, and also against the said Littlefield, a right to take for their own benefit so many of the said four thousand bonds so issued or to be issued by the said State of Florida as would pay them the sum of $1,287,436.03 with interest, being the amount of their alleged claim against the said Swepson and the said Littlefield as aforesaid.

And the said plaintiffs say that at the time that said last claim was made, and in the month of April, 1870, the date of the making of the agreement next hereinafter mentioned, and in the month of November, 1870, the date of the making of another agreement hereinafter mentioned, the said Swepson and the said Littlefield were both in fear of criminal prosecutions threatened against them by and on behalf of the said North Carolina Railroad Company, and they have both of them, in fact, either before or since that time, been indicted in North Carolina.

And the said plaintiffs say that the said claims so made against the said Swepson and Littlefield were yielded to by both, and they, on or about the 16th day of April, 1870, entered into an agreement in form "between the Florida Central Railroad, George W. Swepson, president, and the Jacksonville, Pensacola and Mobile Railroad Company,
2999 Milton S. Littlefield, president, and Milton S. Littlefield, majority
owners of the stock of said companies, and also of the stock of the Tallahassee Railroad Company, of the first part," which agreement was with the defendants, the North Carolina Railroad Company, of the second part, represented by the said Woodfin, Candler, Welsh, and Rollins, as commissioners. And the said plaintiffs say that they annex hereto as a part of their complaint a copy of the said agreement, marked A.

And the said plaintiffs say that the object of the said agreement was to give to the said North Carolina Railroad Company the proceeds of so many of the said four thousand bonds as would pay them the said sum of $1,287,436.03 with interest, and they say that neither the said Swepson nor the said Littlefield had any authority whatever to make any such agreement; that neither the Florida Central Railroad Company nor these plaintiffs have ever in any manner, by resolution or otherwise, conferred upon the said Swepson or the said Littlefield any authority whatever to dispose of the said bonds except only for the purpose for which the said bonds were issued or to be issued as aforesaid, and have never given them, or either of them, any authority to dispose of the said bonds, or the proceeds thereof, or any part of the said bonds or any part of said proceeds to or for the benefit of the said North Carolina Railroad Company. That neither the said Florida Central Railroad Company nor these plaintiffs have ever in any manner, directly or indirectly, by resolution or otherwise, assumed any part of any alleged debt, legal or equitable, due by the said Swepson or the said Littlefield to the said North Carolina Railroad Company; and they further say that they are advised and they charge that neither of said companies had any power by any vote of their board of directors to assume any such debt or to pay it.

Tenth. And the said plaintiffs further say that on or about the
3000 10th day of November, 1870, an agreement was entered into in form
"between the said Milton S. Littlefield, of the State of Florida, in the United States of America, and the Jacksonville, Pensacola and

Mobile Railway Company, by Milton S. Littlefield, the president thereof, the parties of the first part, and the Western Division of the Western North Carolina Railroad Company, acting through and represented by Colonel Nicholas W. Woodfin, chairman of the commission," &c., which said last mentioned agreement was evidently designed as a substitute for the said agreement marked A as aforesaid, and a copy of said substitute agreement is hereto annexed marked B, and the said plaintiffs say that the said Littlefield had no authority whatever, direct or indirect, to make or execute such an agreement on behalf of the plaintiffs.

Eleventh. And the said plaintiffs further say, upon information and belief derived from the said S. W. Hopkins & Co., and from the affidavits in the suit by the North Carolina Railroad Company hereinafter mentioned, that on or before the 16th day of November, 1870, the said S. W. Hopkins & Co., in London, were apprised of the making of the said pretended contract, of which the copy is marked B as aforesaid, and they upon that date wrote a letter to Nicholas W. Woodfin, esq., chairman of the commissioners, &c., in which they said:

"We are in possession of your favor of this day's date, covering order from M. S. Littlefield, president Jacksonville, Pensacola and Mobile Railroad Company, dated November 16th, 1870, for the 800 Florida bonds. We accept the said order and agree to hold the within described bonds as agents for the Western Division of the Western North Carolina Railroad Company, subject to the order of the commissioners.

"We remain your most obedient servants,

"S. W. HOPKINS & CO."

3001 And the said plaintiffs say that the order from Milton S. Littlefield, president, mentioned in the said last mentioned letter of the said S. W. Hopkins & Co. was in the words and figures following, to wit:

LONDON, *November* 16, 1870.

Messrs. S. W. HOPKINS & Co.,
58 Old Broad street, London, and 71 *Broadway, New York:*

GENTLEMEN: On the 10th day of November, A. D. 1870, I made a final settlement with the Western Division of the Western North Carolina Railroad Company, represented by Nicholas W. Woodfin, chairman of the commissioners appointed by the legislature of North Carolina to collect the moneys due said company.

The commissioners are N. W. Woodfin, W. G. Candler, W. W. Rollins, W. P. Welsh, and J. L. Henry.

One of the terms of said settlement was that it should place to the order of said company any 800 of the Florida 8 per cent. gold bonds my railroad contracted with you to negotiate on the 13th of April last; therefore you will place to the order of the Western Division of the Western North Carolina Railroad Company 800 of said bonds, and sell or dispose of the same as the said chairman may direct; but this order is subjected to the following conditions:

First. The said bonds are to remain in your hands to sell.

Second. The proceeds of said bonds are to be transferred to your New York house, and disbursed to said company upon the order of a majority of said commissioners.

I remain, gentlemen, your most obedient servant,

M. S. LITTLEFIELD,
Pres. J. P. & M. R. R. Co.

And the said plaintiffs in fact say, that the said S. W. Hopkins
3002 & Co. wrote such letter and made such acceptance in respect to
the said eight hundred bonds entirely without authority from these plaintiffs, and that such acceptance is, as these plaintiffs are advised and believe, entirely void as against plaintiffs, and to affect their rights, but the plaintiffs fear that the said acceptance may, as between the said S. W. Hopkins & Co. and the said North Carolina Railroad Company, be held to be of some effect.

Twelfth. And the said plaintiffs further say, upon information and belief, that the said defendants, such commissioners as aforesaid, at the time of the making of the said agreements A and B, knew, and have ever since known, that no authority existed in the said Swepson and the said Littlefield to make the said agreements A and B, or to make any disposition of the said bonds such as was sought to be made by such agreements.

Thirteenth. Said plaintiffs further say, upon information and belief, that in the month of May last a suit was brought in the fourth judicial circuit court in the State of Florida, by Aaron Barnett, a stockholder in the Jacksonville, Pensacola & Mobile Railroad Company, against the said S. W. Hopkins & Co., the said North Carolina Railroad Company, the said commissioners, and several other persons, in which it was, among other things, prayed that S. W. Hopkins & Co. be enjoined from delivering any part of the said bonds, or the proceeds thereof, to any of the defendants in said suit, and such injunction was issued accordingly, and served upon the said S. W. Hopkins.

Fourteenth. And the said plaintiffs further say, that afterwards and on or about the 19th day of June instant, the said North Carolina Railroad Company, in their name of the Western Division of the Western North Carolina Railroad Company, commenced a suit in this court against the defendants herein, Hopkins, Collins and Carpenter, in the complaint in which suit it is in substance stated that eight hun-
3003 dred of the said bonds being in the possession of the said S. W.
Hopkins & Company were assigned and transferred, to be held by the said S. W. Hopkins & Co. as the property of the said North Carolina Railroad Company, and to be sold on their account, and the proceeds thereof paid over to them, and that said S. W. Hopkins & Co. had acknowledged to the said North Carolina Railroad Company, in writing, that they held said bonds for sale as the agents of the said company.

And in which said complaint the said plaintiffs in substance further allege, that S. W. Hopkins & Co. had sold a large amount of said bonds, if not the whole thereof, and had received a large amount of money, to wit, not less than four hundred thousand dollars in gold, on account of the sales thereof; that they had paid over $53,776.66 and $1,000 thereof to the said North Carolina Railroad Company; that the said North Carolina Railroad Company had demanded that the said S. W. Hopkins account, and that they pay over the residue of said money; that they refuse to do so, and the said complaint demands judgment that the said S. W. Hopkins & Co. account and pay over and deliver to the said North Carolina Railroad Company the moneys so alleged to be received by them, and interest, and any bonds remaining unsold.

That in such suit the said North Carolina Railroad Company obtained an order of arrest against the said Hopkins, Collins and Carpenter, bailable in the sum of $300,000, under which order the said Hopkins has been arrested.

And they say that the said suit last mentioned is being prosecuted by the said commissioners, defendants in this action, or by some of them, and that the affidavits upon which the order of arrest was granted were sworn in this city by the said defendant Woodfin and the said defendant Rollins on the 19th day of June instant; and they say that the attorney of record who is prosecuting the said suit of the said North Carolina Railroad Company is Algernon S. Sullivan, esquire, who resides and does business in the city of New York.

3004 Fifteenth. And said plaintiffs say, that they fear that the said S. W. Hopkins & Co. may be constrained by the said suit, and by the difficulty of giving so large bail, or by some other suit or proceeding, or in some other manner, to comply with the requirements of the said North Carolina Railroad Company, and may give up to them some part of the said four thousand bonds, or some part of the proceeds thereof, and that these plaintiffs will be greatly and irreparably injured and embarassed thereby.

And the said plaintiffs pray that an injunction issue to enjoin and restrain the said S. W. Hopkins & Co. from delivering the said bonds, or any part thereof, to the said The Western Division of the Western North Carolina Railroad Company, or to any other person for their use, and that they be in like manner enjoined and restrained from paying over to the last mentioned railroad company, or for their use, any part of the proceeds of any of such bonds as are claimed by the said railroad company, and that the said railroad company be enjoined and restrained from prosecuting their said suit against the said S. W. Hopkins & Co. to recover the said bonds, or any part thereof, or the proceeds thereof, or of any part thereof; and that the said railroad company be enjoined and restrained from beginning any other suit or proceeding having in view the recovery of the said bonds, or any of them, or of the proceeds thereof, or of any part thereof, and that said injunction be extended to the said commissioners in this complaint named, and to the agents, attorneys and counsel of the said North Carolina Railroad Company.

And they do further pray, that it be decreed that all of the said four thousand bonds, hereinbefore mentioned, were the property of the said Jacksonville, Pensacola and Mobile Railroad Company, held by them in trust, and to apply the same and the proceeds thereof to the uses and purposes mentioned in the acts of the legislature of the State of Florida, hereinbefore referred to; and that said company are
3005 bound to apply the same, and the proceeds thereof, to the completion, equipment and maintenance of the said Jacksonville, Pensacola and Mobile Railroad Company; and that neither the said railroad company, nor their president, had any authority to divert the same or the proceeds thereof, or any part thereof, from such purposes; and that said agreements of April 16th, 1870, and November 10th, 1870, were void so far as the same undertook to dispose of or appropriate any portion of the said four thousand bonds, or the proceeds thereof; and that an absolute and final injunction be issued in substance as hereinbefore prayed, and that such further or other relief be granted in the premises as shall be just.

AARON BARNETT.

MARTIN & SMITH,
Atty's for plaintiffs.

CITY AND COUNTY OF NEW YORK, *ss.:*

Aaron Barnett, being duly sworn, doth depose and say that he is a director of the plaintiffs. That the said plaintiffs are a foreign corporation, and have no place for the transaction of business in the State of

New York; that the only one of their officers at present in the State of New York is Sidney W. Hopkins, who is their vice-president and one of the defendants in this action; that deponent has heard the foregoing complaint read and knows the contents thereof, and he says that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

AARON BARNETT.

Subscribed and sworn to before me, this 28th day of June, 1871.

EDMUND T. DAVIS,
Notary Public, New York City.

3006 EXHIBIT A.

Memorandum of agreement and settlement between the Florida Central Railroad, George W. Swepson, president, and the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, president, and Milton S. Littlefield, majority owner of the stock of said companies, and also of the stock of the Tallahassee Railroad Company, of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by N. W. Woodfin, W. G. Candler, W. Pink Welsh, and W. W. Rollins, commissioners appointed by an act of the legislature of North Carolina, approved by the stockholders of said corporation, of the second part: Witnesseth,

That whereas George W. Swepson, late president of the Western Division of the Western North Carolina Railroad Company, made certain investments of the funds of said company, in securities of and interests in the said Florida Central Railroad, Jacksonville, Pensacola and Mobile Railroad, and the Tallahassee Railroad of the said State of Florida, as per report made by the said George W. Swepson to the said commissioners, amounting in the aggregate to the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, to bear interest from the first day of November, 1869, at the rate of eight per cent. per annum; and

Whereas the said George W. Swepson heretofore conveyed to the said Milton S. Littlefield, subject to the payment of the above recited claim, his interest in the above recited railroad; and

Whereas the said Littlefield has received authority from the legislature of the State of Florida, and the said several railroad companies, to receive bonds to be issued by and for account of the several rail-
3007 road companies, which bonds are to be exchanged for the bonds
of the State of Florida, to be issued for the purpose of aiding the finances of the several railroad companies, all of which bonds are now in a state of preparation; and

Whereas Milton S. Littlefield has made a contract with S. W. Hopkins & Co., 71 Broadway, for the disposition of the said bonds as the same may be issued, the proceeds of the issue of the bonds of the Central Railroad Company of the said State of Florida, amounting to nine hundred and sixty thousand dollars, are to be applied to the payment of existing liabilities of the said several railroad companies, including the sum of one hundred and fifty thousand dollars to be paid to the commissioners aforesaid for the purpose of paying the existing liabilities of the said Western Division of the Western North Carolina Railroad Company.

It is understood and agreed by the parties of the first and second part, that the proceeds of the sale of the said bonds so to be issued by the said Florida Railroad Companies, and the said State of Florida, is to be equally divided, dollar for dollar, between the Western Division of the Western North Carolina Railroad Company and the said Florida railroads, and as the commissioners aforesaid receive by this first sale of bonds only the sum of one hundred and fifty thousand dollars, it is further understood and agreed that out of the proceeds of the sale of the issue of the bonds of the Jacksonville, Pensacola and Mobile Railroad there is first to be received by the commissioners aforesaid a sum sufficient to be equal to the amount received by and on account of the said Florida railroads, and then an equal amount is to be received by the said commissioners, and the said Florida railroads, dollar for dollar until the entire amount of one million two hundred and eighty-seven thousand and thirty-six dollars and three cents, with interest at eight per cent. as aforesaid, being the sum reported by the parties of
3008 the first part as due to the Western Division of the Western North Carolina Railroad, is fully paid.

It is further understood and agreed by the parties of the first and second parts, that all the interest owned or claimed by the said parties of the first part, both George W. Swepson and Milton S. Littlefield, or which they, as individuals, have a right to control in the said Florida railroads, are hereby pledged for the faithful fulfillment of this contract without the right on part of any party to interfere with our management or control of the affairs of the road.

GEORGE W. SWEPSON,
President Fla. Central R. R.
M. S. LITTLEFIELD.
M. S. LITTLEFIELD,
Pres. J., P. and M. R. R. Co.
N. W. WOODFIN,
W. W. ROLLINS,
W. G. CANDLER,
W. P. WELSH,
Comm'rs.

Witnesses:
M. W. RANSOM.
R. R. SWEPSON.

EXHIBIT B.

Memorandum of an agreement and final settlement made this tenth day of November, A. D. 1870, at London, England, between General Milton S. Littlefield, of the State of Florida, in the United States of America, and the Jacksonville, Pensacola and Mobile Railroad Company by Milton S. Littlefield, the president thereof, the parties of the first part, and the Western Division of the Western North Carolina Railroad Company, acting through and represented by Col. Nich-
3009 olas W. Woodfin, chairman of the commission appointed by the general assembly of the State of North Carolina, by an "act," ratified twenty-fourth day of March, A. D. 1870, to settle with George W. Swepson, and for other purposes, which "act" was approved by the stockholders of the said Western Division of the Western North Carolina Railroad Company of the second part.

Whereas, on the sixteenth day of April. A. D. 1870, at the city of Washington, in the District of Columbia, in the United States of America, a contract in writing was made and entered into by and between the Florida Railroad Company, George W. Swepson, president, and General Milton S. Littlefield, the Jacksonville, Pensacola and Mobile Railroad Company, by Milton S. Littlefield, the president thereof, as parties of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by Nicholas W. Woodfin, W. G. Candler, W. W. Rollins, and W. P. Welsh, commissioners appointed by the legislature of the State of North Carolina, by an "act," ratified on the twenty-fourth day of March, A. D. 1870, which "act" was duly ratified, approved, adopted and made a part of the charter of the said party of the second part—the said corporation—a copy of which contract is attached hereto, and made a part of this contract; and

Whereas the said Jacksonville, Pensacola and Mobile Railroad Company have received certain bonds of the State of Florida, under sundry acts of the legislature of the said State, which bonds, by the term of the laws authorizing the issue of the same, are made payable, both principal and interest, in the gold coin of the United States, and bearing interest at the rate of eight (8) per cent. per annum; and

Whereas, by reason of the present war in Europe, all financial operations are more or less restricted, which has, up to this time, prevented the negotiation for the sale of said bonds; and

3010 Whereas the said Western Division of the Western North Carolina Railroad, through and by its representative, Nicholas W. Woodfin, chairman aforesaid, is pressing the immediate payment by the said party of the first part of the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, with interest at the rate of eight (8) per cent. per annum, since the first day of November, A. D. 1869; to pay or settle the said claim now will cause a great sacrifice to the said party of the first part; and

Whereas the said Nicholas W. Woodfin, as chairman of the said commission for the Western Division of the Western North Carolina Railroad Company, for the purpose of removing embarrassments out of the way, which, in his judgment, prevented the sale of the said bonds, and to avoid litigation, did, on the seventeenth day of October, A. D. 1870, contract with Henry Clews & Co., bankers, in the cities of New York and London, to purchase a certain claim held by them against George W. Swepson, amounting to about twenty thousand dollars, lawful money of the United States of America, which contract was made with the knowledge and approval of the said party of the first part, for the reason, it was understood by all parties to the agreement, that this would secure the full co-operation of the said Henry Clews & Co. to aid in the sale and negotiation of the said Florida bonds.

Now, therefore, be it remembered that for and in consideration of the premises herein stated, and for various other good and sufficient considerations, and for the further purpose of aiding the said Western Division of the Western North Carolina Railroad Company to complete their road from the junction with the main line at Ashville to Point Rock, at the State line between the States of North Carolina and
3011 Tennessee, and to complete their road without delay on the one hand, and to avoid a hasty sale and sacrifice of the said bonds on the other hand, it is agreed by and between the parties of the first and second parts that in full compromise, payment, satisfaction, and accord of the obligation of the party of the first part to pay to the party of the second part the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, lawful money of the United States of America, with interest thereon at the rate of eight

(8) per cent., from and after the first day of November, A. D. 1869, as per terms of the said contract, made and executed at the city of Washington aforesaid, and that the said party of the first part may be fully and finally discharged from every and all liability on account of the terms and conditions of the said contract hereunto appended, the said party of the first part agree to furnish iron to the said party of the second part sufficient to lay a single track of railroad from the junction at Ashville, along the French Broad River to Point Rock, at the Tennessee State line, and into the State of Tennessee, to the present terminus of the Cincinnati, Cumberland Gap, and Charleston Railroad, with turnouts and side tracks, provided that the whole of the railroad shall not exceed, including turnouts and side tracks, fifty-three miles in length. The iron shall be of a good quality of English iron, weighing not less than fifty pounds per lineal yard, with the necessary chairs and spikes to lay the same. The iron to be shipped in the quantities and at the times and places as follows, to wit:

To Norfolk, Virginia, on or before the tenth day of December, A. D. 1870, three hundred tons; to the same place on or before the tenth day of January, A. D. 1871, five hundred tons; to the same place on or before the first day of April, A. D. 1871, one thousand tons, and the rest to be shipped to New York, in the State of New York, on or before the first day of September, A. D. 1871, but the said party of the first part may ship the iron as fast as he may wish, all duties and freights
3012 on the above-described iron to be paid by the party of the first part.

And it is further agreed by the party of the first part, that he will ship, in addition to the above-mentioned quantity of iron, one thousand tons of the same weight and quality as the above-described iron, with the necessary chairs and spikes to lay the same to New York, duties and freights paid, on or before the first day of September, A. D. 1871, the shipping of which iron Messrs. S. W. Hopkins & Co. are to guarantee.

In addition to the shipping of the iron, the said party of the first part does hereby sell and deliver unto the said party of the second part, by placing to the order of the party of the second part, with Messrs. S. W. Hopkins & Co., eight hundred bonds of the State of Florida, of the denomination of one thousand dollars each, numbers of said bonds to be designated by the said party of the first part, but upon the express stipulations and conditions that the said bonds are to be left with Messrs. S. W. Hopkins & Co. for sale at such prices as the said party of the second part may direct. And it is further agreed by the party of the first part that he will pay to the party of the second part two hundred pounds sterling, the receipt whereof is hereby acknowledged.

And it is further agreed, by the party of the first part, to assume and discharge the obligation of the party of the second part to Henry Clews & Co. of about twenty thousand dollars, lawful money of the United States of America.

Now, when the foregoing undertaking and agreement of the party of the first part are fully accomplished and performed, it is to be taken as a full compliance with, and final discharge of the parties of the first part to this contract, as well as all parties of the first part to the said contract, executed at the city of Washington aforesaid, a copy of

3013 which is hereto attached, and this shall operate as a receipt and final discharge thereof from all obligations growing out of the same.

MILTON S. LITTLEFIELD.
MILTON S. LITTLEFIELD,
Pres. Jack., Pen. and Mobile R. R. Co.
N. W. WOODFIN,
Chairman of the Board of Commissioners.

Supreme court.

THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company
ag'st
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company and others.

CITY AND COUNTY OF NEW YORK, *ss:*

Aaron Barnett, being duly sworn, doth depose and say:

That he is a director of the plaintiffs; that he has heard the complaint in this action read, and knows the contents thereof, and he says that the said plaintiffs are a corporation as in the complaint stated; that deponent has examined the laws mentioned in the said complaint passed by the legislature of the State of Florida, and that said laws are correctly stated in said complaint. And deponent says that the facts stated in the 4th, 5th, 6th, and 7th clauses of the said complaint are facts of a public nature, or otherwise within the knowledge of deponent, and the allegations in said clauses are true; and he says that it is true, as stated in said complaint, that the proceeds of the said four 3014 millions of bonds still to be received for or on behalf of the said company are absolutely necessary to carry out the object for which the said bonds were issued, namely, to proceed with the construction of the said railroad westward of Quincy, as stated in the said complaint; and it is true, as stated in said complaint, that if the plaintiffs are deprived of the said bonds, or are prevented from receiving the price thereof, it will greatly embarrass them and greatly delay and possibly defeat the construction of the said road, and will produce an irreparable injury; and he says that the facts stated in the 9th, 10th, 11th, 12th, and 14th paragraphs of said complaint appear substantially from the complaint and affidavits served on the part of the said North Carolina Railroad Company, in a suit brought by them against Sidney W. Hopkins and others, and from a press copy of the agreements and letters which deponent has seen; and further deponent saith not.

AARON BARNETT.

Subscribed and sworn to before me this 28th day of June, 1871.

EDMUND T. DAVIS,
Notary Public, New York City.

3015 Supreme court, city and county of New York.

THE JACKSONVILLE, PENSACOLA AND MOBILE
Railroad Company
against
THE WESTERN DIVISION OF THE WESTERN
North Carolina Railroad Company and others.

The joint and several answer of The Western Division of the Western North Carolina Railroad Company, and William W. Rollins, one of the commissioners appointed by an act of the legislature of North Carolina, defendants in this action, to the complaint therein of the Jacksonville, Pensacola and Mobile Railroad Company, the plaintiff therein.

The said defendants, by Algernon S. Sullivan, their attorney, protesting against the right of the said plaintiffs to implead them in this action, and reserving all objections to the said complaint for the manifold insufficiencies thereof, nevertheless, for their joint and several answer thereto, respectfully show to this court as follows:

The said defendants deny any knowledge or information sufficient to form a belief that the said plaintiffs were created a corporation by or under the particular law of the State of Florida, in that behalf mentioned in the said complaint, or that the said act was amended as therein alleged, although they say they have no reason to suppose that the allegations in that behalf in the said complaint are untrue.

3016 The said defendants also deny any knowledge or information sufficient to form a belief that the link in the line of railroads mentioned in said complaint as running and designed to run from Jacksonville westward to Pensacola, and in the 13th folio of said complaint described as the "second link," and as extending from Lake City to Quincy, was, together with the railroad from Tallahassee to St. Mark's, known as the Tallahassee Railroad, as alleged in said complaint; but they say that at a time prior to the consolidation mentioned in the 14th folio of said complaint, the said "second link," or a part thereof, was known as the Pensacola and Georgia Railroad, and, as the said defendants are informed and believe, was built in whole or in part by a corporate body, whose corporate name was the Pensacola and Georgia Railroad Company.

The said defendants further deny any knowledge or information sufficient to form a belief that the four millions of dollars of the bonds of the State of Florida mentioned in the eighth clause or paragraph of said complaint were placed in the hands of the defendants Hopkins, Collins and Carpenter, under an agreement such as is described in said eighth clause or paragraph; and for better and more certain knowledge in that behalf, these defendants pray that said agreement be produced.

And these defendants also deny any knowledge or information sufficient to form a belief that S. W. Hopkins & Company still have in their hands more than eight hundred of said bonds, upon which no part of the price has been paid, as alleged in said complaint, and they also deny any knowledge or information sufficient to form a belief that any money received, or to be received, for any of said bonds yet in the hands of said S. W. Hopkins & Company is necessary, in order to proceed with the construction of the railroad westward from Quincy, or that the plaintiffs, if they are deprived of said bonds, will be greatly embarrassed, or that the construction of said railroad will be defeated, or any
3017 irreparable injury be produced, as alleged in the complaint.

And these defendants further answering, wholly deny the allegations, and every allegation from the 26th to the 33d folios of said complaint, to the effect that the Western Division of the Western North Carolina Railroad Company has ever claimed that by reason merely of any claims against Swepson and Littlefield mentioned in said complaint, or either of them, individually and without regard to other facts and circumstances creating equities in favor of said Swepson and Littlefield, or one of them, and of the railroad company last mentioned, the said last mentioned railroad company had any right to take for their own benefit any of the four thousand bonds issued by the State of Florida, as mentioned in the complaint.

And these defendants further say, that neither in the month of April, 1870, nor at any time prior to the entering into the agreement mentioned in said complaint on the 16th day of that month, was the said Swepson or the said Littlefield indicted, as alleged in said complaint, nor was the said last mentioned agreement, or any agreement, procured by the company last mentioned from said Swepson or said Littlefield by or through any threats of criminal prosecutions.

And these defendants further answering, deny each and every allegation contained in that part of said complaint beginning with the words in the 37th folio thereof "And they say that neither," and ending with the words "North Carolina Railroad Company," at the 39th folio thereof, and they also in like manner deny the allegation in the 42d folio of said complaint, that the said Littlefield had no authority to make or execute such an agreement as the one mentioned in said complaint as having been made on or about November 18th, 1870, and said defendants also in like manner deny the allegations, and each and every of them, in the
48th and 49th folios of said complaint, to the effect that S. W.
3018 Hopkins & Company wrote the letter and made the acceptance
therein mentioned, without authority from the plaintiffs, and that such acceptance is void as against the plaintiffs and to affect their rights; and they deny any knowledge or information sufficient to form a belief that the allegations contained in the fourteenth clause or paragraph of said complaint are or that any of them are true.

And the said dafendants deny that the commissioners mentioned in the 58th folio of said complaint are prosecuting the action therein mentioned in any other sense, way or manner than that as agents and officers for said Western Division of the Western North Carolina Railroad Company, and not otherwise. They gave directions that said action should be commenced, and as such agents and officers, and not otherwise, they are doing everything in their power to aid and assist in the prosecution thereof.

And the said defendants further answering, say, upon information and belief, that this action is not brought or prosecuted in good faith by the plaintiffs, but that the same is brought and prosecuted at the special instance and request, or by collusion with and for the benefit of, the defendants Hopkins, Collins and Carpenter, and for the fraudulent purpose of baffling, hindering, delaying and defeating the said Western Division of the Western North Carolina Railway Company in the prosecution of their action aforesaid against the said defendants Hopkins, Collins and Carpenter.

Wherefore the said defendants demand judgment that said complaint be dismissed, with the costs of the action.

ALGERNON S. SULLIVAN,
Defendants' Attorney.

CITY AND COUNTY OF NEW YORK, *ss:*

William W. Rollins, being duly sworn, deposes and says that he is one of the defendants in the above entitled action and president of the Western Division of the Western North Carolina Railroad Company; that the foregoing answer is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true. 3019

W. W. ROLLINS.

Sworn to before me, this 3d day of August, 1871.

JAS. P. LEDWITH,
Notary Public, N. Y. County.

Supreme court, city and county of New York.

THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company
against
NICHOLAS W. WOODFIN, IMPLEADED AS ONE of the commissioners appointed by an act of the legislature of North Carolina with the Western Division of the Western North Carolina Railroad Company, and others.

The answer of Nicholas W. Woodfin, one of the defendants in the above entitled action, impleaded as above mentioned, to the complaint therein of the Jacksonville, Pensacola and Mobile Railroad Company, the plaintiffs therein.

3020 The said defendant, by Algernon S. Sullivan, protesting against the right of the said plaintiffs to implead him in this action, and reserving all objections to the said complaint for the manifold insufficienc'es thereof, nevertheless for his separate answer thereto, respectfully shows to this court as follows: The said defendant denies any knowledge or information sufficient to form a belief that the said plaintiffs were created a corporation by, or under the particular law of, the State of Florida, in that behalf mentioned in the said complaint, or that the said act was amended as therein alleged, although he says he has no reason to suppose that the allegations in that behalf in the said complaint are untrue.

The said defendant also denies any knowledge or information sufficient to form a belief that the link in the line of railroads mentioned in said complaint as running and designed to run from Jacksonville westward to Pensacola, and in the 13th folio of said complaint described as the second link, and as extending from Lake City to Quincy, was, together with the railroad from Tallahassee to St. Mark's, known as the Tallahassee Railroad, as alleged in said complaint; but he says that at a time prior to the consolidation mentioned in the 14th folio of said complaint, the said second link, or a part thereof, was known as the Pensacola and Georgia Railroad, and as deponent is informed and believes, was built in whole or in part by a corporate body, whose corporate name was the Pensacola and Georgia Railroad Company.

The said defendant further denies any knowledge or information sufficient to form a belief that the four millions of dollars of the bonds of the State of Florida mentioned in the eighth clause, or paragraph, of said complaint, were placed in the hands of the defendants, Hopkins, Collins and Carpenter, under an agreement such as is described in said eighth clause, or paragraph, and for better or more certain knowledge in that behalf this defendant prays that said agreement be produced.

And this defendant also denies any knowledge or information sufficient to form a belief that S. W. Hopkins & Company still have in their hands more than eight hundred of said bonds, upon which no 3021 part of the price has been paid, as alleged in said complaint; and he also denies any knowledge or information sufficient to form a belief that any money received, or to be received, for any of said bonds yet in the hands of said S. W. Hopkins & Company is necessary in order to proceed with the construction of the railroad westward from Quincy, or that the plaintiffs, if they are deprived of said bonds, will be greatly embarrassed, or that the construction of said railroad be defeated, or any irreparable injury be produced as alleged in the complaint.

And this defendant further answering, wholly denies the allegations, and every allegation, from the 26th to the 33d folio of said complaint, to the effect that the Western Division of the Western North Carolina Railroad Company has ever claimed that by reason merely of any claims against Swepson and Littlefield, mentioned in said complaint, or either of them, individually, and without regard to other facts and circumstances, creating equities in favor of said Swepson and Littlefield, or one of them, and of the railroad company last mentioned, the said last-mentioned railroad company had any right to take for their own benefit any of the four thousand bonds issued by the State of Florida, as mentioned in the complaint.

And this defendant further says, that neither in the month of April, 1870, nor at any time prior to the entering into the agreement mentioned in said complaint, on the 16th day of that month, was the said Swepson or the said Littlefield indicted, as alleged in said complaint, nor was the said last-mentioned agreement, or any agreement, procured by the company last mentioned from said Swepson or said Littlefield, by or through any threats of criminal prosecutions.

And this defendant, further answering, denies each and every allegation contained in that part of said complaint beginning with the words in the 7th folio thereof, "and they say that neither," and ending with the words "North Carolina Railroad Company," at the 39th folio thereof; 3022 and he also in like manner denies the allegation in the 42d folio of said complaint that the said Littlefield had no authority to make or execute such an agreement as the one mentioned in said complaint as having been made on or about November 10th, 1870; and said defendant also in like manner denies the allegations, and each and every of them, in the 48th and 49th folios of said complaint, to the effect that S. W. Hopkins & Company wrote the letter and made the acceptance therein mentioned without authority from the plaintiffs, and that such acceptance is void as against the plaintiffs, and to affect their rights, and he denies any knowledge or information sufficient to form a belief that the allegations contained in the thirteenth clause or paragraph of said complaint are, or that any of them are, true.

And the said defendant denies that the commissioners mentioned in the 58th folio of said complaint are prosecuting the action therein mentioned in any other sense, way, or manner that that as agents and officers for said Western Division of the Western North Carolina Railroad Company, and not otherwise; they gave directions that said action should be commenced as such agents and officers, and not otherwise; they are doing everything in their power to aid and assist in the presecution thereof.

And the said defendant, further answering, says, upon information and belief, that this action is not brought or prosecuted in good faith by the plaintiffs, but that the same is brought and prosecuted at the special instance and request of, or by collusion with and for the benefit of, the defendants Hopkins, Collins, and Carpenter, and for the fraudulent purpose of baffling, hindering, delaying, and defeating the said Western Division of the Western North Carolina Railroad Company in the prosecution of their action aforesaid against the said defendants Hopkins, Collins, and Carpenter.

And said defendant protesting that he has no authority to answer herein for or on behalf of said last mentioned railroad company, 3023 or to submit such company, in any way or manner, to the jurisdiction of this court, demands judgment that said complaint be dismissed, as against him, with his costs.

ALGERNON S. SULLIVAN,
Att'y for Deft. Woodfin.

CITY AND COUNTY OF NEW YORK, *ss:*

Nicholas W. Woodfin, the defendant named in the foregoing answer, being duly sworn, deposes and says, that the said answer is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

N. W. WOODFIN.

Sworn to before me this 7th day of July, 1871.

ISAIAH KEYSER,
Com'r of Deeds.

On the return of the order to show cause, Sewell & Pierce appeared as attorneys for S. W. Hopkins & Co., defendants, and made no opposition to the motion, and did not answer the complaint.

3024 Deposition of Adolph Engler, a witness produced and sworn and examined the 3d day of May, A. D. 1879, at my office in the post-office building in the city of New York, under and by virtue 3025 of a commission issued out of the circuit court of the United States of America for the fifth circuit and northern district of Florida, in a certain cause therein depending and at issue, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants.

ADOLPH ENGLER, of New York City, aged 54 years of age, occupation, commission merchant, being duly and publicly sworn on the part of the complainants, doth depose and say as follows:

First. To the first interrogatory he saith: My name is Adolph Engler, and I reside at No. 437 West 23 street, in the city of New York.

Second. To the second interrogatory he saith: I have read a copy of the bill of complaint referred to. I never met personally any of the complainants except Mr. Jacobus Wertheim; I know some of the defendants.

3026 Third. To the third interrogatory he saith: The only authority I have ever received from the complainants or any of them in respect to the bonds spoken of, is the paper of which I annex a copy to this answer, marked Exhibit A. E. No. 1, J. A. S., commissioner.

Fourth. To the fourth interrogatory he saith: I do not own any of the bonds spoken of, and never have; and have never had any transfer made to me of such bondholders, except as is contained in the paper spoken of in my last answer.

Fifth. To the fifth interrogatory he saith: I was examined as a witness several months ago by Joseph B. Stewart, in a suit entitled the Western Division of the Western North Carolina Railroad Company against Geo. F. Drew, governor, and others; I did then testify that I had a large number of the Florida eight per cent. bonds as trustee,
3027 for the purposes named in the papers executed to me by the owners of said bonds, a copy of one of which papers I have made a part of my testimony in this examination. I used the word trustee, meaning that I held the bonds simply as custodian, and in no other way. I have never considered that I had power to institute any suits or direct the litigation in respect to said bonds as Messrs. Jacobus Wertheim and Charles D. Willard are the sole solicitors and attorneys for the owners of the bonds which I held, and I have always recognized the right upon the part of Wertheim and Willard to control all litigation in respect to the bonds, and the bonds in my possession have been and are subject to their direction in any suit instituted by them in respect to the same.

Sixth. To the sixth interrogatory he saith: I am a native of Germany, and my profession or business is commission merchant. I
3028 am not acquainted with the technical law terms or phrases such as are used in the jurisprudence of the United States.

Seventh. To the seventh interrogatory he saith: I have in my possession about 2,950 of the bonds named in the bill of complaint; they are owned by about two or three hundred different people in Holland, and they were sent to me simply to hold as custodian, subject to the directions of the solicitors of said bondholders, Jacobus Wertheim and Charles D. Willard, who are conducting the present litigation. I hold the bonds for no other purpose and in no other way, and do not own a single bond, and never have. They were first delivered to me for the purposes of the execution of the memorandum plan of agreement between the holders of the complainants' bonds and the holders of
3029 the Pensacola and Georgia and Tallahassee Railroad bonds, as set out in the paper annexed to this answer, and marked Exhibit A. E. No. 1, since which time the present suit was commenced by the Dutch bondholders, and I am instructed to follow the directions of Wertheim and Willard in the use of the bonds in such suit.

To the eighth interrogatory he saith: The memorandum plan refers to the Florida eight per cent. bonds, and the bonds of the Pensacola and Georgia and Tallahassee Railroad, and also refers to the fact that the Florida eight per cent. bonds shall be sent forward to some person in America, as custodian, for the purpose of such plan, which was done by sending the same to me. If for any cause the plan fails of execution in this suit, the bonds will either be returned to the owners, or such disposition made of them as the court directs, and my control or au-
3030 thority of them will be at an end, because I do not own any of them.

Ninth. To the ninth interrogatory he saith: I first heard of the institution of this suit through Mr. C. D. Willard, about the time it was commenced in May, 1877, through Mr. Willard, who has from the first directed the entire litigation for the bondholders. I have in no way, or at any time, had anything to do with conducting the suit, and have never and do not now claim to be a party to the litigation, and could not be one of the complainants in this suit, for I own no bonds.

Tenth. To the tenth interrogatory he saith: I can state nothing further.

3031 To the cross-interrogatories propounded by Jos. B. Stewart, esq., solicitor for the defendant The Western Division of the Western North Carolina Railroad Company, the witness answering says:

First. To the first cross-interrogatory he saith: If I sent any authority at all to Colonel Carter it was a copy of such authority as is referred to in the answer to the third direct question, and was sent at the request of Mr. Willard. I did not send any letters or telegrams at the time referred to to the governor of Florida. The general terms of the letters and telegrams sent to Colonel Carter were suggested by Mr. Willard, who was at the time in Jacksonville, Florida.

Second. To the second cross-interrogatory he saith: I expect to be compensated for my trouble either from the owners of the Florida
3032 eight per cent. bonds or through their attornies, Wertheim and
Willard. The fees, expenses, and charges of this prosecution of the suit I have never had anything to do with, as it is a matter entirely and directly between the bondholders themselves and their attornies. I have never had authority from the bondholders to incur any expenses for them. The authority for the prosecution of the litigation is direct from the bondholders to Messrs. Wertheim & Willard as their attorneys and solicitors. I have never had any authority to institute any suits or to become a party to any litigation. I do not know what agreements exist between the bondholders and their attorneys. I do not know that Mr. Willard is bound in any way to pay any of the expenses or costs of the litigation. I have no letters from any of the Dutch bondholders as to the management of this suit. The letters from Mr. Willard are of a private character only. I think I only
3033 have received one or two from General Davis, and cannot just
now lay my hands on it. I have already annexed a copy of the paper to me from the bondholders in answer to my direct examination, which is the only authority I have.

Third. To the third cross-interogatory he saith: I was examined as a witness in the suits named by Joseph B. Stewart, and what I then stated was true. I did notify Mr. Willard I was subpœnaed. I do not remember what he advised. I appeared and gave my testimony. Service was made on me, as stated, wherein I was styled trustee, but I have been advised by Mr. Willard to whom I sent the subpœna to pay no attention to it, as I was not a trustee for the bondholders in the legal sense intended and could not be a party, and I was advised by Mr. Willard to make no appearance in the said suits. Mr. Willard has the
3034 subpœna I suppose, as I have sent it to him. I have been spoken
to by Mr. Willard as to the testimony I gave in the case named, and he seemed to think it all perfectly proper and in accordance with the facts and state of the case, except that I did not put a proper legal construction upon the word trustee when I referred to my duties. I have not been advised by Mr. Willard or any other counsel what reply to make to the fifth direct interrogatory, and I have not seen or been supplied with a copy of either of the direct or cross interrogatories until read to me now by Commissioner Shields.

Fourth. To the fourth cross-interrogatory he saith: I am well acquainted with the English language, and read, write, and speak it perfectly. I simply use the word trustee in the deposition as meaning that I was merely the custodian to hold the bonds subject to the exe-
3035 cution of the memorandum plan or the order of the court made
in this case. I did read over my testimony carefully before signing it.

Fifth. To the fifth cross-interrogatory he saith: I do hold a large number of the bonds involved in this suit, and they are the same bonds I testified about in the former examination. I hold the same now, and by the same authority and for the same purposes, for the complainants in this suit. I append a copy of authority to me from J. Fred. Schutte as part of my answer to this question, and the same is marked Exhibit A. E., No. II, J. A. S., commissioner. By said authority I am to receive bonds in exchange in the name of and from the Jacksonville and Mobile Railroad after decree and sale of the railroad property as set out in this suit. I am authorized to deliver the bonds under instructions from Messrs. Wertheim & Willard, for the purposes in this suit, as
3036 named in the bill of complaint, as is set out in the authority from
the bondholders to Messrs. Westhein & Willard, their attorneys, which authority I am advised is on file in this suit.

AD. ENGLER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 3rd day of May, A. D. 1879, before

JOHN A. SHIELDS,
Commissioner.

3037 EXHIBIT A. E. No. 1.—Ad. Engler.—*J. A. S., com'r.*

The undersigned bona fi*ed* holder of bonds, 8 %, Florida, issued 1870, each bond of d's 1,000, numbered as follows: declare by these presents to accept and to join for part to the provisions of the memorandum plan for the reorganization of the Jacksonville, Pensacola and Mobile Railroad Company and the Florida Central Railroad Company of Florida, signed on the 12th day of January, 1877, at Savanna', Georgia, between Frank R. Sherwin, agent of the owners and holders of the bonds of the said State of Florida, issued in aid of said railroad*s* companies, on the first part, and the owners and holders of the first mortgage bonds of the Pensacola *en* Georgia *en* Tallahassee Railroad Company of said State, issued under the provisions of the
3038 act of January 6th, 1855, generally known as the internal im-
provement act, represented by Henry R. Jackson, of Savannah, in the State of Georgia, and Charles H. Simonton, of Charleston, in the State of South Carolina, of the second part.

That do hereby appoint lawful trustee Adolph Engler, partner of the firm of Kremelberg & Co., handing to him herewith as trustee said, as above numbered, bonds, with the power to deliver and to exchange the so in trust given bonds as aforesaid, with all the coupons attached, to a company to be formed under the general incorporation laws of the State under style of the *the* name "Jacksonville and Mobile Railroad Company," for the purpose of purchasing the present lines of constructed and completed railways extending from Lake City to Chattahoochee and from Tallahassee to St. Mark's, known as the Jacksonville,
3039 Pensacola and Mobile Railroad, and the road extending from
Jacksonville to Lake City known as the "Florida Central Railroad," together with all their depots, rolling-stock, machine-shops, and all their other saleable property, and such in the proportion of 33⅓ per c't. in bonds and 16⅔ per. c't. in shares lawfully and legally issued by the said new company to be formed as aforesaid, i. e., for each old bond of $1,000, with coupons attached, $333⅓ in bonds and $166⅔ shares, all however under the following terms and conditions:

1°. That the said bonds shall be part of a first mortgage bond, of a maximum not exceeding $12,000 per mile, redeemable in 40 years by lot bearing 5% *c't.* interest per annum in gold, bonds and interest at maturity payable in Amsterdam and New York, at the rate of $2.50 Dutch currency per dollar, first coupon for interest to be paid on the 1st July, 1878.

2°. That no expenses whatsoever already incurred or to be made
3040 for the reorganization as per the memorandum plan aforesaid shall
be at the charge of the bonds or of the bondholders.

3°. That the exchange and delivery of the old bonds against the bonds and shares of the new company must be completed before or on the 1st of December, 1877.

That on or before the 1st of June, 1877, the directors of the new company to be formed, Mess. Robert Walker, Hubbard L. Hart, John Clark, C. H. Allen, and Robert P. Dodge, shall depose with my said trustee an authentic act, containing that they accept to execute the said memorandum plan, and that the necessary funds for the purpose of placing the said lines of the new railroad company in first-class order, and to repair as to road bed, rolling-stock, and otherwise, is secured.

In witness whereof have signed this day of A. D. 1800 seventy-seven, at Amsterdam.

Witness:

For legalization of the above signature of
Amsterdam 1877.

W. S., *Consul.*

3041 At the execution of a commission for the examination of witnesses, wherein J. Fred. Schutte, Jan Prins, Adrianus Prins, and others are complainants, and The Western Division of the Western North Carolina Railroad Company are defendants, this paper writing was produced by and shown to Adolph Engler, and by him deposed unto at the time of his examination before

JOHN A. SHIELDS,
Commissioner.

3042 EXHIBIT A. E. No. II.—Adolph Engler.—*J. A. S., Commissioner.*

We, the undersigned, J. Fred Schutte and Comp., bona fide holders of 51 bonds, 8%, Florida, issued 1870, each bond of d's 1,000, numbered as follows: 51, 89, 127, 179, 267, 291, 354, 395, 424, 447, 539, 562, 580, 587, 674, 696, 727, 758, 813, 820, 974, 1160, 1191, 1225, 1297, 1311, 1373, 1393, 1394, 1431, 1447, 1448, 2510, 2763, 2773, 2806, 2886, 2915, 2936, 2938, 2940, 3030, 3032, 3037, 3141, 3142, 3143, 3169, 3182, 457, 478, declare by these presents to accept and to join, for our part, to the provisions of the memorandum plan for the reorganization of the Jacksonville, Pensacola and Mobile Railroad Company, and the Florida Central Railroad Company of Florida, signed on the 12th day of January, 1877, at Savannah, Georgia, between Frank R. Sherwin, agent of the owners and holders of the bonds of the said State of Florida, issued in aid of said railroads companies on the first part, and the owners and holders of the first mortgage bonds of the Pensacola en Georgia en Tallahassee Rail-
road Company of said State, issued under the provisions of the
3043 act of January 6, 1855, generally known as the internal improve-
ment act, represented by Henry R. Jackson, of Savannah, in the State of Georgia, and Charles H. Simonton, of Charleston, in the State of South Carolina, of the second part.

That we do hereby appoint our lawful trustee, Adolph Engler, partner of the firm of Kremelberg & Co., at New York, handing to him

herewith, as trustee, said as above numbered bonds, with the power to deliver and to exchange the so in trust given bonds as aforesaid, with all the coupons attached, to a company to be formed under the general incorporation laws of the State, under the style of the *the* name *and* Jacksonville and Mobile Railroad Company, for the purpose of purchasing the present lines of constructed and completed railways extending from Lake City to Chattahoochee, and from Tallahassee to St. Mark's, known as the Jacksonville, Pensacola and Mobile Railroad, and the road extending from Jacksonville to Lake City, known as the Florida Central Railroad, together with all their depots, rolling stock, machine-
3044 shops, and all their other saleable property, and such in the proportion 33⅓ p. ct. in bonds and 16⅔ p. ct in shares lawfully and legally issued by the said new company, to be formed as aforesaid, i. e., for each old bond of $1,000, with coupons attached, $333⅓ in bonds and $166⅔ shares, all, however, under the following terms and conditions:

1°. That the said bonds shall be part of a first-mortgage bond of a maximum not exceeding $12,000 per mile, redeemable in 40 years by lot, bearing 5 p. c't interest per annum in gold, bonds and interest at maturity payable in Amsterdam and New York at the rate of $2.50 Dutch currency per dollar, first coupon for interest to be paid on 1st July, 1878.

2°. That no expenses whatsoever already incurred or *or* to be made for the reorganization as per the memorandum plan aforesaid shall be at the charge of the bonds or the bondholders.

3. That the exchange and delivery of the old bonds against the
3045 bonds or shares of the new company must be completed before or on the 1st of December, 1877; that on or before the first of June, 1877, the directors of the new company to be formed, Mess's Robert Walker, Hubbart G. Hart, John Clark, C. H. Allen, & Robert P. Dodge shall depose with my said trustee an authentic act containing that they accept to execute the said memorandum plan, and that the necessary funds for the purpose of placing the said lines of the new railroad company in first-class order and to repair as to road-bed, rolling stock, and otherwise, is secured.

In witness whereof we have signed this eighth day of May, A. D. 1800 seventy-seven, at Amsterdam.

(Sig.) J. FRED SCHUTTE & COMP.

Witness:

(Sig.) J. WARNING.

For legalization of the above signature of J. Fred Schutte & Comp.
Amsterdam, ninth day of May, 1877.

[CONSULATE SEAL.] (Sig.) CHARLES MULLER,
U. S. Consul.

At the execution of a commission for the examination of witnesses, wherein J. Fred Schutte, Jans Prins, Adrianus Prins, and others are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants, this paper-writing was produced, shown to Adolph Engler, and by him deposed unto at the time of his examination before—

JOHN A. SHIELDS,
Commissioner.

3046 SOUTHERN DISTRICT OF NEW YORK,
City of New York, ss:

I, John A. Shields, the commissioner named in the foregoing commission, do hereby certify that on the days herein named I was attended by the witnesses referred to in said commission; that said witnesses were by me duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in the cause named in said commission, and thereupon they gave their answers to the interrogatories and cross-interrogatories annexed. I further certify that such answers were reduced to writing by me in the presence of said witnesses and from their statements, and after the same had been carefully read over to them they severally subscribed the same. The exhibits refer'ed to in said depositions and produced by the witnesses and hereunto annexed and marked by each witness and myself.

3047 And I do further certify that I am not of counsel nor attorney for either of the parties in said commission named, nor in any way interested in the event of the cause named in said deposition.

[SEAL.] JOHN A: SHIELDS,
Commissioner.

NEW YORK, *May 3rd*, 1879.

3048 In the circuit court of the United States for the northern district of Florida, fifth judicial circuit.

THE WESTERN NORTH CAROLINA RAILROAD Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Florida Central Railroad Company, et al.

and

THE WESTERN NORTH CAROLINA RAILROAD Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Jacksonville, Pensacola & Mobile Railroad Company, et al.

and

J. FRED SCHUTTE ET AL., COMPLAINANTS,
vs.
THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, The Florida Central Railroad Company, et al., defendants.

3049 Be it remembered that I, Philip Walter, clerk of the circuit court of the United States in the fifth circuit for the northern district of Florida, do hereby certify that the foregoing pages numbered from one to three thousand and forty-seven, inclusive, contain and are a true and correct transcript of the record as directed by law to be made, and true copies of the proofs and proceedings and of such entries and papers of record and on file in my said office in the case above mentioned, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den

Tex, J. H. Brunnekruff, J. H. Grem, Willenmier Van Tyer Van Taer, C. Both, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaar, jr., Jacobus Wertheim. P. Van Reysen, May de Benedithy Beer, Gerard A. Heineken, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyen, N. J. Franket, Johannes Willem Donk, Vander Stoop & Berg, Adolph Engler, et al., are the complainants, and The Jacksonville, Pensacola and Mobile Railroad Company, The Florida Central Railroad Company, D. Griffith Ambler, M. K. Jessup & Co., Ed-
3050 ward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Fallegant, Lewis F. Nicoll, George Robertson, J. A. Hunnicutt, The Peoples' Bank, William McBurney, Winthrop B. Williams, and George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer of the State of Florida; Hugh A. Corley, commissioner of lands and immigration of the State of Florida; George P. Raney, attorney-general; Walter Gwynn, treasurer; Columbus Drew, comptroller; George F. Drew, governor, trustees of the internal improvement fund, and sued as such, et al., are defendants.

And in the case above mentioned, wherein The Western North Carolina Railroad Company is the complainant, and The Florida Central Railroad Company, George F. Drew, governor of the State of Florida; Gidian Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, John Collinson, Milton S. Littlefild, Walter Gwynn, Thomas B. Coddington, J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, Dr. Nicholas Jacob Den Tex, Edward Isaac Asser, Adolph Engler, trustee, et al., are defendants.

And in the case above mentioned, wherein The Western North Carolina Railroad Company is the complainant, and George F. Drew, governor of the State of Florida and George F. Drew, *governor;* Columbus Drew, comptroller; Walter Gwynn, treasurer; George P. Raney,
3051 attorney-general; Hugh A. Corley, commissioner of lands and immigration of the State of Florida, trustees of the internal improvement fund of the State of Florida; The Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, John Collinson, Thos. B. Coddington, et. al., are defendants, as are necessary on the hearing of the appeals prayed and allowed in the said cases.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this the eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.]

PHILIP WALTER,
Clerk U. S. Circuit Court,
By W. F. QUAILE,
A Deputy Clerk for said Court.

PHILIP WALTER,
Clerk U. S. Circuit Court,
By LEVI PHILLIPS,
A Deputy Clerk of said Court.

3051½ (Indorsed:) No. 667.—The Florida Central Railroad Company, appellant, vs. J. Fred. Schutte et al. No. 668—The Jacksonville, Pensacola and Mobile Railroad Company, appellant, vs. J. Fred. Schutte et al. No. 669—The Western North Carolina Railroad Company, appellant, vs. George F. Drew, governor, &c., The Jacksonville, Pensacola & Mobile R. R. Co., et al. N. Florida, C. C. U. S. Filed 24th October, 1879.

3052 *Minutes of Justice Bradley at hearing (inserted at request of counsel).*

Circuit court U. S., N. Dist. Fla.

JACKSONVILLE, *May* 19*th*, 1879.

Present, Bradley, C. J., & Settle, D. judge.

THE WESTERN DIVISION OF THE WESTERN N. Carolina R. R. Co.
v.
GEO. F. DREW, GOV'R OF FLORIDA, THE FLA. Central R. R. Co., The J., P. & M. R. R. Co., G. M. Boisevain, & others; Frank R. Sherwin, ag't Jno. Collinson, M. S. Littlefield, Walter Gwynn, & T. B. Coddington.
No. 1.

Bill filed Feb'y 9, 1879.
Injunction granted May 22d, 1877.

THE WESTERN DIVISION OF THE WESTERN N. Car. R. R. Co.
v.
GEO. F. DREW, GOV. OF FLA.; TRUSTEES OF Int. Imp. Fund, Fla.; The J., P. & M. R. R. Company, M. S. Littlefield, Jas. G. Gibbs, T. C. Spooner, & Walter Gwynn, treas'r Fla.; C. H. Foster, G. M. Boisevain, & als.; Jno. Collinson, & T. B. Coddington.
No. 2.

Bill filed March 8, 1877.
Injunction granted May 22, 1877.

3053 J. FRED. SCHUTTE, JANS PRINS, AND 23 others, for themselves & others having like claims,
v.
THE WEST. DIV. W. N. CAR. R. R. CO., THE J., P. & M. R. R. Co., Edward Lewis, Patrick Houston, & al., directors in J., P. & M. R. R. Co.; Jas. M. Baker, G. R. Foster, W. J. Lawton, M. S. Littlefield, N. K. Sawyer, J. C. L'Engle, Chas. B. Fenwick, Jos. B. Stewart, claiming directors of Fla. Central; Trustees imp. f'd, M. S. Littlefield & R. J. Washington.
No. 3.

Bill filed May 23d, 1877.

Appearing for compl'ts in Nos. 1 & 2, & def. No. 3: J. B. Stewart, J. M. Baker, E. M. L'Engle, J. T. Walker, & Mr. Herbert.

Opposing counsel: W. G. M. Davis, C. D. Willard, M. H. Carpenter, H. R. Jackson, Mr. Thompson (Phil.); for the trustees, G. P. Rainey, att'y gen'l, P. W. White; for J., P. & M. R. R. Co., Mr. Ste-
3054 phens; for D. P. Holland, Mr. Finley.

MAY 19, 1879.

J. F. SCHUTTE & AL.
v.
W. DIV., &c.
} No. 3.

Gen. Davis moves to dismiss bill as to West. Div. W. N. Car. R. R., as to the directors of the J., P. & M. R. R. Co. & of Central R. R. Co., and as to Littlefield & Washington.

Stewart objects, at this late stage—unfair after their defence is developed, & they are all ready for argument.

Carpenter replies: (Held over.)

Stewart moves to suppress certain testimony; also moves to examine a witness under rule 67.

Affidavit of J. B. Stewart that Jacobus Wertheim, who is now present, & could not have been examined before, &c.

MAY 20, 1879.

Ordered bill dismissed as applied for, without prejudice as to any evidence that may have been taken in the cause affecting the rights of the parties still remaining parties in the cause.

3055 Stewart now applies for leave to amend his bill, in cases No. 1 & No. 2.

Adjourned to Wednesday, May 21st, 1879, at 12 noon, to see amendment proposed.

After hearing application for attachment against Dr. Wertheim for not attending according to subpœna. Application refused because no tender of mileage.

Adjourned to May 21st, 12 m.

Judge Settle held separate court to try case of U. S. v. Hull & Gauldin.

MAY 21ST, 1879.

12 m. court met and a discussion ensued as to the status of the causes.

Mr. Stewart offers to amend his bills, presents the proposed amendments.

Carpenter speaks adversely.

Stewart replies.

Withdraws amendment to bill vs. Fla. Central, No. 1.

Court refused leave to amend as proposed; suggested striking out evidence & argument.

Recess to 4 p. m.

Stewart reads his proposed amendment as modified.

3056 Ordered that amendment as proposed and read to the court be made to the bill upon terms. Def'ts need not answer under oath. No further evidence unless def'ts elect.

Carpenter applies to strike out Schutte, Prins & als. from record in Nos. 1 & 2, because not served with process according to law. Refers to Rev. Stat. § 738.

Stewart replies. The Dutch bondholders were here apply'g to the governor to sell the road. They contested our application for injunction. Mr. Engler, their trustee, is here.

MAY 22d, 1879.

Decided Schutte & Co. must appear to N. Carolina bills for reasons expressed in order.

Mo. to suppress depositions made and argued.

Davis in opposition.

Walker in favor.

Depositions overruled on the ground that the answers were prepared in writing.

Carpenter moves to suppress the depositions taken in New
3057 York, because not taken by a commissioner properly authorized;
the objection being that the oral examination pointed out in rule 67 must be taken by an examiner appointed by the court; but within the jurisdiction of the court.

Stewart contends that the rule authorizes the appointment of an examiner outside of the circuit.

Davis refers to sect. 868, Rev. Stat.

Motion is denied. I think the rule intended to authorize the court to appoint an examiner as well outside as within the jurisdiction of the court so as to dispense with the necessity of a commission, and have an open examination.

MAY 23d, 1879.

Carpenter presents answers in Nos. 1 & 2; ordered to be filed. The answer is filed by all the bondholders in the Schutte bill. Carpenter, also, presents & files a suggestion of an act of legis. of No. Car., passed Feb'y, 1879, repealing the charter of the Western Division of W. N. Car.
R. R. Co., and declaring said co. extinct, and moves the cases of
3058 the co. be declared abated. The act transfers to W. N. Car. R.
R. Co., all the property and rights of action of the extinguished co. with power to conduct all suits in No. Car., or elsewhere.

Also refers to constitution of No. Car. adopted in 1868, declaring that all general laws & special acts forming corporations may be altered or repealed; art. 8, sec. 1.

The charter of West. Div. W. N. C. R. Co. was created by special act in August, 1868, under this constitution.

Moves that the causes of said company be declared abated.

Court intimates that the causes are abated, but gives the complainants time until to-morrow morning to elect whether they will abide by the motion or file a bill of revivor.

Stewart says that they will not risk the abatement, but will seek authority from W. North Car. R. Co. to file a bill of revivor, and asks the time allowed.

McLeod, of N. Car., states he is a director of W. Division, and that said co. is not prepared to accept the act of extinction. Matter stands over.

3059 Stewart refers to code of N. Car. of 1854, p. 134, §§ 5, 6; allowing a company whose charter is repealed 3 years to wind up its affairs.

Carpenter refers to act of No. Car., 1870, also repealing same charter. Matter stands over. (Acts of 1869-70, p. 84.)

(N. B.—Original charter of Western N. Car. R. R. Co., passed Feb'y 15, 1855. Private laws N. C., 1854-5, p. 257.)

REC. 667—83

MAY 24th, 1879.

Nos. 1 & 2.

Stewart announces that by telegram he is informed authority to revive suits will be forthcoming. Asks further time to Monday morning; which is granted.

Carpenter proposes to proceed with No. 3; court declines.

Jackson (H. R.) calls on trustees of int. imp. fund, & the Dutch bondholders, in suit No. 3, to declare their position with regard to the original bonds of Pa. & Ga. R. R. Co., it being provided in the Mem. plan that they should have preference.

Court adjourned to Monday May 26th.

3060 MAY 26, 1879.

Steward files bills of revivor in Nos. 1 & 2.

Carpenter appears & files confession of the bills.

Order of revivor made.

Stewart files replication to def'ts answer.

(Answers, replications and order considered as in.)

Carpenter offers record in N. Y. sup. court. John Collinson v. S. W. Hopkins & als., J., P. & M. West. Divis. &c., J. B. Stewart, bill dismissed 17 March, 1879.

Also, transcript of record in sup. ct. N. Y., West. Div. No. Car. R. R. vs. S. W. Hopkins & al.

Also, certified copies of 6 other papers in same case.

Also, answer of Fla. Central R. R. Co., in case of the State and trustees, &c., v. J., P. & M. Co., &c., cir. ct. DuvalCo.

Also, fraud com. report, North Car.

Also, all the bonds in the case now exhibited.

Stewart offers record in Gamble & Westcott v. Houston & Littlefield, circuit court of Leon County. Obj'd to by Dutch bondholders.

Also, certified certificate of register as to the recordation of certain deeds, rec'd subject to objection.

3061 Also, charter West. Div. of W. N. Car. Co.

Also, act 24 March, 1870, appointing the Woodville commission.

Also, the original contract between F. W. Dibble & Asso., 26 March, 1869. (Objected to.) Deed of conveyance from Dibble & Asso. to Swepson, dated Ap. 22, 1869. (Objected to.)

Also, original drafts drawn by Houston as agent for Swepson on Sutor & Co., in N. Y., dated Feb'y 18, 1869, to March 23, 1869, fifty-two drafts. (Objected to.)

Rainey offers stipulation between West. Division W. N. Car. & trustees recognizing priority of lien for purchase money, June 7, '78, in Nos. 1 & 2, & dismissing the bill as to money in hands of treas'r.

Also, a stip. in No. 3 withdrawing demurrer to cross-bill of trustees, and that they shall have same relief upon cross-bill as if it had been answered & testimony taken.

Mr. Walker offers the acts of Fla. as to the Central R. R.

3062 Both parties agree to regard all the books of both companies & Tallahassee Company as in evidence to be referred to as occasion requires.

4h. 7m. p. m.—Stewart commences his argument.

MAY 27, 1879.

Carpenter files answers to the bills of revivor and confessing same.

Orders made reviving suits Nos. 1 & 2 in name of Western North Carolina Railroad Company, complainant, dated May 26, 1879.

Gen. Jackson presents an agreed statement of facts raising a question between the holders of Pa. & Ga. R. R. Co. & the Dutch bondholders. Jackson explains the matter. Some of the Pa. & Ga. holders might stand out. The trustees contested them.

Agreement of Jan. 29, 1879. 1 Dutch, 2 trustees, 3 P. & G. bondholders. 1 agree to prosecute against the Cos. & N. Car. R. Co., & to sell the road—all holders of P. & G. bonds to be allowed to come in.

3063 Rainey states that the trustees take their position because a minority of the Pa. & Ga. holders do not enter into the Mem. plan and insist upon their full priority of lien.

Carpenter presents a list of the State bonds held by pl'ffs in No. 3—2,946 in all, viz: (below 3,000) 2,749; (above 3,000) 197—2,946. (See N. Y. testimony, No. .)

Davis presents answers of J., P. & M. vs. State & als., in Duval circuit court.

Newspaper published in Amsterdam, dated , giving prices current; daily issue Dec. 9, 1870, to April 30, 1872. One of the exhibits presented; proposes to prove it by Dr. Wertheim.

Overruled.

Deed from Dibble & asso. to Tallahassee, rec'd, sub. to obj.

Two deeds of trustees of Int. Imp. Company to F. Dibble & als., 1869.

Agreement of June 7, 1870, modifying agree't of May 13, 1870.

(Report of the fraud commission, 1871, N. Car., so far as relates to West. Division W. N. Car. Volume of legislative documents, 1870, 1871. Not admitted.)

3064 2 agreements of Ap. 16, 1870 (already in).

Stewart calls Littlefield to produce documents and offers 5 letters, dated respect., London, Sept. 6, 1870, Sep. 6, 1870, Sep. 7, 1870, Sep. 8, 1870, Sep. 10, 1870, from S. W. Hopkins & Co. to M. S. Littlefield; presented for the purpose of contradicting Hopkins & Collins as witnesses.

Overruled.

Stephens offers to file his points in support of the plea and answer of J., P. & M. R. R. Co.

Bisbie states that he has given notice to intervene; files petition; ordered to intervene.

Walker, for Fla. Central, commences 11^h, $39'$ a. m.

Davis commences at 12^h $30'$.

Carpenter commences 3^h $34'$; has $2\frac{3}{4}$ hours.

3065 MAY 28TH, 1879.

Carpenter resumes.

Stewart commences at 10.32 a. m.

Finley, in the case of Holland, who entervenes by petition in the Schutte case, notices having been served.

Rainey. Application for trustees to be paid out of the fund; their expenses of litigation to recover the unpaid purchase.

Stewart again commences at 10.50 (has $1\frac{1}{2}$ hours).

Walker.

MAY 31.

Court, Bradley, J., delivered opinion.

(Indorsed:) Supreme Court U. S. 1879, Octo. term. Nos. 1022, 1023,

& 1024. The Florida Central R. R. Co. & al., appellants, vs. J. Fred. Schutte & al. Copy of minutes of Justice Bradley at hearing in circuit court to be inserted in record. Filed 12 April, 1880.

3066 Supreme Court of the United States.

THE FLORIDA CENTRAL R. R. CO., APPELLANT,
vs.
J. FRED. SCHUTTE ET AL.,

THE JACKSONVILLE, PENSACOLA AND MOBILE R. R. Co., appellant,
vs.
J. FRED. SCHUTTE ET AL.

and

THE WESTERN NORTH CAROLINA R. R. CO. et al., appellant,
vs.
GEORGE F. DREW, GOV'ER, &C., ET AL.

The motion of Mr. Baker, of counsel for the appellants, to eliminate certain papers from the supplemental record in these cases was argued by him in support of the same; Mr. Willard appearing for the appellees. On consideration whereof it is ordered that in printing the record in the above cases the following matters be omitted; but the same to be printed in full or in part by the parties, respectively, as they may be advised; that is to say, all acts and parts of acts of the legistatures of Florida and North Carolina, and the constitution of the latter
3067 State, all and any copies of cases or opinions of the supreme court of Florida, taken from the published reports of said State.

And it being suggested by counsel at the bar that the record as returned contains many redundant matters that can have no bearing on the determination of the causes, it is further ordered that any other matters which the counsel for the appellants and appellees may mutually stipulate may be omitted.

It is further ordered at the request of the counsel of the parties respectively, that the minutes of Mr. Justice Bradley, taken at the hearing of said causes, showing the evidence offered at the hearing and the proceedings had before him, be printed as part of the record.

12th April, 1880.

3068 (Indorsed:) Supreme Court of the United States, October term, 1879. Nos. 1022, 1023, 1024. The Western North Carolina R. R. Co., app't, vs. Geo. F. Drew, gov., trustee, &c., The Florida Central Railroad Company et al., and the Western North Carolina R. R. Co., app't, vs. The Jacksonville, Pensacola and Mobile Railroad Company et al. and The Jacksonville, Pensacola and Mobile Railroad Company. The Florida Central Railroad Company et al., app'l', vs. J. Fred. Schutte, Jan Prins, et al., appellees. Additional papers in above-entitled cause under order of this honorable court, dated December 22nd, 1879.

3069 In the circuit court of the United States, fifth judicial circuit, northern district of Florida.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Florida Central Railroad Company, et al.

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &c., The Jacksonville, Pensacola and Mobile Railroad Company, et al.,

J. FRED SCHUTTE, JAN PRINS, ET AL.,
vs.
THE JACKSONVILLE, PENSACOLA & MOBILE Railroad Company; George F. Drew, governor of the State of Florida, et al.

(Pages 3070 to 3166 omitted per order of court Apr. 12, 1880.)

3167 *List of Florida* 8 % *State coupon bonds sold in Holland, now held by Ad. Engler as custodian for the owners, May*, 1879.

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3182 *List of Florida* 8 % *bonds issued to the J., P. and M. R. R. Co., held by Ad. Engler as custodian for the owners and numbered above No.* 3000.

3001 3019 3027 3035 3038 3048
3054 3057 3059 3073 3075 3082

3093 3100 3101 3102 3103 3104
3105 3107 3108 3114 3119 3120
3122 3126 3132 3139 3170 3171
3172 3124 3175 3176 3179 3183
3189 3190 3191 3192 3193 3194
3195 3196 3197 3198 3199 3200
3772 3773 3794 3775 3776 3002
3003 3004 3005 3006 3007 3009
3010 3011 3012 3013 3014 3015
3016 3017 3018 3020 3021 3022
3023 3024 3025 3026 3028 3029
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3055 3058 3060 3061 3064 3065
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3072 3074 3076 3077 3078 3079
3080 3081 3083 3084 3086 3087
3088 3090 3092 3094 3096 3097
3098 3099 3969 3770 3771 3106
3109 3110 3111 3112 3113 3115
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3158 3159 3160 3161 3162 3163
3164 3165 3166 3167 3168 3169
3173 3177 3178 3180 3181 3182
3184 3185 3186 3187 3188

Making 197,000$. Bonds numbered above 3000 now here; some more are in transit, No's of which are not yet known.

Résumé.

On first page	168	numbers of bonds.
" 2nd "	192	" " "
" 3rd "	192	" " "
" 4th "	192	" " "
" 5 "	192	" " "
" 6th "	192	" " "
" 7th "	6	" " "
Nos. above 3000	197	
(" written with lead pencil on orig.)	1611	
In box. Total	2942	

A few bonds are under control or in individual hands, the no's of which are not at hand here.

3184 (Indorsed:) List of the bonds. Florida 8 % bonds presented in the U. S. court, May, '79, in Jacksonville, Florida, by Adolph Engler, of N. Y. City, in the case of J. Fred Schutte et als. vs. J., P. & M. R. R. Co. & Florida Central R. R. Co. et als. Filed . P. Walter, clerk.'

3185 (Copy.)

To whom it may concern:

Know ye, that I, Harrison Reed, governor of Florida, have appointed and by these presents do hereby constitute the New York State Loan and Trust Company of New York City, of the city of New York, financial agent of the said State of Florida, for the payment of the interest on the bonds of the State issued in aid of the Jacksonville, Pensacola and Mobile Railroad falling due on the 1st day of January next.

In witness whereof I have hereunto set my hand and caused the great seal of the State to be attached at Tallahassee, the capital, this 21st day of December, A. D. 1872.

HARRISON REED,
Governor of Florida.

By the governor.
Attest:

JONATHAN C. GIBBS,
Secretary of State.

3185½ (Indorsed:) Copy of proclamation of Harrison Reed appointing fiscal ag't.

(Pages 3186 to 3605, inclusive, omitted per order of court April 12, 1880.)

3606 TALLAHASSEE, *May* 24, 1870.

The stockholders met pursuant to adjournment, and were present M. S. Littlefield, Col. Sanderson, Cheney, Hawkins, Smith, Requa, and Huling, representing a majority of the stock.

Col. Sanderson was called to the chair & F. H. Flagg acted as secretary.

The report of the committee made on the 9th instant by Dr. Hawkins, chairman, was adopted.

Gen. Littlefield moved that a committee of three be appointed by the chair to adjust and agree with the Florida Central R. R'd for the proper & equitable settlement of the accounts between that road and this up to the period of the consolidation of this road with the Jacksonville, Pensacola & Mobile Railroad, which was adopted, and the chair appointed Messrs. Hawkins, Smith, & Huling said committee, and on motion the chair was added to the committee.

3607 It was resolved that the superintendent be requested to report at an early day as to the convenience of the depots for passengers and freights, and suggesting what is required and necessary for the accommodation and comfort of the public, & report to the board of directors.

It was resolved that a committee of five be appointed by the chair to confer with a committee on the part of the Jacksonville, Pensacola & Mobile Railroad, to take in consideration the consolidation of the two roads.

The chair appointed Messrs. Littlefield, Huling, Requa said committee, &, on motion, the chair (Sanderson) and Mr. Papy were added to said committee.

Adjourned to 9 o'clock a. m., to-morrow.

TALLAHASSEE, *May* 25, 1870.

Pursuant to adjournment, the stockholders convened this day, Col. Sanderson in the chair.

The stock being represented as follows, viz:

M. S. Littlefield	17,998	shares.
E. M. Cheney & J. L. Requa	4,083	"
C. B. Dibble, by Gen. Littlefield	2,333	"
A. Huling	583	"
J. M. Baker	1,250	"
J. P. Sanderson	1,250	"
3608 L. S. Niblock, by J. M. Baker	1,250	"
F. Dibble, by Gen'l Littlefield	1,250	"
Dr. A. B. Hawkins	1	"
M. D. Papy	1	"
C. H. Smith	1	"
	30,000	

Gen'l Littlefield then made the following report:

Report of the committee appointed by the Tallahassee Railroad Company to arrange and report upon a basis of consolidation with the Jacksonville, Pensacola and Mobile Railroad Company.

We, the undersigned committee, would respectfully report:

That we have agreed with the committee appointed by the Jacksonville, Pensacola and Mobile Railroad Company that the capital stock of this company shall be three millions of dollars, taken as the basis of the consolidation of the companies.

That the capital stock of the Jacksonville, Pensacola and Mobile Railroad Company shall be taken in said consolidation as three millions
of dollars. That the capital stock of the Jacksonville, Pensacola and
Mobile Railroad Company, after the consolidation of the two com-
3609 panies, shall be six millions of dollars, which shall represent the
whole of the stock of the consolidated companies, under the name
and franchise of the Jacksonville, Pensacola and Mobile Railroad Company, said six millions of dollars of capital stock to be represented by sixty thousand shares of stock of one hundred dollars per share, which said shares shall be divided as follows, among the following

Stockholders.	Shares.
M. S. Littlefield	38,433
E. M. Cheney	4,166
J. L. Requa	4,166
J. P. Sanderson, 4,000, 1,250	5,250
A. Huling	1,875
J. M. Baker	1,250
J. L. Niblack	1,250
C. B. Dibble	2,330
F. Dibble	1,250
M. L. Stearns	10
G. E. Wentworth	10
W. J. Penman	10
No. of shares	60,000

That the foregoing be the list of stockholders and their respective number of shares.

That the liabilities of the Tallahassee Railroad Company created since its organization shall be assumed by the Jacksonville, Pensacola
3610 and Mobile Railroad Company.

Respectfully submitted.

(Signed by)—

M. S. LITTLEFIELD, *Cha'n*,
ALONSO HULING,
J. L. REQUA,
J. P. SANDERSON,
M. D. PAPY,
Committee.

All of which was adopted, and the terms therein proposed agreed to unanimously.

On motion of Gen'l Littlefield, the following resolution was adopted unanimously:

Whereas, by the fourteenth section of an act entitled "An act to perfect the public works of this State," it was made lawful for this company to consolidate with the Jacksonville, Pensacola & Mobile Railroad Company by a vote of the owners of a majority of its stock in interest, so as to become one corporation under the name of the said Jacksonville, Pensacola and Mobile Railroad Company, on such terms as may be agreed on:

Be it therefore resolved, That the Tallahassee Railroad Company be, and the same is hereby, consolidated with the Jacksonville, Pen-
3611 sacola and Mobile Railroad Company, and merged in said company under the corporate name of said company, and that the Tallahassee Railroad shall hereafter be merged in said Jacksonville, Pensacola & Mobile Railroad upon the terms agreed on by the parties in interest.

Resolved, further, That as a condition to the consolidation aforesaid, the said Jacksonville, Pensacola & Mobile Railroad Company shall assume all debts and obligations created by this company since its organization, and especially that it shall assume the redemption of the transportation tickets issued by the said Tallahassee Railroad Company.

On motion, a committee, consisting of Messrs. Papy, Huling, and Hawkins, was appointed by the chair to notify the stockholders of the Jacksonville, Pensacola & Mobile Railroad Company of the action of this company, agreeing to the terms of consolidation reported by the committee aforesaid, and of the adoption by this meeting of the preamble and resolutions aforesaid, and that they furnish a copy of said preamble & resolutions to the Jacksonville, Pensacola & Mobile Railroad Company.

3612 On motion, the meeting took a recess of one hour.

At the expiration of the hour the chair called the meeting to order.

A committee on the part of the Jacksonville, Pensacola & Mobile Railroad Company, appointed before the meeting and by D. P. Holland, their chairman, stated that

"We have been appointed a committee on behalf of the Jacksonville, Pensacola and Mobile R. R'd Co., and of the stockholders thereof, to notify the stockholders of the Tallahassee Railroad Company that the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company accept the terms of consolidation reported by the committee to confer upon that subject, and have adopted a preamble and resolutions of consolidation, a copy of which we are instructed to furnish to this meeting."

The copy of the preamble and resolutions so presented by said committee are ordered to be recorded in these minutes, and is as follows:

Whereas, by the fourteenth section of "An act entitled 'An act to perfect the public works of this State,'" it was made lawful for the
3613 several companies owning the roads or parts of roads from Quincy
to Jacksonville, from Tallahassee to St. Mark's, &c., by a vote of the owners of a majority of the stock in interest, and with the consent of the owners of a majority of the stock in interest of the Jacksonville, Pensacola & Mobile Railroad Company to consolidate with the said Jacksonville, Pensacola and Mobile Railroad Company, so as to become one corporation, under its name, on such terms as may be agreed upon; and whereas the Tallahassee Railroad Company have agreed to consolidate with this company, by virtue of the provisions of said section:

Be it therefore resolved, That the consent of the owners of the stock in this company is hereby given to such consolidation, and that the said Tallahassee Railroad Company be, and the same is hereby, consolidated with this company, and that hereafter the said Tallahassee Railroad Company shall be merged in the Jacksonville, Pensacola & Mobile Railroad Company.

Resolved, further, That upon such consolidation the Jacksonville,
Pensacola & Mobile Railroad Company will assume all debts and
3614 obligations created by said Tallahassee Railroad Company since
its organization, including the redemption of the transportation tickets issued by said company.

Whereupon Mr. Papy offered the following preamble & resolutions:

Whereas a committee from the stockholders of the Jacksonville, Pensacola and Mobile Railroad having reported to this meeting the resolutions adopted by said stockholders, agreeing to the terms of consolidation, and giving their assent thereto according to the terms of the law,

Be it now resolved, that the president and directors of this company are directed to transfer and deliver to said Jacksonville, Pensacola and Mobile Railroad Company the Tallahassee Railroad, together with the engines, cars, stock, material, and property of ever kind, which shall thereafter vest in the said Jacksonville, Pensacola & Mobile Railroad Company.

Resolved further, that as by the terms of consolidation agreed on the owners of the stock in this company are to become, and by adopting
said terms do become, stockholders in said Jacksonville, Pensa-
3615 cola & Mobile Railroad Company, when this meeting adjourns
the stockholders interested in said consolidated stock will unite
in a meeting of the stockholders of the Jacksonville, Pen. & Mobile Railroad Company for the purpose of a new organization of said company.

Adjourned.

3615½ (Indorsed:) Copy of proceedings of stockholders Tallahassee R. R. Co. at meeting of 24 & 25 May, 1870.

3616 TALLAHASSEE, *May* 24, 1870.

Pursuant to adjournment the stockholders convened at the office of the company.

Col. J. P. Sanderson was called to the chair, and F. H. Flagg appointed secretary.

Gen'l Littlefield moved that a committee of five *five* be appointed by the chair to confer with a similar committee on the part of the Tallahassee R. R'd Co. to take in consideration the manner and terms and conditions of a consolidation of the two companies. Adopted.

The chair appointed Messrs. Cheney, Stearns, Wentworth, Holland & Purman said committee.

Adjourned to nine o'clock to-morrow a. m.

TALLAHASSEE, *May* 25, 1870.

Pursuant to adjournment the stockholders convened this day, Col. Sanderson in the chair,

The stock being represented as follows, viz:

M. S. Littlefield	9930	shares.
3617 J. P. Sanderson	10	shares.
M. L. Stearns	10	"
G. E. Wentworth	10	"
E. M. Cheeney	10	"
W. J. Purman	10	"
J. L. Requa, by Mr. Cheney	10	"
D. P. Holland	10	"
	10,000	shares.

Mr. Cheney then moved the following report:

Report of the committee appointed by the Jacksonville, Pensacola & Mobile Railroad Company to arrange and report upon a basis of consolidation with the Tallahassee Railroad Company.

We, the undersigned, would respectfully report as follows:

We have agreed with the committee appointed by the Tallahassee R. R'd Company that the capital stock of this company shall be made $3,000,000, to be divided into 30,000 shares.

That the capital stock of the Tallahassee Road being $3,000,000, also divided into 30,000 shares; the capital stock of the two companies be put together, making the whole stock of the consolidated companies
$6,000,000, divided into 60,000 shares. That the sixty thousand
3618 shares be divided among the stockholders, as follows, viz:

M. S. Littlefield	38,433	shares.
E. M. Cheney	4,166	"
J. L. Requa	4,166	"
J. P. Sanderson	5,250	"
A. Huling	1,875	"
J. M. Baker	1,250	"
S. L. Niblack	1,250	"
C. B. Dibble	2,330	"
F. Dibble	1,250	"
M. L. Stearns	10	"
Geo. E. Wentworth	10	"
W. J. Burman	10	"
No. shares	60,000	

That the liabilities of the Tallahassee Railroad Company created since its organization shall be assumed by the Jacksonville, Pensacola and Mobile Railroad Company.

Respectfully submitted.

(Signed)

E. M. CHENEY, *Ch'm*,
GEO. E. WENTWORTH,
W. J. PURMAN,
D. P. HOLLAMD,
M. L. STEARNS,
Committee.

All of which was adopted and the terms therein recited were unanimously agreed to.

3619 A committee appointed by the Tallahassee Railroad Company appeared before this meeting and by M. D. Papy, their chairman, stated as follows:

REPORT.

We have been appointed a committee of the stockholders of the Tallahassee R. Rd. Co. to notify the stockholders of the Jacksonville, Pen. and Mobile R. Rd. Co. that the stockholders of that company have unanimously agreed to the terms of consolidation proposed by the committee before that time appointed to consult with the committee appointed by this company, and that they have resolved according to the terms of the fourteenth section of the act entitled "An act to perfect the public works of the State," to consolidate with this company upon those terms, and upon the condition that the Jacksonville, Pensacola and Mobile Railroad Company shall assume all debts incurred by that company since its organization, and especially the transportation tickets issued by that company, and I submit to this meeting a copy of the resolutions adopted by that company, as follows:

(Copy.)

3620 Whereas, by the fourteenth section of an act entitled "An act to perfect the public works of this State," it was made lawful for this company, to consolidate with the Jacksonville, Pen. & Mobile Railroad Company, by a vote of the owners of a majority of its stock in interest, so as to become one corporation under the name of the said Jacksonville, Pen. & Mobile Railroad Company on such terms as may be agreed on;

Be it therefore resolved, that the Tallahassee Railroad Company be and the same is hereby consolidated with the Jacksonville, Pensacola and Mobile Railroad Company and merged in said company under the corporate name of said company, and that the Tallahassee Railroad shall hereafter be merged in the said Jacksonville, Pensacola and Mobile Railroad upon the terms agreed on by the parties in interest.

Resolved further, that as a condition to the consolidation aforesaid, the said Jacksonville, Pensacola and Mobile Railroad Company shall assume all debts and obligations created by the company since its organization, and especially that it shall assume the redemption of 3621 the transportation tickets issued by this said Tallahassee Railroad Company.

Whereupon Gen'l Littlefield offered the following:

Whereas, by the fourteenth section of an act entitled "An act to perfect the public works of this State," it was made lawful for the several companies owning the roads or parts of roads from Quincy to Jacksonville, from Tallahassee to St. Mark's, &c., by a vote of the owners of a majority of the stock in interest and with the consent of the owners of a majority of the stock in interest of the Jacksonville, Pensacola and Mobile Railroad Company, to consolidate with the said Jacksonville, Pensacola and Mobile Railroad Company so as to become one corporation under its name on such terms as may be agreed upon; and whereas the Tallahassee Railroad Company have agreed to consolidate with this company by virtue of the provisions of said section;

Be it therefore resolved, that the consent of the owners of the
3622 stock in this company is hereby given to such consolidation and
that the said Tallahassee Railroad Company be, and the same is hereby consolidated with this company, and that hereafter the said Tallahassee Railroad shall be merged in the Jacksonville, Pensacola & Mobile Railroad.

Resolved further, That upon such consolidation the Jacksonville, Pensacola and Mobile Railroad Company will assume all debts and obligations created by the said Tallahassee Railroad Company since its organization, including the redemption of the transportation tickets by said company.

All of which was unanimously adopted and agreed to.

On motion, a committee consisting of Messrs. Holland, Purman, and Wentworth were appointed to report to the stockholders of the Tallahassee Railroad Company the acceptance of the terms of consolidation,
and that the directors be authorized to receive from the Tallahassee
3623 Railroad Company the Tallahassee Railroad, with all its engines,
cars, material, and property of every kind belonging to said company.

On motion the meeting then adjourned to meet in a joint stock meeting of the two companies as consolidated.

(Indorsed:) Copy resolution J., P. & M. R. R. Comp. in
consolidation.

3624 TALLAHASSEE, *April* 1

Pursuant to adjournment the stockholders *the stock*
this day and were present

* * * * * * *

Mr. Houstoun offered the following resolution:

Resolved, That Edward Houstoun is authorized to place the bonds referred to in the preamble and resolutions of the stockholders adopted June 20th, 1870, in the hands of S. W. Hopkins & Co. for the purpose mentioned in said resolutions, subject to the same exceptions as thereon expressed with respect to the proportion thereof applicable to the stock owned by other parties and according to the same terms therein mentioned. Which was adopted.

3625 TALLAHASSEE, *May 25th*, 1870.

The directors elected this day at a meeting of the stockholders of the Florida Central Railroad Company convened this day and were present, J. P. Sanderson, M. S. Littlefield, M. D. Papy, A. Huling, and J. M. Baker.

That the liabilities of the Tallahassee Railroad Company created since its organization shall be assumed by the Jacksonville, Pensacola and Mobile Railroad Company.

Respectfully submitted.

(Signed)

E. M. CHENEY, *Ch'm*,
GEO. E. WENTWORTH,
W. J. PURMAN,
D. P. HOLLAMD,
M. L. STEARNS,
Committee.

All of which was adopted and the terms therein recited were unanimously agreed to.

3619 A committee appointed by the Tallahassee Railroad Company appeared before this meeting and by M. D. Papy, their chairman, stated as follows:

REPORT.

We have been appointed a committee of the stockholders of the Tallahassee R. Rd. Co. to notify the stockholders of the Jacksonville, Pen. and Mobile R. Rd. Co. that the stockholders of that company have unanimously agreed to the terms of consolidation proposed by the committee before that time appointed to consult with the committee appointed by this company, and that they have resolved according to the terms of the fourteenth section of the act entitled "An act to perfect the public works of the State," to consolidate with this company upon those terms, and upon the condition that the Jacksonville, Pensacola and Mobile Railroad Company shall assume all debts incurred by that company since its organization, and especially the transportation tickets issued by that company, and I submit to this meeting a copy of the resolutions adopted by that company, as follows:

(Copy.)

3620 Whereas, by the fourteenth section of an act entitled "An act to perfect the public works of this State," it was made lawful for this company, to consolidate with the Jacksonville, Pen. & Mobile Railroad Company, by a vote of the owners of a majority of its stock in interest, so as to become one corporation under the name of the said Jacksonville, Pen. & Mobile Railroad Company on such terms as may be agreed on;

Be it therefore resolved, that the Tallahassee Railroad Company be and the same is hereby consolidated with the Jacksonville, Pensacola and Mobile Railroad Company and merged in said company under the corporate name of said company, and that the Tallahassee Railroad shall hereafter be merged in the said Jacksonville, Pensacola and Mobile Railroad upon the terms agreed on by the parties in interest.

3621 Resolved further, that as a condition to the consolidation aforesaid, the said Jacksonville, Pensacola and Mobile Railroad Company shall assume all debts and obligations created by the company since its organization, and especially that it shall assume the redemption of the transportation tickets issued by this said Tallahassee Railroad Company.

Whereupon Gen'l Littlefield offered the following:

Whereas, by the fourteenth section of an act entitled "An act to perfect the public works of this State," it was made lawful for the several companies owning the roads or parts of roads from Quincy to Jacksonville, from Tallahassee to St. Mark's, &c., by a vote of the owners of a majority of the stock in interest and with the consent of the owners of a majority of the stock in interest of the Jacksonville, Pensacola and Mobile Railroad Company, to consolidate with the said Jacksonville, Pensacola and Mobile Railroad Company so as to become one corporation under its name on such terms as may be agreed upon; and whereas the Tallahassee Railroad Company have agreed to consolidate with this company by virtue of the provisions of said section;

3622 Be it therefore resolved, that the consent of the owners of the stock in this company is hereby given to such consolidation and that the said Tallahassee Railroad Company be, and the same is hereby consolidated with this company, and that hereafter the said Tallahassee Railroad shall be merged in the Jacksonville, Pensacola & Mobile Railroad.

Resolved further, That upon such consolidation the Jacksonville, Pensacola and Mobile Railroad Company will assume all debts and obligations created by the said Tallahassee Railroad Company since its organization, including the redemption of the transportation tickets by said company.

All of which was unanimously adopted and agreed to.

3623 On motion, a committee consisting of Messrs. Holland, Purman, and Wentworth were appointed to report to the stockholders of the Tallahassee Railroad Company the acceptance of the terms of consolidation, and that the directors be authorized to receive from the Tallahassee Railroad Company the Tallahassee Railroad, with all its engines, cars, material, and property of every kind belonging to said company.

On motion the meeting then adjourned to meet in a joint stock meeting of the two companies as consolidated.

(Indorsed:) Copy resolution J., P. & M. R. R. Comp. in respect to consolidation.

3624 TALLAHASSEE, *April* 13*th*, 1871.

Pursuant to adjournment the stockholders *the stockholders* met this day and were present

* * * * * * *

Mr. Houstoun offered the following resolution:

Resolved, That Edward Houstoun is authorized to place the bonds referred to in the preamble and resolutions of the stockholders adopted June 20th, 1870, in the hands of S. W. Hopkins & Co. for the purpose mentioned in said resolutions, subject to the same exceptions as thereon expressed with respect to the proportion thereof applicable to the stock owned by other parties and according to the same terms therein mentioned. Which was adopted.

3625 TALLAHASSEE, *May* 25*th*, 1870.

The directors elected this day at a meeting of the stockholders of the Florida Central Railroad Company convened this day and were present, J. P. Sanderson, M. S. Littlefield, M. D. Papy, A. Huling, and J. M. Baker.

Mr. Papy was called to the chair and F. H. Flagg acted as secretary.

On motion, a ballot for president was taken, and Col. J. P. Sanderson was duly elected president of this company and assumed the chair.

On motion, the by-laws of the Tallahassee Railroad Company relating to a vice-president was adopted by this board.

On motion, a ballot was taken for vice-president, and it was found that Alonzo Huling, esq., was duly elected vice-president of this company.

3626 Gen'l Littlefield stated that Mr. Swepson, late president, had appointed H. H. Thompson, esq., as secretary and treasurer of this company for the past year, and moved that the action of the late president in this respect be approved and confirmed; which was agreed to.

On motion, a ballot was taken for secretary and treasurer for the ensuing year, and resulted in the election of F. H. Flagg as secretary and treasurer of this company.

On motion, Mr. Jas. Anderson was retained as superintendent of the road.

Gen'l Littlefield offered the following preamble and resolution:

3627 Whereas, by the extension of the Jacksonville, Pensacola and Mobile Railroad to the Chattahoochee River, the business of this road will be largely increased; and whereas also several large steam saw-mills are about being erected on the line of the road, which will demand a corresponding increase in the facilities of the company to enable it to do the business:

Resolved, That it has become an imperative necessity upon this company to complete the improvements at Jacksonville, heretofore contemplated, and the president is hereby authorized to proceed at once to have said improvements completed according to the plans and specifications furnished by the engineer, and for that purpose he is authorized to use any funds of the company to an amount not exceeding the sum of one hundred thousand dollars.

All of which was adopted and agreed to.

3628 On motion, the president and superintendent of this road be authorized to confer with the Jacksonville, Pensacola and Mobile Railroad Company as to the terms of the joint running of the two roads and to arrange the same with that company.

Adjourned subject to the call of the president.

F. H. FLAGG,
Secretary.

TALLAHASSEE, *June* 2, 1870.

The stockholders of the Florida Central Railroad Company convened this day, pursuant to a call of the chairman of the last meeting.

* * * * * * *

M. S. Littlefield offered the following resolution:

3629 Resolved, That bonds to the extent of sixteen thousand dollars per mile be issued by this company, which bonds shall be a first lien or mortgage on the Florida Central Railroad, its equipments, franchise, road-bed, work-shops, and depots, excepting, however, the town lots in the city of Jacksonville not used for depot purposes.

And whereas the late president, George W. Swepson, caused to be prepared bonds to be issued by this company preparatory to an order of the board of directors to that effect, and which bonds were signed by said Swepson as president of this company and countersigned by H. H. Thompson, treasurer:

Be it therefore resolved, That the said bonds so signed by said Swepson and countersigned by said Thompson, to the extent of sixteen thousand dollars a mile, be and they are hereby adopted as the bonds to be issued under the foregoing resolution, and that such bonds when
3630 so issued shall be a first lien or mortgage on the said Florida Central Railroad, its equipment, franchise, road-bed, work-shops, and depots (excepting the lots in Jacksonville not used for depot purposes).

Be it further resolved that said bonds shall be placed in the hands of Edward Houstoun for the purposes agreed upon by an arrang'ment between himself and Milton S. Littlefield, who is the owner of nearly all the stock in this company, which bond' or their proceeds are to be held and applied according to the terms of said arrangement, except the proportion thereof applicable or apportionable to the stock owned by other parties and upon the satisfaction otherwise of the terms of said arrangement with said Houstoun, the said bonds are to be by him transferred to Milton S. Littlefield, or according to his direction, to the extent of the stock owned by him at the time.

Resolved further, That the directors be directed to carry the foregoing resolutions into effect.

All of which were unanimously adopted.

(Pages 3631 to 3634 inclusive omitted per order of court April 12, 1880.)

(Indorsed:) Proceedings Fl'a Cent. R. R. Co. authorizing issue of $1,000,000 first mortgage bonds, & also copy of minutes of April 30, 1870, in relation to said bonds.

3635 WASHINGTON CITY,
District of Columbia:

This agreement, executed on this the 16th day of April, 1870, between N. W. Woodfin, W. G. Candler, W. W. Rollins, commissioners appointed by an act of the legislature of North Carolina, entitled "An act to provide for the completion of the Western Division of the Western North Carolina Railroad" and "ratified March 24, 1870," which said act has been approved by the stockholders of the said corporation and the said commissioners now representing the Western Division of the Western North Carolina Railroad, of the first part, and George W. Swepson, (formerly president of the said Western Division of the Western North Carolina Railroad Company) of the second part, witnesseth:

That whereas a deed of agreement of this date has been made between George W. Swepson, as president of the Florida Central Railroad, and Milton S. Littlefield, in his own right, as president of the Jacksonville, Pensacola & Mobile Railroad, and as majority stockholder in all of these three railroad companies, of the first part, and the aforesaid com-
3636 missioners of the second part, which agreement has been signed in triplicate; and whereas by said agreement an interest in said railroads, amounting to the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents has been transferred and conveyed to the said Western Division of the Western North Carolina Railroad Company;

And whereas the said George W. Swepson, through his brother, Robert R. Swepson, has this day paid to the said commissioners the sum of fifty thousand dollars, cash;

And whereas the said George W. Swepson has this day executed and delivered to the said commissioners his obligation, in the form of a draft, accepted by M. S. Littlefield, as president of the J., P. & M. Railroad Co., and endorsed by M. S. Littlefield and George W. Swepson, as president of the Florida Central Railroad Company, for the sum of one hundred thousand dollars, payable four months after date;

And whereas the said George W. Swepson has this day executed and
delivered to the said commissioners his other obligations, in the
3637 form of a draft, accepted by M. S. Littlefield, as president of the
J., P. and Mobile Railroad Co., and endorsed by M. S. Littlefield
and George W. Swepson, as president of the Florida Central Railroad Company, for the sum of one hundred and sixty-four thousand dollars, payable twelve months after date, with interest on both of said premises at the rate of six per cent.

And whereas, as a security for the payment of the last aforesaid obligations of one hundred and sixty-four thousand dollars, the said George W. Swepson has agreed to execute a mortgage deed or deed in trust, with full relinquishment of all rights of dower upon the following lands, viz: the marble and lime lands at Catawba County, North Carolina, owned in copartnership with Dr. A. M. Powell, his interest being one-half; an undivided half of the Eagle Hotel, in Ashville, North Carolina; the Dr. Woodfin place, in Moore County, about three hundred acres; the Jarret place, on Nautahala River, about four hundred acres in Cherokee; the Gid Morris plantation, about sixteen hundred acres; the Charles Moore
place, about six hundred acres; the David Hennessee place,
3638 about acres; the Sharp place, about three hundred
acres; one-half interest in fifteen trails' length Horshaw, of Burke
County, all on Valley River; one half interest in about twenty thousand acres in copartnership with M. Fair, also in Cherokee County; all of his interest in about sixty-two thousand acres in Macon County (this land has been paid for, but the grants are not yet received); about ninety thousand acres of land in Macon, Cherokee, and Clay, known as the Olmstead's; a lot of about fifty thousand acres, held by Joseph Keener in trust for George W. Swepson.

And whereas the said George W. Swepson has agreed that the said mortgage or deed in trust, with relinquishment as aforesaid, shall be executed within the next thirty days;

And whereas R. R. Swepson and R. Y. McAden have agreed that they will guarantee that the said lands so to be mortgaged shall be relieved and discharged from all liens by reason of any judgments against George W. Swepson;

And whereas it is expressly understood that the said notes of one
hundred thousand dollars and one hundred and sixty-four thou-
3639 sand dollars may be paid in railroad iron, delivered at Portsmouth,
Virginia, and if so paid before their maturity the unaccrued interest
shall not be charged.

And whereas the said Robert R. Swepson has this day advanced the sum of fifty thousand dollars to aid in this settlement, and whereas it is understood that the directory of the Western Division of the Western North Carolina Railroad Company will resolve that all stock on which 5 per cent. has not been paid shall be forfeited to the company and the stockholders released therefrom, the said commissioners hereby, so far as they have any authority or interest therein, express their consent thereto.

And whereas it is further understood that upon the payment upon the said note of $164,000 of the sum of five thousand dollars, the Eagle Hotel may be discharged of the trust; upon the payment of twelve

thousand dollars, the Gid Morris place may be discharged; upon the payment of seven thousand five hundred dollars, the Hennessee lands may be discharged; upon the payment of six thousand five hun-
3640 dred dollars, the Charles Moore place may be discharged; upon the payment of three thousand dollars, the Sharp place may be discharged; upon the payment of two thousand dollars, the Woodfin place may be discharged; upon the payment of five thousand dollars, the Jarret place, on Nautahala River; upon the payment of five thousand five hundred dollars, the Horshaw lands; and upon the payment of five thousand dollars, the Fair lands may be discharged.

Now, therefore, considering the premises, and in consideration of the said interest and security, amounting to the sum of $1,287,436.03, transferred by said agreement of George W. Swepson and M. S. Littlefield as aforesaid, special reference being here made to said agreement, and in consideration of the further sum of fifty thousand dollars, this day paid in cash, as aforesaid; further, in consideration of the two obligations of $100,000 and $164,000, each respectively, in consideration of the disbursements heretofore made by the said George W. Swepson for and on account of the said railroad company, the said commissioners, in their capacity as commissioners, by authority of the said act of the legislature of North Carolina and its approval by the stockholders, agree and promise to execute
3641 and deliver to the said George W. Swepson a full and final release and discharge and receipt of all claims, demands, and accounts of the said Western Division of the Western North Carolina Railroad Company against the said George W. Swepson, of any character whatever, when the said Swepson shall have executed the said mortgage or deed in trust with relinquishment of dower, as aforesaid, and the said Robert R. Swepson and the said R. Y. McAden shall have given a satisfactory guarantee that the said lands shall be discharged of any and all judgments as aforesaid, and when the sum of $880,000 of the amount of $1,287,436.03, transferred in Florida railroads shall have been paid or made fully secure; provided, nevertheless, that it shall be determined by N. W. Woodfin and M. W. Ransom, and in case they cannot agree they are to call in an umpire, that George W. Swepson was not authorized to make such investments in Florida by his board of directors of the Western Division of the Western North Carolina Railroad Company. But it shall not be determined by the said referees, or the said referees and umpire, that George W. Swepson was
3642 authorized to make such investments, or that the said directors recognized and approved the investment, then there shall be no obligation on Mr. G. W. Swepson to guarantee the payment of the said sum of $880,000, but the compliance with the other obligations shall be his receipt and discharge.

It is further understood that the said mortgage or deed in trust will be executed and delivered within ninety days from the date of these presents, unless there should be cause sufficient and satisfactory to the said commissioners to postpone the same at their discretion. But it is expressly understood that the said commissioners do not approve of the payment by Soutter & Co. of the expenses to attorneys, etc., in the university case, but that they protest against the same, and that nothing in this agreement shall be construed to prevent the said Western Division of the Western North Carolina Railroad Company from recovering the same or any part thereof from those receiving the same.

In witness whereof the parties of the first and second parts have hereunto set their hands.

N. W. WOODFIN.
W. G. CANDLER.
W. W. ROLLINS.
GEO. W. SWEPSON.

Witnesses:
R. W. PULLMAN.
R. R. SWEPSON.

3642½ (Indorsed:) Copy of agreement & settlement bet. Fla. Cent. R. R. Co. and J., P. & M. R. R. Co. & Littlefield with W. D. W. N. C. R. R. Co., & approved by lat'er comp. April 16, 1870.

3643 THE STATE OF FLORIDA & HARRISON Reed, governor of the State of Florida; Horatio Bisbee, jr., attorney-general of the State of Florida; Rob't H. Gamble, comptroller of the State of Florida; John S. Adams, commissioner of lands and immigration of the State of Florida, trustees of the internal improvement fund of said State, plaintiffs,

THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, Milton S. Littlefield, Calvin Littlefield, Franklin Dibble, John L. Requa, Alonzo Huling, Edward M. Cheeny, Mariano D. Papy, Converse L. Chase, Francis H. Flagg, Aaron Barnett, George W. Swepson, and the Florida Central Railroad Company, defendants.

The defendant the Florida Central Railroad Company, answering the amended complaint herein, says:

1st. That under an act of the legislature *of the legislature* of the State of Florida, entitled "An act to incorporate the Florida, Atlantic and Gulf Central Railroad Company, and for other purposes," approved Jan'y 24th, 1851, and an act amendatory thereto approved January 7th, 1853, the said "Florida, Atlantic and Gulf Central Railroad Company" was incorporated, and by that name the stockholders and mem-
3644 bers of said company, their successors and assigns, were authorized and impowered to construct and operate a railroad from some tributary on the Atlantic Ocean, within the limits of said State, having a sufficient outlet to the ocean to admit of the passage of sea steamers then running through said State, in the most eligible direction to some point, bay or arm or tributary of the Gulf of Mexico, west of the Apalachicola River, in West Florida, having a sufficient outlet for sea steamers, as in and by the said act and amended act, reference being thereunto had, will appear.

2. That, under the powers, rights, and privileges conferred by said acts, and in accordance with the provisions thereof, the said company constructed a railroad from the city of Jacksonville to the town of Lake City, in said State, and surrendered their right to build any portion of their line west of Lake City.

3. That, in accordance with the authority of an act of the legislature of said State, entitled "An act to provide for and encourage a liberal

system of internal improvements of this State," approved January 6th, 1855, and generally known and designated as the "internal im- 3645 provement law," the said Florida, Atlantic and Gulf Central Railroad Company, for the purpose of constructing its road, as authorized by its charter, issued coupon bonds amounting, in the aggregate, as the defendant is informed and believes, to the sum of five hundred and fifty-five thousand dollars.

4th. That under said internal improvement law, and by virtue of the contract therein expressed, the bonds issued thereunder became and constituted a first lien or mortgage on the road-bed iron, equipments, workshops, depots, and franchise of any railroad company, *ex*cepting the provisions of said law, and it was in the said law provided that any company *ex*cepting the provisions of said law, and failing to provide the interest as therein provided, on the bonds issued by said company, and the sum of one per cent. per annum as a sinking fund as therein provided, that after the expiration of thirty days from such default or refusal, that it should be the duty of the trustees of the internal improvement fund to take possession of said railroad and all its property of every kind and advertise the same for sale at public auction to the highest bidder, either for cash or additional ap- 3646 proved security, as they might think most advantageous to the interest of the internal improvement fund and the bondholders, the proceeds arising from said sale to be applied by said trustees to the purchaser, and cancelling of the outstanding bonds issued by said defaulting company, and said sale to be made upon the condition that the purchaser should be bound to continue the payment of one-half per cent. semi-annually to the sinking fund until all the outstanding bonds were discharged, under the penalty of an annullment of the contract of sale and a forfeiture of the purchase money paid in, as in and by the said internal improvement law, reference thereunto being had, will appear.

5. That the said Florida, Atlantic and Gulf Central Railroad Company having accepted the provisions of said law, and having failed to comply with the requirements thereof, the said trustees took possession of the said Florida, Atlantic and Gulf Central Railroad, then and for several years previous thereto a fully completed and finished road from Jacksonville to Lake City, and sold the same, together with 3647 all its property of every kind, as authorized by said law, at public auction, for cash, on the 4 day of March, 1868, at which said sale Wm. E. Jackson and associates became the purchasers thereof, for the sum of one hundred and eleven thousand dollars, being a pro ratta of twenty per cent. on the whole amount of bonds issued by said company under said law.

6. That immediately after said sale said purchase money was paid, and a deed to said road and its property, in accordance with the terms of sale, executed and delivered by the said trustees to the said William E. Jackson and associates.

7. That by virtue of an act of the legislature of said State, entitled "An act for the relief of William E. Jackson, Edward Thomas, Wm. Sheor, John Craig, James B. Walker, and their associates, now owning and operating the railroad from Jacksonville to Lake City," approved July 29, 1868, the said Wm. E. Jackson and his associates were vested with the powers and franchises granted the Florida, Atlantic and Gulf Central Railroad Company in and by an act entitled "An act to 3648 amend an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company," approved January 7th, 1853, and the

said William E. Jackson and associates, they and their successors and assigns, authorized and empowered to exercise the said powers and franchises so far as they appertained to the said railroad, constructed from the city of Jacksonville, in Duval County, to Lake City, in Columbia County, in this State; and the said William E. Jackson and associates made and created a body politic and corporate, under the name of the Florida Central Railroad Company, and by that name they and their successors declared capable to enjoy and hold the said railroad from Jacksonville to Lake City, and all the benefits thereof, subject only to the condition annexed to the sale thereof by the trustees of the internal improvement fund, and as a body politic and corporate entitled as aforesaid to exercise all the powers and franchises granted in said above referred to act of the said Florida, Atlantic and Gulf Central Railroad Company, and various other powers and rights not
3649 necessary to be here enumerated as in and by the said act, reference being thereunto had, will more fully and at large appear.

8. That under and in pursuance of the grants, powers, and privileges conferred in and by the said act of incorporation, this defendant, the Florida Central Railroad Company, on or about the 13 day of August, 1868, having accepted the provisions of said act, organized said company by the election of directors and the election of a president and other officers, and by the taking of all other legal, needful and proper steps to perfect its organization according to law, and that from that time to the present time this defendant, The Florida Central Railroad Company, has been at all times duly and legally organized as a separate and independent corporation, with its own board of directors, president, and other needful and proper officers and agents, and that the minutes of the meetings of the stockholders and directors of this defendant show this to be the fact.

9. This defendant denies in most positive terms that this defendant was, at any time, consolidated with, or became a part of, the Jacksonville, Pensacola and Mobile Railroad Company; and this defend-
3650 ant avers that, under the laws of this State, no such consolidation could have taken place except by a vote of the owners of a majority of the stock in interest of this defendant, and with the consent of the owners of a majority of the stock in interest of the said Jacksonville, Pensacola and Mobile Railroad Company, and that no such action was ever proposed, considered or taken by the stockholders of this defendant, or any of them, or by the stockholders of the said Jacksonville, Pensacola and Mobile Railroad Company, or any of them, so far as this defendant is informed and believes; that the minutes of the meetings of the stockholders of this defendant, from its first organization to the present time, which are true and correct, do not show that any such act, or pretended act, of consolidation was ever brought forward, considered or acted upon by this defendant, and that no such consolidation, in fact, ever did take place. And this defendant further avers that this defendant has always since its first organization had its own board of directors, president and other needed officers separate and independent of the said Jacksonville, Pensacola and Mobile Railroad Company; that at the time of the institution of this
3651 action, it had its own board of directors and president, duly elected, who held their respective offices wholly independent of any connection with, or control on the part of, the said Jacksonville, Pensacola and Mobile Railroad Company; that very soon after the seizure of the road of this defendant by a receiver in this suit, based upon the ground of its alleged consolidation with the said Jacksonville, Pen-

sacola & Mobile Railroad Company, a meeting of the stockholders of this defendant was held, on the 2nd day of April, 1872, at which meeting a resolution was unanimously adopted denying any such consolidation or pretended consolidation, a copy of which is hereto annexed, marked Exhibit A, and prayed to be taken and considered as a part of this answer, and that the trustees of the internal-improvement fund, the plaintiffs in this action, at whose instance such seizure was made, admitted that their action in this behalf was erroneous and without just ground, and met and adopted a resolution agreeing to a release and return of the road of this defendant and to a vacation of the order ap-
pointing a receiver in this action, but afterwards, in violation of
3652 good faith & without any excuse, refused to carry out such reso-
lution.

10. This defendant denies that Milton S. Littlefield was ever president of the whole line of railroad from Jacksonville to Quincy as a consolidated line of road; that, as hereinbefore stated, this defendant has been since its first organization, and is now, a separate and independent corporation; that it is true that said Littlefield was at one time, to wit, from on or about the 10th day of April, 1872, president of this defendant, but that he held said office by virtue of his election by the directors of this defendant in conformity to its charter and by-laws, and not by virtue of any connection which he may have had as president or otherwise of or with the said Jacksonville, Pensacola and Mobile Railroad Company; that at the last regular annual meeting of the stockholders of this defendant, held in April, 1872, Aaron Barnett was duly elected president of this defendant, and is now the president of this defendant; and this defendant further avers that if the said Milton S. Littlefield ever assumed to represent, as president or otherwise, the whole line of railroad from Jacksonville to Quincy as one corporation, or a
consolidated line of road, which this defendant in nowise admits,
3653 that such action or assumption of the said Littlefield was, so far
as this defendant is concerned, without any authority, and was
wholly illegal and void.

11. This defendant further denies that all contracts of affreightment and transportation supplies, and for labor and the sale of tickets over, and all and singular the entire business, has been done and performed in the name of the said Milton S. Littlefield as president of or in the name of the said Jacksonville, Pensacola and Mobile Railroad Company as one entire corporation, from Jacksonville to Quincy, as in said complaint alleged. And this defendant avers that very soon after the organization of this defendant, to wit, on or about the 15th day of August, 1868, this defendant leased its road and property to the Pensacola and Georgia Railroad Company, and was operated by it until about the time of its sale by the trustees of the internal-improvement fund, when the said case was determined and cancelled, and the road of this defendant and its other property surrendered and returned to this defendant and to its own proper management and control; and this defendant had but little rolling stock, and from time to time made such arrangements with
the Tallahassee (formerly Pensacola and Georgia) Railroad Com-
3654 pany with reference to the use of its rolling stock and the pro-
rating of freights and other matters as were deemed mutually ad-
vantageous to both parties; that on the 20th day of January, 1870, an agreement was made between said companies, based upon the report of their respective superintendents, with respect to the receipts for freights and the rent, use of rolling stock, &c., a true copy of which, taken from the minute book of the proceedings of the directors of this defendant,

is hereto annexed, marked Exhibit B, and prayed to be taken and considered as a part of this answer; that this agreement has been substantially the basis upon which the defendant has operated its road in connection with the said Tallahassee Railroad Company, and afterwards with the Jacksonville, Pensacola and Mobile Railroad Company up to the present time; that the accounts of this defendant have been kept separate and distinct by its treasurer, this defendant being charged with its share of expenses and credited with its proportion of earnings, according to this agreement, and that every freight list used by the two roads shows the proportion of freight due to each road.

This defendant further avers that the legal place of business or corporation domicil of this defendant, as fixed by a resolution of its
3655 stockholders, at a meeting held on the 17th day of December,
1869, is now, and from the date of said resolution has been, the city of Tallahassee, in this State, at which place, by said resolution, all meetings of the stockholders and directors of this defendant are required to be held. And this defendant further avers that said city of Tallahassee, and not the city of Jacksonville, as in the said complaint alleged, is also the legal place of business of the said Jacksonville, Pensacola and Mobile Railroad Company, and was so advertised according to law, by its secretary, on the 9th day of July, 1870, a copy of which advertisement, taken from the Florida Sentinel, a newspaper published in the said city of Tallahassee, is hereto annexed, marked Exhibit C, and prayed to be taken and considered as a part of this answer.

12. This defendant denies that the city of Jacksonville is the eastern terminus of the said Jacksonville, Pensacola and Mobile Railroad, and avers that Lake City, in the county of Columbia, in the third judicial circuit of this State, is the eastern terminus of the said Jacksonville, Pensacola and Mobile Railroad; that the said city of Jacksonville is the eastern terminus this defendant, and that the depots,
3656 wharves, and other property used in its business, and located at
that point, is the property of this defendant, bought and paid for by it; that this defendant was at one time indebted to the said Jacksonville, Pensacola and Mobile Railroad Company for advances made on account of this defendant in the construction of certain improvements at that point, but that all such advances have been fully paid by this defendant.

13. That shortly after the sale of the Florida, Atlantic and Gulf Central Railroad, as hereinbefore stated, the trustees of the internal improvement fund appointed Edward Houstoun their agent to take up the outstanding bonds of said road, and placed money in his hands for this purpose; that nearly all the bonds issued by said company had been paid in by the purchasers and cancelled, leaving outstanding upon which the purchasers were required to pay the sinking fund only about one hundred and twenty thousand dollars; that the said Houstoun as agent of said trustees has from time to time, as fast as he could obtain information of their whereabouts, taken up said bonds until there is now outstanding and uncancelled, as this defendant is informed and be-
3657 lieves, bonds only to the amount of about twenty thousand dol-
lars; that, as will appear by the book of the treasurer of said trustees, the sinking fund due by this defendant was fully paid up to the 4th day of March, 1870, and that, as will appear by reference to a report of the said Houstoun, as agent of said trustees, made May 16, 1872, and now in the possession of J. S. Adams, secretary of said trustees, he, the said Houstoun, had in his hands, to the credit of this defendant on account of such sinking fund, six hundred and thirty dollars paid to the

said Houstoun by this defendant; that as far as this defendant has been able to obtain information respecting the bonds outstanding upon which this defendant is liable to pay the sinking fund there was nothing due by this defendant on account of said sinking fund at the time of the filing of said complaint; but if upon obtaining accurate information it can be shown that there was at that time a small amount due, this defendant denies that it has incurred any such penalties and forfeiture as therein pretended and claimed; that the said trustees, in their course of dealing with this defendant with respect to said sinking fund,
3658 have never been rigid and exacting in requiring payment on the
day when due; that the sinking fund being only payable on the amount of outstanding bonds, time was often required to ascertain the amount of such outstanding bonds, and that such information could only be ascertained through the said Houstoun, the agent of said trustees. This defendant was always ready and willing to pay whatever may be due, if anything, on account of said sinking fund, and that the said trustees were fully aware of such willingness and readiness on the part of this defendant, and well knew its ability to respond at any moment to any claim in this behalf which might be made upon it; that no notification or even information was given to this defendant of any such default or pretended default, and that no demand or request for payment was made before the commencement of this action; all of which was and is at variance with the course of dealing heretofore pursued toward this defendant with respect to the said sinking fund; that since the seizure of its road and property by the receiver appointed in this action, the said receiver has received and now has or ought to have in his hands to the credit of this defendant, and realized from the opera-
3659 tion of its road, many thousand dollars more than enough to pay
the small amount of sinking fund, if any, that upon a correct statement of accounts might now be found due. And this defendant denies that under the circumstances this defendant has incurred any penalty or forfeiture under the said internal improvement law; and this defendant insists that this honorable court cannot, in equity and good conscience, on the ground of such pretended default of this defendant of such an inconsiderable amount as may be supposed still to be *be* payable on account of said sinking fund, decree a sale of its road as prayed for by said plaintiffs.

14. This defendant believes it to be true, as in said complaint alleged, that after the purchase of the said Florida, Atlantic and Gulf Central Railroad Company by the said William E. Jackson and associates, that George W. Swepson did become the owner of a majority of the stock subscribed for and issued by this defendant; that it appears by the stock-ledger and transfer book of this defendant that Edward Houstoun assigned and transferred to the said Swepson 3,110 shares of the capital stock of this defendant, April 13th, 1869; that afterwards the
3660 said shares of stock were transferred by said Swepson to Milton
S. Littlefield, and by said Littlefield to the said Houstoun, and now stands on said books in the name of said Houstoun.

15. That this defendant is informed and believes that said stock was assigned and transferred to said Houstoun, by said Littlefield, as collateral security for the payment to said Houstoun of certain drafts given to said Houstoun for the purchase of certain first mortgage bonds of the Pensacola and Georgia and the Tallahassee Railroad Companies and of other stock in this defendant; that shortly after this assignment and transfer said Littlefield expressed a desire to have bonds issued on the road of this defendant for the benefit of its stockholders; that said

Houstoun and other parties in interest objected to the issuing of such bonds except upon the express condition and understanding that the same should be placed in the hands of said Houstoun as additional security for the payment of what was due him; that was agreed to between said Littlefield and said Houstoun. Afterwards at a meeting of the stockholders, and also a meeting of the directors of this defendant held June 2nd, 1870, resolutions were adopted authorizing the
3661 issue of bonds to the extent of sixteen thousand dollars per mile on the road of this defendant, to be a first lien or mortgage on its equipment, road, franchise, workshops, and depots, excepting the town lots belonging to this defendant in the city of Jacksonville, not used for depot purposes, true copies of which, taken from the minute book of this defendant, are hereto annexed, marked Exhibits D & E, and prayed to be taken and considered as a part of this answer; that some time before the adoption of these resolutions, and while Geo. W. Swepson was president of this defendant, the said Swepson, in expectation of obtaining the sanction and authority of this defendant, through its stockholders and directors, but without any such sanction or authority having been previously given, had caused to be prepared one million dollars bonds of this defendant, signed by the said Swepson, as president, and countersigned by one H. H. Thompson, as treasurer; that the said Swepson never communicated with any meeting of the stockholders or directors of this defendant as to his purpose or design in having said bonds prepared, and that said bonds, so far as any action or knowledge of this defendant was concerned, were prepared
3662 without any reference to an exchange thereof for bonds of the State of Florida, as was afterwards done; that at the time the stockholders and directors of this defendant adopted the resolutions aforesaid authorizing the issue of first-mortgage bonds as aforesaid, they were for the first time informed that the said Swepson, as president, had caused to be prepaired and had signed, the bonds aforesaid; and it being represented that the adoption of said bonds as executed as the bonds of the company then authorized to be issued would save expe'se and prevent delay to the company, they were asked to adopt them as aforesaid; that without any knowledge of the form of said bonds, or that they were made payable to the State of Florida, or that it was intended that they were to be used in exchange for State bonds, and without any suggestion of such purpose, or that they were to be employed as they were afterwards attempted to be, the said bonds so signed by the said Swepson, as president, and countersigned by the said Thompson as treasurer, were by the said resolutions adopted as the bonds to be issued by said defendant, and declared to be when issued a first lien
3663 or mortgage on the equipment, franchise, road-bed, workshops, and depots, except the lots in Jacksonville not used for depot purposes of this defendant; that, as will be seen by reference to the said resolutions, said bonds were authorized to be placed in the hands of the said Edwin Houstoun for the purposes agreed upon between the said Littlefield and himself, as hereinbefore stated; and the said bonds or their proceeds were directed to be held and applied according to the terms of said arrangement, except the proportion thereof applicable or apportionable to the stock owned by other parties; and upon the satisfaction otherwise of the terms of said arrangement with the said Houstoun, it was further directed that the said bonds were to be by the said Houstoun transferred to the said Littlefield, or according to his direction, to the extent of the stock owned by him at the time; that at the meeting of the directors of this defendant at which the resolution herein-

before referred to was adopted (a further resolution was adopted), authorizing
the president of this defendant to do any and all acts, and,
if necessary for that purpose, to execute and deliver any proper,
3664 and under the seal of this defendant, that might be deemed needful
to make the first lien or mortgage in favor of the bonds authorized
to be issued as aforesaid effectual to all intents; that this last
resolution was adopted because at that time it was not contemplated or
intimated that said bonds were to be exchanged for bonds of the State
of Florida, as was afterwards done, and because it was thought that
some such deed might be necessary to create a lien; that shortly after
the adoption of these resolutions the said Houstoun demanded the delivery
of said bonds in pursuance thereof, and the said Littlefield then
for the first time insisted that bonds of the State of Florida to be exchanged
for bonds of this defendant, under the authority of an act of
the legislature of said State entitled "An act to perfect the public works
of this State," and the act amendatory thereto, should be the bonds to
be received by the said Houstoun. To this the said Houstoun objected
principally upon the ground that these were not the bonds contemplated
by the agreement between said Littlefield and himself, and
3665 that if it should be required to sell said bonds as provided for in
said agreement, in order to get the benefit of his security, he did
not wish to sell bonds of the State of Florida which were issued and
exchanged to carry out a public work in this State; that upon the said
Littlefield insisting that the said Houstoun would soon be paid, and
that the said Houstoun would then have no further interest or right to
make opposition, and that as president of the Jacksonville, Pensacola
and Mobile Railroad Company, which position the said Littlefield then
occupied, he could not use the said bonds so issued by this defendant
for the benefit of his company, the said Houstoun at length consented
to a modification of the agreement between the said Littlefield and himself
and consented to receive the State bonds, upon the express understanding,
however, that instead of selling the State bonds according to
the terms of his agreement, he should, if he so desired, have the privilege
of returning said State bonds and taking back the bonds issued as hereinbefore
stated by this defendant; that the drafts due said Houstoun
3666 toun in accordance with the option and authority given him by
his said agreement returned said State bonds to the governor of
the State, and received back the bonds of this defendant which had
been deposited with him, but which, being payable to the State of Florida,
were not available for sale under the terms of his agreement with
said Littlefield; that said Houstoun then made a request of the directors
of this defendant to issue to him other bonds in lieu of those he
had obtained from the governor as aforesaid, secured by a deed of trust,
so that he might obtain the benefit of the agreement with said Littlefield
by a proper sale. Before this could be done two of the stockholders
of this defendant filed a complaint in Leon circuit court, in this State,
and obtained an injunction against the said Houstoun restraining him
from making any disposition of said bonds. Whilst the injunction was
pending, Mr. C. B. Coddington, who was in the city of Tallahassee, in
this State, representing S. W. Hopkins and Company, who claimed to
be financial agents to sell said State bonds for the benefit of the
3667 Jacksonville, Pensacola and Mobile Railroad Company, made
some arrangements with the plaintiffs in said injunction suit by
which the injunction therein granted was waived, and at the request of
the said Coddington the said Houstoun authorized Robert H. Gamble,

one of the said plaintiffs and comptrollers of the State of Florida, in whose office he had deposited the said railroad bonds, to deliver the same to the said Coddington, which was done by him, and the said Coddington himself delivered the bonds issued by this defendant to the governor and obtained from him in exchange the State bonds which had been before issued by the governor, under the law, to the said Jacksonville, Pensacola and Mobile Railroad Company, and that it was in this way, and without any sanction or assent on the part of this defendant, the governor got possession of the bonds of this defendant.

16. This defendant denies that as a matter of prudence and caution it was required by the State that the bonds issued by this defendant should be issued in its name and under its seal, and not in the name of the Jacksonville, Pensacola and Mobile Railroad Company, with 3668 whom it is charged this defendant had consolidated as in the said complaint alleged; on the contrary, this defendant alleges the facts to be, and of which facts the defendant believes the said plaintiffs were fully cognizant before filing their said complaint, that the State of Florida had nothing whatever to do with the form and manner of the execution of said bonds, and never made or insisted upon any requirements in connection therewith; that Harrison Reed, the governor of said State, and one of the plaintiffs in this action, was advised and well knew at the time that the road of this defendant constituted no part of the road of the said Jacksonville, Pensacola and Mobile Railroad Company; that there never had been any consolidation or pretended consolidation of said roads, and that this defendant was a separate and independent corporation, and that it was upon the ground that no such consolidation had taken place, and that this defendant was a separate and independent corporation, that he was authorized by law to exchange bonds of the State of Florida for bonds of this defendant, and that it was 3669 upon this ground and this only, and not upon the now pretended ground of consolidation, that he made such exchange; and this defendant avers that he never heard of any such pretension or claim on the part of the governor or any one else representing or assuming to represent the State of Florida until the commencement of this action; and this defendant believes that such pretension and claim were but a mere afterthought to furnish a pretext for the wrongful and unjust seizure of the road of this defendant, and the placing the same in the hands of a receiver, all of which this defendant alleges to be in flagrant violation of the principles of equity and good conscience.

17. This defendant has never been informed save by the allegation contained in the said complaint whether the said Milton S. Littlefield ever gave such verified certificate for the purpose of obtaining State bonds on the whole line of road from Quincy to Jacksonville, as reconsolidated line of road, as in said complaint alleged. But this defendant insists that such certificate, if any such was given, is in no manner binding on this 3670 defendant, and this defendant denies that at the time such certificate is alleged to have been given that the said Littlefield was president of this defendant or authorized to bind it; and this defendant avers that at the time the resolution hereinbefore*before* mentioned, authorizing the issue of bonds, were adopted, the said Littlefield was not the president of this defendant, nor was the said Littlefield president at the time of the pretended exchange of said bonds for State bonds, founded upon his alleged certificate as to the whole line of road, but that Jno. P. Sanderson was such president.

18. That this defendant is informed and believes that the State bonds delivered to the said Coddington by the governor, as hereinbefore

stated, have not been sold, and that said bonds are about to be returned to the State, and the bonds of this defendant surrendered to it, thus relieving the State of all liability or pretended liability on account thereof, and of all interest or pretended interest in or connection with this defendant; and this defendant denies that it is by any act of its own or any act or assumed act of others in its behalf by virtue of any law of this State, liable to be taken possession of by the governor of this 3670½ State and sold, as in the said complaint claimed and alleged.

August 28th, 1872.

PEELER AND RANEY,
Attorneys for Defendant.

Attest.
[SEAL.] F. H. FLAGG,
Secretary Florida Central Railroad Company.

STATE OF FLORIDA,
County of Leon:

Before the subscriber, a notary public in and for said county and State, personally came Francis H. Flagg, who, being duly sworn, deposes and says that he is now and has been since the 25th day of May, 1870, secretary and treasurer of the above-named defendant The Florida Central Railroad Company, and that the foregoing answer is true to the knowledge of this deponent, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

F. H. FLAGG,
Sec'y F. C. R. R. Co.

Sworn to and subscribed before me this the 27th day of August, 1872.
[SEAL.] GEO. LEWIS,
Notary Public.

3670¾ (Indorsed:) Ans. of Fla. Central R. R. Co. in case of State of Fla. vs. E. C. Anderson et al. From record in case in Sup. Ct. U. S.

3671 In United States circuit court for the northern district of Florida, fifth judicial circuit. In equity.

J. FRED. SCHUTTE, JAN PRINS, ADRIANNUS Prins, et al.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

On motion of solicitors for complainants, and upon reading the affidavit of Charles D. Willard filed herein, it is ordered that the time for taking testimony to be read at the hearing of said cause is extended for the space of ninety days from the second Monday of the month of January instant. And upon further motion of said solicitors for complainants, it is ordered that David Eckstein, consul of the United States at Amsterdam, in the kingdom of the Netherlands, be, and he is hereby, appointed a commissioner to take the testimony of such witnesses as may be produced before him in said city, for examination as witnesses is said cause upon interrogatories and cross-interrogatories 3672 now, or which may be, filed therein, and that the proper commission do issue to said David Eckstein.

January 22, 1879.

(Signed) THOMAS SETTLE, *Judge.*

UNITED STATES OF AMERICA,
Northern District of Florida :

I, Philip Walter, clerk of the United States circuit court in and for said northern district of Florida, do hereby certify that the foregoing is a true copy of the orginal order on file and of record in my office.

Witness my hand and the seal of said circuit court at the city of Jacksonville, in said district, this thirtieth day of January, A. D. 1879.

[SEAL.] (Signed) PHILIP WALTER, *Clerk.*

United States circuit court, northern district of Florida.

The President of the United States of America to David Eckstein, consul of the United States at Amsterdam, in the kingdom of the Netherlands, greeting:

Know ye, that we, in confidence of your prudence and fidelity,
3673 have appointed you a commissioner, and by these presents do
give you full power and authority diligently to examine, upon their corporal oaths or affirmations, before you to be taken, and upon the interrogatories and cross-interrogatories hereunto annexed, A. L. Worfbain, P. A. L. Van Ogtrop, Jan Frederick Schutte, Johnnes Herman Warring, Abraham Carel Wertheim, Frederick Wellem Oewel, and F. H. Ziegelaar, as witnesses on the part of the complainants in a certain cause now pending and undetermined in the circuit court of the United States of America for the fifth circuit and northern district of Florida, wherein J. Fred. Schutte, Jan Prins, Adriannus Prins and others are complainants, and The Western Division of the Western North Carolina Railroad Company and others are defendants. And we do further empower you to examine on the same behalf, and in like manner, any other person or persons who may be produced as witnesses before you; and we do hereby require you, before whom such testimony may be taken,
to reduce*d* the same to writing, and to close it up under your
3674 hand and seal, and directed to the clerk of the circuit court of
the United States for the fifth circuit and northern district of Florida, at the city of Jacksonville, as soon as may be convenient after the execution of this commission; and that you return the same when executed, as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in said circuit and district, this thirtieth day of January, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and third.

[SEAL.] (Signed) PHILIP WALTER,
Clerk of the Circuit Court of the United States for the Fifth Circuit and Northern District of Florida.

In the United States circuit court, northern district of Florida, fifth judicial circuit. In equity.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS
3675 Prins, Heinrich Ulrici, Elias Fuld, J.
Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, H. J. Brunnekneff, J. H. Geem Willenneir, Van Tyer Van Taer, C. Booth, L. L. Wertheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaer, jr., Jacobus Wertheim, P. Van Reysen, Mey de Benedethy, Beer Gerard, A. Heineken, T. Colom, Charles Gozervinckel, Boon Hartsink Vandyer, N. J. Franket, Johannes Wilhelm Donk, Vanderstoop & Berg, who are aliens and subjects of the king of the Netherlands, bring this their bill of complaint in their own behalf, and in behalf of such other persons having like claims, who may come in and be made parties plaintiffs herein, and contribute to the expenses thereof,

against

THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, a corporation created by and existing under the laws of said State, and a citizen thereof, the Jacksonville, Pensacola & Mobile Railroad Company, the Florida Central Railroad Company, corporations created by and existing under the
3676 laws of the State of Florida, and citizens
thereof, Edward Lewes, Patrick Houston, Robert H. Gamble, Charles E. Dyke, sr., Edward M. L'Engle, Robert Walker, Clayton A. Cowgill, and George W. Betton, directors in the said last mentioned corporation, and who are citizens of the State of Florida, James M. Baker, George R. Foster, W. J. Lawton, Milton S. Littlefield, N. K. Sawyer, J. C. L'Engle, Edward M. L'Engle, and Charles B. Fenwick, who are citizens of the State of Florida, and Joseph B. Stewart, who is a citizen of the State of New York, claiming to be directors in said Florida Railroad Company; George F. Drew, governor of the State of Florida, Walter Gwynn, treasurer of the State of Florida, Hugh A. Corley, commissioner of lands and immigration of the State of Florida, George P. Raney, attorney-general, Walter Gwynn, treasurer, Columbus Drew, comptroller, George F. Drew, governor, which officers are
3677 trustees of the internal improvement
fund, and herein sued as such, Milton S. Littlefield, in his own right, and Robert J. Washington, who is a citizen of the State of Virginia.

Interrogatories to be propounded to A. L. Worfbain, P A. T. Van Ogtrop, Jan Frederick Schutte, Johannes Herman, Warring Abraham, Carel Wertheim, Frederick William Sewel, and F. H. Ziegelaar, witnesses to be examined in behalf of the complainants in the above-entitled cause, who reside in Amsterdam, in the kingdom of the Netherlands:

Interrogatory first. What is your name, age, occupation or business?

Interrogatory second. Where did you reside in the years 1871, up to and including the year 1873?

Interrogatory third. What was your occupation and business through the period before named? Were you or not directors of or members of the bourse or stock exchange of the city of Amsterdam; and 3678 were you or not, at any time during the period before named, engaged in the purchase and sale of bonds and their securities, such as were sold at the bourse or stock exchange before mentioned; and were you or not acquainted with the dealings which took place in the said bourse or stock exchange in domestic and foreign bonds?

Interrogatory fourth. Do you or not know of the introduction, sale and dealings in bonds purporting to have been issued by the authority of a law of the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company, in aid of the construction, maintenance and repair of the line of railroad which was owned by the said corporation, a copy of which bonds is hereto annexed, marked with the letter A?

Interrogatory fifth. If you answer and say that you have such knowledge and information, please state by whom said bonds were put upon the market at the bourse or stock exchange in Amsterdam or 3679 elsewhere, and state what representations were publicly made by the persons by whom said bonds were so introduced and offered for sale, and if such representations were made in print or writing. Please annex to your answer to this interrogatory a copy of such printed or written statement and say whether the sales and purchases of said bonds were made, to your knowledge, in reliance upon the correctness of such statement.

Interrogatory sixth. Do you or not know whether or not the directors of said bourse or stock exchange gave any authority to those persons who were members of said institution to deal in such bonds as a part of the business of said bourse; and if you say that such dealings were permitted by such authority, please state whether or not an examination or an investigation as to the character, validity, and legality of the issue of said bonds were first made by the directors or other authorities governing the said bourse; and if you answer in the affirmative, state fully what was 3680 done by such authorities in respect to such bonds, and what decision was arrived at in relation to nature, character, and validity of said bonds.

Interrogatory seventh. Please state fully as you may be able to state what was decided by the said authorities of said bourse as to the nature and character of said bonds; whether the same were or not decided to be treated as and authorized to be dealt in as a public security and obligation of the State of Florida.

Interrogatory eighth. At what time were the said bonds first bought and sold publicly at the bourse or stock exchange of the city of Amsterdam, and at about what price? Say whether the dealings in respect to such bonds were public or general, among a large class of buyers, or whether such dealings were confined to a small number of persons. Say whether such bonds changed hands frequently or otherwise, and whether the buyers were numerous or not.

3681 Interrogatory ninth. Please state about what price the said bonds were first sold, and whether the price varied from time to time, and what was the highest price paid therefor at any one time.

Interrogatory tenth. Did said bonds decline in value or price from the amount first paid therefor, or from the highest price thereafter; and, if so, say when said decline took place, and what was the cause of such decline, if you are able to state such cause.

Interrogatory eleventh. Do you know and can you state anything as to the termini of the railroad of the Jacksonville, Pensacola and Mobile Railroad Company, which were designated by the persons by whom said bonds were introduced and sold in Amsterdam? If you do know and can state, please answer and say at what point said railroad was by said persons represented to commence, and at what point to terminate, and what branch or branches thereof from the main line was represented to form a part of and belong to the main line of the railroad of said
3682 company, and what was the entire number of miles of completed
road of said company, which said persons alleged to belong to and be in the use of said company.

Interrogatory twelfth. Do you or not know whether or not the persons by whom said bonds were introduced on the market in Amsterdam made any public or written statement as to the place of commencement and termination of said railroad, and as to its branches, and as to the number of miles completed and in use by the said Jacksonville, Pensacola and Mobile Railroad Company, and whether or not there was included in such statement any averment that the said line of railroad and branches so designated and described was by a law of the State of Florida made subject to a lien for the payment of the said bonds? Relate fully all that you know as to the matters herein inquired of.

3683 Interrogatory thirteenth. Do you or not know whether or not at the time of the introduction and sale of said bonds in Amsterdam, whether at the bourse or otherwise, there was any public information given or published to the effect that any portion of the line of railroad between Jacksonville, in the State of Florida, and Chattahoochee, the western terminus of the line of railroad, of the said Jacksonville, Pensacola and Mobile Railroad Company, was the property of any other corporation in the State of Florida than the Jacksonville, Pensacola and Mobile Railroad Company, or that any portion of said line belonged to or was claimed to be owned by a corporation called the "Florida Central Railroad Company," or whether the existence of said last named corporation was by any means, or in any manner, made known to the persons who bought and sold said bonds at the bourse in Amsterdam, or elsewhere in the kingdom of the Netherlands, or to the directors and members of said bourse or to the public in general.

Interrogatory fourteenth. State fully all you know as to the inducements which caused the persons who dealt in said bonds to pur-
3684 chase the same, what they relied upon in making such purchases,
as to the nature of such security, and what it was that gave character and credit to said bonds as valuable securities, and caused them to realize the prices at which they were sold; and say whether any public notice was given in Amsterdam to the dealers in bonds and public securities who transacted business in said city on the bourse or stock exchange, by the president and directors or the stockholders of the Florida Central Railroad Company, that such corporation was the owner of any portion of the line of railroad commencing at Jacksonville, and running westward to Lake City, or that said corporation disputed the rightfulness and legality of the actions of the Jacksonville, Pensacola

and Mobile Railroad Company in selling and disposing of said bonds, or in making representations to the public in Holland that such last named corporation was the owner of the entire line of railroad which commences at Jacksonville, and which at the time of the sale
3685 of said railroad bonds terminated at Quincy, in the State of Florida. Do you or not know of any such claim of ownership of a portion of said railroad having been made known to the persons who bought and sold said bonds prior to the first day of July, 1873, or to the public in general in Holland?

Interrogatory fifteenth. Did said bonds decline in value in Amsterdam after the first day of July, 1873? If you answer that such decline did take place, state, if you know, what was the cause of such decline.

Interrogatory sixteenth. Please state, if you know, what representations were made by the persons by whom said bonds were placed upon the market, and sold at Amsterdam, as to the payment of the interest thereon, and as to whence the money for such payment was derived; by whom such payment was to be made, whether by an agent appointed by the governor of the State of Florida, or otherwise.

3686 Interrogatory seventeenth. Were any payments of interest made to the holders of said bonds; were such payments annual or semi-annual; in what amount per bond was each payment; by whom such payments were made; was there public notice given in Holland that any agent for the payment of such interest had been appointed by the governor of the State of Florida? If you answer that such notice was given, state all that you know in relation thereto, and append a copy of such notice, if you have it in your possession, and say whether the dealers in said bonds accepted said notice as valid and true, and whether or not they relied upon the statements therein made, and what effect such notice produced among the dealers in such bonds.

Interrogatory eighteenth. If you say that any public notice was given in Amsterdam, such as that as to which you have been interrogated in the preceding question, please say what effect the publication of such notice had upon the buyers and sellers of said bonds in Amsterdam or elsewhere, as to the validity of said bonds, and as to the correct-
3687 ness of the representations which were before made, if any there were, by the persons who put aside bonds on the market in Amsterdam, and sold the same, as to the validity of said obligations, the number of miles of railroad owned by the said Jacksonville, Pensacola and Mobile Railroad Company, its commencement, termination, and the branches thereof; state freely all that you know as to the effect produced upon the minds of the persons who bought and sold said bonds by the notice made public, if any there was, that the governor of Florida had appointed an agent to pay the interest of said bonds and the subsequent payment of any such public agent of such interest.

Interrogatory nineteenth. Do you or not know, or are you or not acquainted the complainants, or any one or more of them, in the suit in which you are now examined as witness? If you say that you are acquainted with any or all of them, please say who they are, what is their occupation, credit, and standing in the place where they reside?

3688 Interrogatory twentieth. Have you any knowledge of any purchases made by any one or all of said complainants of any of said bonds? If you have such knowledge, say whether or not, to the best of your knowledge, information, and belief, said persons made such purchases in good faith or otherwise, and if you say that you know of any such purchase, please say what you know in relation thereto, how you acquired your information, and what induced the said purchase's to b'y said bonds?

Interrogatory twenty-first. Did you purchase or sell any of said bonds for your own account, or for the account of others? If you answer affirmatively, state at what time such purchases or sales were made, what price was paid, and the numbers of the respective bonds, as far as you are able to furnish the same, and the names of the parties from whom purchases were made or bonds sold to?

Interrogatory twenty-second. State, if you can, the manner in
3689 which said bonds were introduced on the market and sold, whether
by general public subscription or by private sales; relate fully the manner of proceeding, the names of those who subscribed for the loan, and all that took place when said bonds were first sold.

Interrogatory twenty-third. Did you at any time when said bonds were first introduced and put on the market in Amsterdam, or at any time thereafter up to the commencement of said suit, receive any information or acquire any knowledge of any claim or demand made or put forward by the defendants, the trustees of the internal improvement fund of the State of Florida, for any sum of money claimed to be due and unpaid now owing by any persons by whom any part of said line of railroad had been purchased at any sale of any part of such line of railroad made by said trustees, acting under authority of a law of the State of Florida? Did you ever learn of such claim? If so, say how
and when? Was there any notice, public or private, of the ex-
3690 istence of such claim given in Holland to your knowledge? If
such notice was given, or such claim had been made, is it likely you would have know' of it; and, if so, why?

Interrogatory twenty-fourth. Had the president, directors, or stockholders of the Floriday Central Railroad Company caused to be published and made known in Holland, in any manner, either at the Bourse in Amsterdam, or in a gazette or newspaper, that any part of said line of road was the property of such company, or that any of the bonds issued by the governor of the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company had been illegally issued, or were in any manner unauthorized by the said Florida Central Railroad Company, what effect would such action have produced in Holland among the bankers and brokers and members of the Bourse?

Interrogatory twenty-fifth. Please say what effect would have been
produced at the Bourse in Amsterdam, or among the dealers in
3691 securities in Holland, had the trustees of the internal improve-
ment fund given, in 1871, 1872, or 1873, public notice in Amsterdam, or elsewhere in Holland, that they claimed to have a lien on any part of the railroad of the Jacksonville, Pensacola and Mobile Railroad Company for any large sum of money; in what way would sales of said bonds have been effected thereby?

Interrogatory twenty-sixth. Can you say or do you know whether at any time said bonds were put on the market and sold in Amsterdam the laws of the State of Florida, mentioned in the body of said bonds, were exhibited for inspection by the persons who introduced and sold said bonds, and were opened to be read by the authorities of the Bourse and by bankers and brokers generally in Amsterdam? Were there any other public acts of the authorities of the State of Florida likewise exhibited and made public in like manner? Give copies of all such documents if you can, or, if you cannot, then describe them to the best of you' recollection, and say whether any other public acts of the

3692 authorities of the State were so exhibited or in any way published or made known in Amsterdam within your knowledge.

Final interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set forth the same fully and largely in your answer.

(Signed) C. D. WILLARD,
Solicitor for Complainants.

A.

UNITED STATES OF AMERICA.

$1,000.] STATE OF FLORIDA. [$1,000.

It is hereby certified that the State of Florida justly owes to or bearer, one thousand dollars, redeemable in gold coin of the United States, at the Florida State agency, in the city of New 3693 York, on the first day of January, 1900, with interest thereon, at the rate of eight per centum per annum, payable half yearly at the said Florida State agency, in gold, on the first days of July and January in each year from the date of this bond and until the principal be paid on surrendering the proper coupons hereto annexed.

Tallahassee, January 1, 1870.

[GREAT SEAL.] (Signed) HARRISON REED, *Governor.*
" S. B. CONOVER, *Treasurer.*

Issued in accordance with an act of the legislature of Florida, approved January 28, 1870.

At the execution of the foregoing and annexed commission for the examination of witnesses in the cause therein entitled, this exhibit (marked A) was produced and shown to Gideon Maria Boissevain, Frederik Willem Dewel, Jan Fred Schutte, and by them deposed unto at the time of their examination, by

D. ECKSTEIN, *Commissioner.*

(Endorsed as follows:) State of Florida, thirty years' eight per cent bonds.

3694 $1,000,

payable January 1, 1900, interest first of July and January, in gold, at the Florida State agency, in the city of New York.

This bond is one of a series issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company to the extent of sixteen thousand dollars per mile upon completed road. The State of Florida holding the first mortgage bonds of said railroad company for a like amount as further security to the holders thereof.

(Signed) HARRISON REED,
Governor of Florida.
F. W. DEWELL.
P. A. L. VAN OGTROP.
J. H. WARING.
E. C. BOISSEVAIN, Dz.

G. M. BOISSEVAIN.
J. FRED SCHUTTE.
A. L. WORFBAIN.
SCURUH.

UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF FLORIDA.
Jacksonville, January 15th, 1879.

I certify that I have served a true copy of the within interrogations
upon E. M. L'Engle, esq., and upon James M. Baker, esq., attorneys
of the Florida Central Railroad Company, at Jacksonville, Fl'a,
3695 on the 26th day of December, A. D. 1878, and upon S. B. Stephen,
esq., attorney of the J., P. & M. R. R. Co., at Quincy, Fl'a, on the
27th day of December, A. D. 1878, and upon Geo. P. Raney, esq., at-
torney of the trustees of the internal improvement fund of Florida, at
Tallahassee, Fl'a, on the 28th day of December, 1878.

S. CONANT,
U. S. Marshal.

Service four interrogations, $8.00; 166 miles to Tallahassee, $9.96; 117 miles to Quincy, 11.22, 21.18—$29.18.

(Indorsed:) United States circuit court, northern district of Florida. J. Fred Schutte and others vs. The Western Division of the Western North Carolina Railroad Company and others. Interrogatories. Filed December 23, 1878. P. Walter, clerk.

3696 Jos. B. Stewart, esq., attorney of the W. D. N. C. R. R. Co., cannot be found within the northern district of Florida.
January 15, 1879.

S. CONANT,
U. S. Marshal.

At the execution of the foregoing and annexed commission for the examination of witnesses in the cause therein entitled, this exhibit (marked A) was produced and shown to Gideon Maria Boissevain, Frederik Willem Dewel, Jan Fred. Schutte, P. A. L. Van Ogtrop, A. L. Worfbain, J. H. Warring, A. C. Wertham, J. H. Ziegelaar, G. C. Boissevain, and by them deposed unto at the time of their examination by

D. ECKSTEIN,
Commissioner,

Exhibit A to cross-interrogatories of Florida Central Railroad Company.

In the U. S. circuit court.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY
et al.

JACKSONVILLE, FLA., *February 8th*, 1871.

Messrs. HOLJE BOISSEVAIN,
Bankers, Amsterdam, Holland:

3697 GENTLEMEN: On December 18th, 1870, Governor Harrison Reed, of Florida, received a telegraphic dispatch from you, substantially as follows:

"Being negotiating four million bonds issued by your State, the Jacksonville, Pensacola and Mobile Railroad begs to know by telegraph from you whether provision made for payment interest, whatever result railroad traffic. Financial provision of State really sound and bonds undoubted security."

To this dispatch Governor Reed replied as follows:

"Bonds recently recalled by the company, no provision will therefore be made for interest."

It was hoped that Governor Reed's telegram would have the effect of causing the bonds to be returned, as the railroad companies desired they should be. This has not been done, but on the contrary more bonds than were then out have been sent to Europe for negotiation, though no money I infer has yet been realized. I feel it to be my 3698 duty therefore to make a statement of facts to you, which I hope that you will lay before others who may be interested with you in the negotiation.

When the legislature of Florida enacted the laws under which the bonds your telegram enquired about were issued, it was believed by the two railroad companies, hereafter named, that the proceeds of the State bonds when sold would be honestly and legitimately applied to the extension, through the western portion of this State, of the lines of railroad already built from the eastern to the middle portion. That extension was so much desired by the two companies owning the completed railroads that they were willing to mortgage, and did mortgage, their roads to the State in order to secure the issuing of State bonds upon which to raise money to enable the newly organized company to build said extension.

The railroads which so pledged their mortgage bonds to the State were the Florida Central Railroad, sixty miles long, and the Tallahas- 3699 see Railroad, one hundred and fifty miles long.

The former gave its mortgage bonds to the amount of one million dollars; the latter to the amount of three million dollars; and this latter road consolidated its line with that proposed to be built westward from the completed road, and the two companies became one under the name of the Jacksonville, Pensacola and Mobile Railroad Company.

But the Florida Central Railroad, commencing at Jacksonville and running westward sixty miles, was not included in the consolidation. Subsequently, and after three millions of the State bonds had been sent to Europe, it was discovered that the president of the Jacksonville, Pensacola and Mobile Railroad, who had been active in procuring the legislation and inducing the completed roads to give to the State their bonds in exchange for the State bonds which were issued to him, had made, even before he got the bonds, secret contracts with some of his creditors by which the larger portion of the proceeds were to be 3700 diverted from the purposes for which the bonds were issued, and were to be applied in payment of individual debts. This produced such dissatisfaction, and caused such investigation by the companies which had mortgaged their roads to the State, as resulted in both of the companies, through their several directories, rescinding the action by which their roads were mortgaged and recalling the bonds. The million of bonds issued by the State on a security of a like amount pledged to the State by the Florida Central Railroad, had not then gone into the hands of the president of the Jacksonville, Pensacola and Mobile Railroad, but were held by a party till certain conditions precedent were performed before delivery to the president of the Jacksonville, Pensacola and Mobile Railroad. That million of bonds were then returned to the State, and the bonds of the company, upon the security of which the others were issued, were withdrawn from deposit with the State, and were in the hands of the party already referred to, to be re-

3701 turned to the company for cancellation, when they were by that party, without the authority or knowledge of the railroad company or of any of its officers, and in violation of the company's resolutions of recall and rescission, delivered to an agent of the president of the Jacksonville, Pensacola and Mobile Railroad, who by influences best known to himself effected with the governor of the State their re-exchange for the State bonds, which latter were hurri'dly and secretly sent out of the State and to Europe before any legal process could be obtained for their detention. This re-delivery to the governor of Florida of the Florida Central Railroad Company's million of bonds is a gross fraud on that company, and none who are advised of it, and buy or advance money on the State bonds for which they were exchanged, will have any legal or moral right to ask that they receive any benefit or advantage from the security so wrongfully obtained.

The same may be said of the three million of State bonds issued on the pledge of the same amount of bonds of the Tallahassee or
3702 Jacksonville, Pensacola and Mobile Railroad. No one who, having notice of that company's rescission of its action and recall of its bonds, advances money on or buys the State's bonds for which the others were pledged, will have legally or morally any locus standi in curia as against that railroad company. The creditors and stockholders of the railroad companies will assert their right, resist the wrongs that have been perpetrated and attempted, and seek successfully redress in the judicial tribunals. You have had the above mentioned action of the railroad companies brought to your notice by the telegram from Governor Reed, who sent it after consulting with the said companies, and at their instance, and you have incurred all the legal disqualifications to urge against the railroad companies any claim based on their supposed suretyship for any bonds of the State.

An examination of the law under which the State's bonds were issued discloses that the governor had caused half a million more
3703 of bonds to be issued than the law provides for. The law allows the issue of $16,000 per mile upon so much of said roads as may be completed and in running order; only 210 miles were, when the bonds were issued, completed, and only a mile and a half have been completed since, and no more is being completed. This would allow of an issue at the time it was made of only $3,360,000. Add the liberal allowance of ten miles for side-tracks, &c., if such unreasonable construction of the law be claimed, and it legalizes only $3,520,000 of the bonds.

To secure the principal and interest of the Jacksonville, Pensacola and Mobile Railroad Company's bond but not of the bond, of the Florida Central Railroad, the law gives the State of Florida a statutory lien, valid as a first mortgage on that company's road and property and authorizes the governor, on failure of the company in any payment of principal or interest, to seize and sell the road at auction,
3704 and authorizes the State to purchase and to pay for it with any evidence of indebtedness the State may hold against the road, while every other bidder would, in case of purchase, have to pay cash.

This summary process is not applicable to the Florida Central Railroad, but to the other road only. What would be the result in case of failure of the Jacksonville, Pensacola and Mobile Railroad to pay principal or interest on its bonds? The State, if no resistance, or if unsuccessful resistance through the courts were had, might seize, sell and buy, paying for the purchase with the road's obligations, while the State might not, perhaps could not or would not, pay her own, nor is there any way known to our system of government by which a State can be compelled to pay its obligations. You will thus perceive the character of the securities offered you, and the taints of fraud that affected them from their first issue, and that still do, and will act advisedly.

3705 This communication is made in the interest of the stockholders of the companies whose bonds have, by misrepresentation and bad faith, been obtained and exchanged with the State of Florida for the State's bonds, which you have been and may still be negotiating for. The stockholders do not intend to submit to the fraud which has been attempted on them. They seek to have the State's bonds brought back, and a re-exchange affected, and it is to that end that this letter is written. Such a course will prevent litigation. Persistence in the wrong will insure it. Attempts may be made to give credit to the bonds by professional and perhaps by judicial opinions from this State, but the facts that I state are incontestable and I can give you much more and more detailed information concerning the worthlessness of the securities that you are negotiating for, and I will do so if desired, but I have said enough to make discreet men repudiate the securities and

3706 abandon negotiation.

I will say, further, that since the mortgage of the railroads to the State, 128 miles of the completed road, being all except twenty-two miles on which the State has any statutory lien, have been sold by the United States under a judicial process in their favor, issued from a United States court, thus divesting the company's title, and vesting it in the individual purchaser. That sale of course relieves that much of the road of the lien created in favor of the State of Florida by the mortgage above mentioned. You are at liberty to show this letter to whom you please, and to give it the widest publicity, and will oblige me by acknowledging its receipt. I will presume on a very slight acquaintance to refer you, touching myself, to Hon. H. S. Sanford, late U. S. minister to Belgium, at Brussels.

Respectfully,

E. M. L'ENGLE,
Of Counsel for the Florida Central Railroad Company.

3707 G. M. Differnin, F. W. Dervel, J. Fred Schutte, P. A. L. Van Ogtrop, A. S. Worfbain, J. H. Warring, A. C. Wortheim, F. U. Zeigláar, E. C. Boissevain, Dz.

At the execution of the foregoing and annexed commission for the examination of witnesses in this cause therein entertained, this exhibit (marked B) was produced and shown to Gideon Maria Boissevain, Frederick William Dervell, Jan Fred Schutte, P. A. L. Van Ogtrop, A. L. Worfbain, J. H. Warring, A. C. Wortheim, F. H. Zieglaar and E. C. Boissevain, Dz., and by them deposed unto, at the time of their examination by—

D. ECKSTEIN,
Commissioner.

Exhibit B to cross-interrogations of the Florida Central Railroad Company.

In United States circuit court, northern district of Florida.

J. FRED SCHUTTE ET AL.
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY, ET AL.

3708 FLORIDA STATE BONDS.

TALLAHASSEE, FLORIDA, *June*, 1871.

To Chairman States and Corporations Arrears Committee, 193, 194, 195,
Gresham House, London:

SIR: It is understood here that General M. S. Littlefield, the president of the Jacksonville, Pensacola and Mobile Railroad Company, a corporation existing under the laws of Florida, Messrs. S. W. Hopkins & Co., financial agents in the same interest, are endeavoring, with a prospect of success, to negotiate a sale of a very large number o f bonds of the State of Florida, issued under the provisions of the act of the legislature of this State, entitled "An act to perfect the public works of the State," and subsequent acts amending the act named.

It is only fair that capitalists who have been induced to think favorably of these State bonds as an investment should be informed as to the character of the securities in which they are about to embark their means, and the purpose of this letter is to place you, and through
3709 you others concerned, in possession of such facts connected with
the history of these bonds, and the law under which they were issued, as it may be to their interest to know.

The Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company were railroad corporations existing under the laws of this State. These corporations having availed themselves of the benefits of the legislature of this State, commonly called the internal improvement act, approved January 6th, 1855, and having failed afterwards to comply with its requirements, by payments of the semi-annual interest and sinking fund due upon the debt contracted, on account of the first mortgage bonds issued by the companies under the provisions of the said act, these road beds, property, and franchise were, in accordance with the requirements of the said act, taken possession of by the trustees of the internal improvement fund and sold, after due advertisement, to the highest bidder, on the day of , 1869. This
sale was in one essential feature, a fraud. The law permitted that
3710 the trustees sell either for cash, or for additional approved security, as they might think of most advantage to the fund and the first mortgage bondholders, to satisfy whose claim the sale was made. In this case the trustees elected to sell for cash, and so advertised to the world up to the moment of sale. And the sale purported to be a cash sale. In point of fact, however, the purchasers did not pay cash, but only made partial payment by a surrender to the trustees of about $1,000,000 of the first mortgage bonds. The entire first mortgage debt of the two companies were about $1,473,000, and this payment of $1,000,000 in the bonds left a balance due upon the price bid, which was in amount equal to the entire bonded debt, of about $473,000, which amount on payment would have been at once applicable to take up and pay off the balance of bonds outstanding, about $473,000 in amount. The trustees, however, delivered possession of the railroad property to the pur-

chasers upon this partial compliance by them with the terms
3711 (cash), for sale. This indebtedness, which has never been paid
except in small part (there being still about $300,000 of first mortgage bonds outstanding and unsatisfied), has a legal priority, and has been always so recognized by the parties now in possession through this purchase, as a first lien, anterior to all others now existing, or that may be created upon the property and franchise of the Jacksonville, Pensacola and Mobile Railroad Company (formerly, as will appear hereafter, the Pensacola and Georgia and Tallahassee Railroad Companies).

The parties in possession of the property have constantly promised payment, and doubtless have induced persons abroad to believe that they have already paid off the debt. After the sale of the Pensacola and Georgia and Tallahassee Railroads, referred to above, the parties in possession through this incomplete sale procured the passage by the legislature of several acts for their benefit, and first among them of the
"Act to perfect the public works of the State," approved June
3712 24th, 1869. This act consolidated the Pensacola and Georgia and
Tallahassee Railroad Companies, and incorporated the Jacksonville, Pensacola and Mobile Railroad Company, and authorized aid to be given by the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company, by the issue to the company of bonds of the State to amount of $14,000 per mile. This act, however, provided that the State, as a condition precedent to the issue of its bonds, should be made secure by a lien to be taken by the State upon the property and franchise of the corporation for whose benefit this aid was to be given. This was a condition fixed by the act, and with this provision it passed the legislature; and when some time after the act had passed it appeared that by its fraudulent enrollment the provision securing the State had been omitted, and that a forged law had been filed in the office of the
Secretary of State, and officially published as a law of the State,
3713 certain citizens of the State, property holders and taxpayers, filed
their bill on the chancery side of the circuit court of Leon County, second judicial circuit of Florida, praying for an order of injunction against Harrison Reid, governor of Florida, and against S. B. Conover, treasurer of the State, and for an order of the court against these officers to restrain and enjoin them from signing, countersigning, or delivering the bonds authorized by this fraudulent law, and from doing any act whatever under the pretended act, upon the ground of the forgery and fraud practiced in omitting from the enrolled bill the clause which required a security to the State in the issue of its bonds by a mortgage upon the railroad property and franchise.

You will readily perceive, in view of the fact that the balance of $473,000 first mortgage debt referred to was unpaid, that the purpose in this fraud was to relieve the railroad company of the necessity of paying off its existing incumbrances before getting the benefit of the funds to be raised on the State bonds.

3714 The court acted favorably and at once upon this application,
and granted without hesitation the injunction prayed for; and so patent was the fraud that no answer was ever made to the bill and no effort was ever made to dissolve the injunction. So matters rested until the next convening of that great and good body of law-givers—the Florida legislature. The next legislature which assembled on the day of , 1870, passed an act to alter and amend the aforesaid act, which last act validified and made of force the "Act to perfect the public works of the State," which had been enjoined, except as amended and modified by the last law. Under these two acts Messrs. Littlefield

and associates, parties in present possession of the railroad property, are now endeavoring to raise money upon State bonds. These acts authorized the aid to be given to the corporation, but required as a condition precedent to the granting this aid and the delivery of the State bonds, that the State be made secure by a lien to be taken in the
3715 manner pointed out by the acts on the Jacksonville, Pensacola and Mobile Railroad property and franchise, and of course that corporation could not be in condition to comply with the requirement and give this until incumbrances already existing and resting on the property should be removed, by payment of the outstanding first mortgage bonds of the Pensacola and Georgia and Tallahassee Railroad Companies.

That the statement as to liability is correct there is not the least doubt, and in order to show that it is admitted to be correct, I refer you to the annexed copy of a letter addressed by me to Harrison Reed, governor of the State of Florida, to whom it was intrusted under the law to see that the State was protected before the delivery of its bonds, and his reply endorsed. In both the letter and the pledge endorsed, in reply, the position is taken that the unpaid first-mortgage bonds of the Pensacola and Georgia Railroad and Tallahassee Railroad Companies, outstanding, constitute a first lien upon the railroad property and franchise, and that no issue of the State bonds could or would be made
3716 until these lien incumbrances resting upon the property should be removed by payment and satisfaction of the first-mortgage bonds, outstanding, after which the company would acquire the power to mortgage unincumbered property to the State. Notwithstanding these admitted opinions of Governor Reed, this solemn written pledge, and his full knowledge that this first mortgage bonded indebtedness outstanding against the railroad was unpaid, after quieting the apprehensions of the holders of the unpaid first-mortgage railroad bonds by this pledge, he signed, at a time when he had lulled suspicion, and delivered the State bonds, thus imposing upon the State a security which he knew to be imperfect. Can you suppose that a vast indebtedness, placed upon a people already insolvent, under these circumstances, will ever be paid.

The principal security which those who may invest in the bonds of this State will have must be that security which has been given to the State.

3717 The principal security for any investment to be made in railroad securities of this State must be the road-bed and franchise. In the light of the past and present history of this State you cannot rely either upon its willingness or ability to pay a security of the character of these bonds when all the benefits result to stockholders in the corporation. In this case, the chief security being incumbered by prior mortgages, it is clearly the interest of the purchaser of the State bonds to see that such an amount of the money paid, as may be necessary, be applied to the discharge of this prior indebtedness. The bonds representing this prior incumbrance may be purchased at reasonable rates, but they will not be sacrificed by the holders.

In the mean time suit has been instituted and is now pending in the United States circuit court for the district of Florida, for the purpose of subjecting the railroad property to sale, unless the original first mortgage debt, outstanding, be paid up. You may have been advised that the purchaser of the State bonds will have nothing to do with the
3718 corporation, and may look entirely to the State; but a very little

reflection must show the error into which this view may lead those who may purchase the State bonds. It is true a bond of this character is a State bond and imports a State liability; but the law makes no specific provision by which the holder of the bond can collect either the principal or interest from the State, and in the absence of such a provision any intelligent lawyer will advise you that the bondholder has no remedy in the courts by which principal or interest can be collected by judicial process from the people or out of their property. And even if such provision existed as a part of the law, it could not be enforced in a case where the bonds have been issued by means of a fraud upon that requirement of it which stipulates that the State should have been made secure by a good lien on unincumbered property as a precedent condition.

The sole reliance, then, of a holder of State bonds must be the
3719 good faith of the State, and that good faith under all the circumstances connected with the issue of these bonds will not be measured by the letter of the contract, but will be fixed entirely by the value of the security which the corporation has placed in the hands of the State to indemnify it against loss, and that security should be the roadbed and franchise of the road itself, unsaddled by anterior law.

I especially direct attention, in connection with this consideration of the State's security, to the provisions of section 13 of the "Act to perfect the public works of the States," which gives to the railroad company the privilege of paying off and discharging the lien taken by the State at any time before maturity of the debt in the State's own paper, now immensely depreciated by reason of the great quantity issued during the past few years beyond its capacity to pay. It is very evident, and ought to be patent to every one who will be at the pains to examine this provision, that it is to the interest of the railroad com-
3720 pany to depreciate all *all* the paper of the State, to depreciate
the very bonds they are now selling, and the moment the bonds shall be sold Littlefield and his associates will become the enemies of the holders, for their interest will clearly be to buy up the paper of the State. These very bonds will answer as good a purpose as any other, and thus relieve their mortgage to the State, and the result will be that the purchasers will be left looking to the State when the security of the State is gone. Littlefield to-day can force $500,000 of State bonds upon the market and buy them at 25 cents, and can with them destroy the State security to the extent of a half million. You may rest assured that to that extent the people will think your bonds should be retired also. You must perceive that it would be great folly to make any investment in the State bonds, unless those investing shall secure an application of a sufficient amount of the money paid to a settlement of the incumbrances existing on the railroad property on account of the
3721 original first mortgage bonded debt now outstanding.

But even after this shall have been done, it concerns the interest of capitalists to reflect upon the following facts, additional to those already set forth:

1. The people of Florida have not the ability to pay this debt.
2. The legislature which passed the acts referred to did not, to any extent, represent the tax-payers and property holders of the State, and the legislature which fixed this indebtedness upon the State was notoriously corrupt, and in the interest of a few railroad speculators not identified even by citizenship with the people of Florida, and these men manipulated the votes of the legislators by corruption so open and flagrant that there are at this time indictments pending in the circuit

court of Leon County against several of the legislators for receiving, and against General Littlefield for paying, bribes to secure the passage of the very acts under the provisions of which these State bonds were issued.

3. The whole series of acts, both in and out of the legislature,
3722 including and beginning with the sale of railroads referred to in the first part of this communication, connected with the issue of these State bonds, has been dishonest, flagrantly corrupt, and going solely to aggrandize Littlefield, Hopkins, and a few others, their co-schemers and confederates, and it cannot be matter of surprise that the entire property-holding and tax-paying part of the people of Florida are not only adverse, but hostile to the payment of a debt which they know to have been put upon the State by the combined fraud of their governor, their indigent legislators, and a set of sharks and financial free lances under the leadership of Milton S. Littlefield, now president of the Jacksonville, Pensacola and Mobile Railroad Company. The people of this State, while they earnestly desire the success of any railroad enterprise which is legitimate and conducted with honesty, would greatly regret if foreign capitalists should make so injudicious an investment as a purchase of these State bonds must be. The
3723 State bonds, without the road as a security, available for the benefit of the bondholders (which now is not the case) amount to nothing. And if there be any truth in a report now current, that certain persons abroad have been already induced to make advances upon the State bonds, they should require such legislation to be had as will enable them to get this security. As a matter of course, they can, by refusing to advance further, force the corporation to make any just contract within its corporate powers or that the legislature will authorize. If the holders of the State bonds had the simple authority to exchange securities with the State it would be a great advantage to them. It is certainly advisable, at any rate, that they get all the security they can. One hundred and sixty miles of completed road, after being relieved of its existing encumbrances, can certainly be made a good security for the cost of constructing a road of same distance, and this, with a mortgage also upon the newly-constructed road, will be safe security.
3724 I ask that these suggestions may be considered.

Respectfully,

T. W. BREVARD, Jr.,
Counsel for Holders of First-Mortgage Bonds of
P. & G. & T. R. R. Companies.

P. S.—I enclose herewith copies of the acts of the legislature referred to in the above communication, as officially published; also majority report of a committee of the assembly of the legislature of Florida, appointed under resolutions of the body to examine and take evidence concerning the conduct of Harrison Reed, governor, pending proceedings then inaugurated to impeach the governor upon charges of corruption in office, certain portions of which will be of some interest to you in connection with the history of the railroad manipulations to which reference is made in the above.

TALLAHASSEE, *February* 21, 1870.

His Excellency HARRISON REED,
Governor of Florida:

DEAR SIR: On behalf of parties holding original first-mortgage bonds

of the (late) Pensacola and Georgia and Tallahassee Railroad Com-
3725 panies, I have been authorized to institute legal proceedings by an application for an injunction to restrain the issue of the State bonds in exchange for first-mortgage bonds upon the railroad property under the provisions of the act of the legislature passed at its last session, entitled "An act to alter and amend an act to perfect the public works of the State," the parties whom I represent apprehending that by such issue of bonds as that proposed by the said law, their rights of lien would be imperiled.

I am satisfied, however, that such proceedings will not be necessary if your excellency shall agree with me in the following propositions, viz: (1st.) That the original first mortgage bonds of the Pensacola and Georgia Railroad and the Tallahassee Railroad Companies, which remain outstanding and unpaid, incumbers the said property with a lien prior to all others now existing, or that may be created; and (2.) That there can be properly no issue of first-mortgage bonds upon the said property
3726 until the outstanding unpaid first-mortgage bonds of the original issue shall be paid up (at the pro rata valuation fixed by the sale) and cancelled.

I am sure that should your excellency agree with me in these views, no bonds of the State will be signed and delivered to the parties who are the beneficiaries under the said act until after a redemption of the outstanding bonds referred to, in which event the right of the new company to rebond the property cannot be disputed.

Very respectfully, your obedient servant,

T. W. BREVARD, Jr.

(Reply endorsed:)

"I concur in the view of Colonel Brevard, and shall issue no bonds under the new law until the lien upon the road is satisfied.

(Signed) HARRISON REED,
Governor.

G. W. Boissevain, F. W. Dewell, J. Fred. Schutte, P. A. A. Van Ogtrop, J. H. Warring, A. C. Wertheim, N. H. Zeiglaar, E. C. Boissevain, Dz., O. L. Wortbain.

3727 At the execution of the foregoing and annexed commission for the examination of witnesses in the cause therein entitled, this exhibit (marked C) was produced and shown to Gideon Maria Boissevain, Frederick Willem Dewell, Jan Fred Schutte, T. A. L. Van Ogtrop, A. L. Worfbain, J. H. Warring, A. C. Wortham, F. H. Zieglaar, and E. C. Boissevain, Dz., and by them deposed unto at the time of their examination by—

D. ECKSTEIN,
Commissioner.

In the United States circuit court, northern district of Florida.

J. Fred Schutte et al.
vs.
The Florida Central Railroad Company
et al.

Exhibit C to cross-interrogations of Florida Central Railroad Company.

Articles of impeachment exhibited by the assembly of the State of Flor-

ida, in the name of themselves and all of the people of Florida,
3728 against Harrison Reed, governor of Florida, in maintenance
and support of their impeachment against him for high crimes and misdemeaners in office, for incompetency and malfeasance, and conduct detrimental to good morals.

Article 1. That said Harrison Reed, governor of Florida, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, unmindful of the high duties of his office, of his oath of office, and of the requirement of the constitution, that he shall see that the laws are faithfully executed, did unlawfully, and in violation of the constitution and laws of the State of Florida, cause*d* to be issued, and did himself sig*h* his official signature as governor, to a large number of State bonds, to the amount of five hundred and twenty-eight thousand ($528,000) in excess of the amount of bonds authorized to be issued by the act of the legislature of the State of Florida entitled "An act to alter and amend an act entitled 'An act to
3729 perfect the public works of the State,'" approved June 24, A. D.
1869, approved January 28, A. D. 1870, with intent, then and there, to violate the said act, whereby the said Harrison Reed, governor of Florida did, then and there commit and was guilty of a high crime in office of incompetency and malfeasance.

Article II. That in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, said Harrison Reed, governor of Florida, unmindful of the high duties of his office, of his oath of office, and in violation of the constitution of the State of Florida, and contrary to the provisions of an act entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24, A. D. 1869, approved January 28, 1870, did, then and there, with intent to violate the constitution of the State and the act aforesaid, and without authority of law, fraudulently conspire to issue State bonds to the amount of one million of dollars ($1,000,000)
3730 for the purpose of purchasing the stock of the Florida, Atlantic
and Gulf Central Railroad Company, for the use and benefit of persons and parties, and with full knowledge of the consent to said purpose, and in collusion with such persons and parties, for his and their pecuniary benefit, whereby said Harrison Reed, governor of Florida, did then and there commit, and was guilty of, a high crime in office, and of incompetency and malfeasance.

Article III. That said Harrison Reed, governor of Florida, unmindful of the high duties of his office, and of his oath of office, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State Florida, did cause to be issued, and did, himself, sign his official signature, as governor, to one million dollars of State bonds, for the purpose of purchasing the stock of the Florida, Atlantic and Gulf Central Railroad Company, for the use and benefit of persons and parties, contrary to and in violation of the constitution of the
3731 State of Florida and of the laws of the State of Florida, and es-
pecially in violation of an act of the legislature of the State of Florida, entitled "An act to alter and amen*t* 'An act to perfect the public works of the State,'" approved June 24, A. D. 1869, approved January 28, 1870, and with intent to violate the laws of the State of Florida, and especially said act, whereby the said Harrison Reed, governor of the State of Florida, did then and there commit, and was guilty of, a high crime in office, and of incompetency and malfeasance.

Article IV. That Harrison Reed, governor of Florida, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, unmindful of the high duties of his office, and of his oath of office, and in violation of the constitution and laws of the State, and especially of an act entitled, "An act to alter and amend," &c., did cause to be issued and did, himself, sign his official signature, as governor, to four million dollars of State bonds, for the use and benefit of the Jacksonville, Pensacola and Mobile Railroad Company, in the State of Florida, having full notice of the fradulent title of said company to the property of the Pensacola and Georgia and Tallahassee Railroads, and with intent to violate the constitution and laws of the State of Florida, and especially of the act of the legislature of the State of Florida, entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,'" approved June 24, A. D. 1669, approved January 28, 1870, whereby the said Harrison Reed, governor, &c. 3732

G. M. BOISSEVAIN.
J. FRED. SCHUTTE.
A. L. WORFBAIN.
A. C. WORTHEIM.
F. W. DEWELL.
P. A. L. VAN OGTROP.
J. H. WARRING.
E. C. BOISSEVAIN, Dz.
F. H. ZIEGLAAR.

In the United States circuit court, northern district of Florida, fifth judicial circuit. In equity.

J. FRED. SCHUTTE, JAN PRINS, ADRIANUS Prins, and others,
against
3733 THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company, The Florida Central Railroad Company, and others.

The Florida Central Railroad Company objects to the interrogatories filed by the complainants in the above cause, to be propounded to witnesses, none of whom are named, to be examined in behalf of the complainants, and states grounds of objection, as follows:

It objects to the said interrogations, and to each of them, because no witnesses are named to whom the said interrogatories are to be propounded. For this reason the said Florida Central Railroad Company objects to the issuing of a commission to take any testimony on the said interrogatory.

To the third interrogatory: The said Florida Central Railroad Company objects, because it is irrelevant and immaterial.

To the fourth interrogatory: It objects on the same ground.

To the fifth interrogatory: It objects on the same ground.

To the sixth interrogatory: It objects on the same ground, and because the testimony sought is hearsay, and not the best that the case admits of. 3734

To the seventh interrogatory: It objects on the same ground.

To the eighth interrogatory: It objects, because it is irrelevant and immaterial.

To the ninth interrogatory: It objects on the same ground.

To the tenth interrogatory: It objects on the same ground, and because a portion of the testimony sought is not the best that the case admits of.

To the eleventh interrogatory: It objects on the same ground.

To the twelfth interrogatory: It objects on the same ground.

To the thirteenth interrogatory: It objects, because the said interrogatory is irrelevant and immaterial.

It objects to the fourteenth interrogatory on the same grounds, and because the testimony sought is not the best that the case admits of.

It objects to the fifteenth interrogatory on the same ground.

It objects to the sixteenth interrogatory because it is immaterial and irrelevant.

3735 It objects to the seventeenth interrogatory on the same ground, and because the testimony sought is hearsay, and not the best that the case admits of.

It objects to the eighteenth interrogatory on the same grounds.

It objects to the nineteenth interrogatory because it is irrelevant and immaterial.

It objects to the twentieth interrogatory on the same grounds, and because the testimony sought is hearsay, and not the best that the case admits of

It objects to the twenty-second interrogatory because it is irrelevant and immaterial.

It objects to the twenty-third interrogatory on the same ground.

It objects to the twenty-fourth interrogatory on the same ground.

It objects to the twenty-fifth interrogatory on the same ground.

It objects to the twenty-sixth interrogatory on the same grounds.

Cross-interrogatories to be propounded by and in behalf of the Florida Central Railroad Company to such witnesses (though not now named) as may be produced on the part of the complainants in the above-entitled cause, if any should be produced:

3736 First cross-interrogatory. When were the bonds mentioned in the fifth direct interrogatory first put upon the market at the bourse or stock exchange in Amsterdam or elsewhere? Where were they first put upon the market? When, where, and by whom, to whom, and at what prices, were the first sales and deliveries of said bonds or of any of them made? When, where, and by whom, to whom, and at what prices were each subsequent sale and delivery of said bonds, or of any of them, made, so far as you know or can ascertain and disclose? State the number of the bonds sold and delivered each time.

Second cross-interrogatory. Read the printed paper annexed hereto, marked Exhibit A, being a copy of a communication dated at Jacksonville, Florida, February 8th, 1871, purporting to have been addressed by E. M. L'Engle to Holje Boissevain, bankers, Amsterdam, Holland, and state when and where you first saw the original, or what purported to be the original, or a copy of the said communication, and who

3737 had it. When and where, and from whom did you first hear of it? Where, when, and from whom did you subsequently hear of it as often as you did hear of it? State whether or not the said communication was received by the person or persons to whom it was addressed, and whether such person or persons were members or directors, or other officers of the bourse or stock exchange, of Amsterdam, in Holland. Where did he or they live, and what were his or their occupations? State whether such person or persons were connected in any manner with the sale of the bonds referred to in the telegraphic correspondence mentioned in the said communication; and if so, how were they connected therewith? State what degree of publicity was given to the said communication; was it made known to the members or directors or other officers of the bourse or stock exchange of Amsterdam, or to any, and which of them? Was it known to the persons or to any, and which of them, engaged in selling the said bonds? When, 3738 as nearly as you can state, was the said communication received or known in Amsterdam? State all that you know on the subject.

Third cross-interrogatory. Read the printed paper annexed hereto, marked Exhibit B, being a copy of a communication dated at Tallahassee, Florida, June, 1871, purporting to have been addressed by T. W. Brevard, jr., to the chairman of States and corporations arrears committee, 193, 194, 195, Gresham House, London, England, and state when and where you first saw the original, or what purported to be the original, or a copy of the said communication, and who had it? Where, when, and from whom did you first hear of it? Where, when, and from whom did you subsequently hear of it, as often as you did hear of it? State whether or not the said communication was received by the person or persons to whom it was addressed, and whether such person or persons were members or officers of the bourse or stock exchange of Amsterdam, in Holland. Where did he or they live, and what were his or 3739 their occupations? State whether such person or persons were connected in any manner, and what manner, with the sale of the bonds issued by the State of Florida, in aid of the Jacksonville, Pensacola and Mobile Railroad. State what degree of publicity was given to the said communication; was it known to the members or directors, or other officers of the bourse or stock exchange of Amsterdam, or to any, and which of them? Was it known to the persons, or to any, and which of them, engaged in selling the said bonds? When, as nearly as you can state, was the said communication, or a copy of it received, or known in Amsterdam, or received by, or known to the persons, or any of them, who were selling said bonds of the State of Florida? What action was taken upon it? State all that you know on the subject.

Fourth cross-interrogatory. Read the printed papers attached hereto marked exhibit C, being a copy of articles numbered one, two, three, and four of impeachment, exhibited by the assembly of the State 3740 of Florida, against Harrison Reed, governor of Florida, and state when and where you first saw the said articles of impeachment. State when and where you first became informed that articles of impeachment had been exhibited by the assembly of the State of Florida against Harrison Reed, governor of Florida, for the cause stated in the said articles, or for any of the said causes. Were the said impeachment and the causes thereof, as set forth in said articles, known to the members or directors or other officers of the bourse or stock exchange of Amsterdam, or to any, and which of them, and when did they become so known? Were they known to John Collinson, of London, England, or to the persons, or to any of them, and to which of them, engaged in selling the said bonds of the State of Florida, issued in aid of the Jacksonville, Pensacola and Mobile Railroad, and when did they become so known, as nearly as you can state?

Fifth cross-interrogatory. State whether or not any member or 3741 members, officer or officers, of the bourse or stock exchange of Amsterdam, in Holland, have ever been expelled, deposed, suspended, required to resign, or withdraw therefrom, fined, censured, or otherwise punished, or reflected upon by the said bourse or stock exchanges, government, guild, or association for improper practices or conduct, whether of commission or omission, in connection with the negociation or sale, or putting upon the market of said bonds (or any of them) of the State of Florida, issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company. If you state who such member or members, officer or officers, were, whether he or they were expelled, deposed, suspended, required to resign or withdraw, fined or censured, or how otherwise punished or reflected upon, what was the improper practice or practices or conduct? State all you know on the subject.

Sixth cross-interrogatory. State whether in December, 1870, or about that time, Harrison Reed, the governor of Florida, did not send to one Boissevain, or to him and others in Amsterdam, Holland, a 3742 telegraphic dispatch, in substance, as follows: "Bonds recently recalled by the company; no provision will, therefore, be made for interest." State whether said telegraphic dispatch was not an answer to a telegraphic dispatch, in substance, as follows: "Being negotiating four million dollars of bonds issued by your State to the Jacksonville, Pensacola and Mobile Railroad Company, beg to know, by telegraph from you, whether provision will be made for payment of interest, whatever the result of railroad traffic may be. Is the financial position of the State really sound, and have the bonds undoubted security?" Which was sent at or about that time to the said Harrison Reed, governor of the State of Florida, by the said Boissevain, or by him and others from Amsterdam, in Holland? State all that you know about this telegraphic correspondence. State who the persons were who sent the said dispatch to Governor Reed, and to whom he sent the reply. Where did they live? What was their occupation? Were they, or any of them, members or officers of the bourse or stock exchange of Amsterdam, or connected in any manner with the sale of the said bonds; if so what connection had they, or any of 3743 them, therewith? What degree of publicity was given to the said telegraphic correspondence? Was it made known to the members or directors or other officer of the bourse or stock exchange of Amsterdam, or to any, and which of them?. Was it known to the persons engaged in selling the said bonds, and to which of them? Had any of said bonds been sold and delivered at that time?

JAMES M. BAKER,
Solicitor for F. C. R. R. Co.

(Endorsed:) United States circuit court, northern district of Florida. J. Fred Schutte and others vs. the Western Divison of the Western North Carolina Railroad Company, the Florida Central Railroad Company, and others. Exceptions and cross-interrogatories by the F. C. R. R. Company. Filed January 15, 1879. P. Walter, clerk.

3744 To DAVID ECKSTEIN, Esq.,
U. S. Consul, Amsterdam, Netherlands:

SIR: A commission was heretofore sent to you from this office, with interrogatories annexed, entitled in the cause of J. Fred Schutte and others against the Western Division of the Western North Carolina Railroad Company and others, authorizing you to take the deposition of A. L. Worfbain, P. A. L. Van Ogtrop, Jan Frederick Schutte, Johannes Herman Warring, Araham Carel Wertheim, Frederick William Oewel, and F. H. Zieglaar, witnesses on the part of complainant.

By an omission in the proceeding, the cross-interrogatories on the part of the defendant were not sent to you, which, being brought to the attention of the court, the leave to file and forward cross-interrogatories was granted, which are herewith inclosed to you.

You are therefore instructed to address to each of the several witnesses the said cross-interrogatories, certified copies of which, from the originals on file in this office, are hereto annexed, which you are 3745 directed to return to this office, with the direct interrogatories and deposition of the witnesses duly certified.

Respectfully, yours,

PHILIP WALTER, *Clerk.*

Jacksonville, Fla., March 1, 1879.

P. S.—These instructions are sent at the request of the defendants' solicitor.—P. W.

Northern district of Florida.

J. FRED SCHUTTE ET AL.
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al.

Cross-interrogatories on the part of defendants, to be propounded to A. L. Worfbain, P. A. L. Van Ogtrop, Jan Frederick Schutte, Johannes Herman Warring, Abraham Carel Wertheim, Frederick Willem Oewell, and F. H. Zieglaar, witnesses on the part of complainants.

Defendant excepts to the third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty- 3746 first, twenty-second, twenty-third, twenty-fourth, and twenty-fifth and twenty-sixth direct interrogatories, on the part of the complainants, because the said several interrogatories are leading, illegal, irrelevant, and incompetent, and the defendant further excepts for the reason that the said interrogatories call for conclusions and opinions of the witnesses instead of facts, and call for hearsay evidence, and call for secondary and not the best evidence, and because the same are not complete, in omitting to file the Exhibit A mentioned in the fourth interrogatories; and defendant further objects to the said interrogatories because they are a*u*gumentative and suggest conclusions to the witnesses instead of calling for facts and information within their knowledge.

And the exceptions of defendant are not waived by the cross-examination of the witnesses, but, on the contrary, are expressly and hereby reserved.

Cross-interrogatory number one. When did you become a 3747 member or director of the stock exchange or bourse of Amsterdam? State precisely what functions you perform therein; are you not a speculator in stock and bonds on the said bourse or exchange? and state fully your connection therewith.

Cross-interrogatory number two. When did you first see or hear of a Florida State bond? Who brought the same to your attention; in what manner, and for what purpose? How do you know what railroad the bonds you saw, if any, were designed to construct? Was your information written or verbal; and, if written, by who and when written? and produce a copy thereof. When, how, and from whom did you learn the matters you speak of? Please give full details, with names, dates, and particulars.

Interrogatory number three. If you say you are familiar with the purchase and sale of bonds, foreign and domestic, then please state what, within your knowledge, is and ought to be the value of an eight (8) per cent. bond issued by a State free from all doubt as to validity and title. What did first-class 8 per cent. bonds sell for on
3748 the bourse and exchange of which you are a director or a member in 1870 and up to 1872? State fully your knowledge and information on this subject.

Cross-interrogatory number four. How do you know by whom the said Florida State bonds were put on the market at the exchange or bourse? If you say they were put on the same, what connection, if any, had you thereunto, and what induced you to have such connection, if any? With whom did you converse, or from whom did you acquire your information in regard to said bonds?

Cross-interrogatory number five. Do you not know that said Florida State bonds were put on the market in Holland after they had failed in England? And do you not know that they were so put on the market by John Collinson, G. M. Boissevain, A. J. Milden, Adrian Stoop, Joseph Zadock, with the co-operation and knowledge of yourself, for purely speculative purposes? And do you not know that the bonds were offered in Holland by a proposal or prospectus which had just
3749 been printed in England, in English, and then translated and printed in Holland in the Dutch language? And do you not know that the printed paper hereto annexed, marked B, is a correct copy of the proposal or prospectus which was translated into the Dutch language and used for placing said bonds on the market? And did you ever see any other prospectus or proposal used for the sale of said bonds? And if you say you did, please produce a copy thereof, and make the same a part of your answer.

Cross-interrogatory number six. Do you not know that before the said bonds were sold or purchased on your said bourse or stock exchange, that statements had been circulated and published in the public journals, and circulated before the public, that said Florida State bonds were alleged to have been fraudulently and illegally issued, and were issued in violation of the constitution or organic law of the State of Florida, and had been so pronounced? And do you not know that in consequence of such charges, that legal opinions were asked and telegrams sent to the governor of Florida for information, and that was alleged to
3750 be the opinion of some of the judges of the supreme court of Florida, which opinion was sought and procured for the purpose of allaying the suspicions and charges of fraud alleged against said Florida State bonds, from and after about the month of June, 1870, up to and in the year 1871. Please state fully and in detail all the knowledge and information in reference to the charges of fraud alleged against said bonds, before and during the time the same were being sold in the market.

Cross-interrogatory number seven. Do you not know that no decision of any kind was made by the directors or managers of your said bourse or stock exchange until after the legal opinions were asked and the telegrams sent to the governor of Florida inquiring into the validity of said Florida State bonds, as mentioned in the preceding cross-question? And amongst other modes of inquiry caused by the reports that were in circulation, do you not know that Messrs. Holje, Boissevain, or Holje and Boissevain, bankers of Amsterdam, Holland, on the 18th
3751 day of December, 1870, addressed a telegram to the governor of

Florida, in the following, or substantially the following, words, that is to say:

"Being negotiating four million bonds issued by your State, the Jacksonville, Pensacola and Mobile Railroad, beg to know by telegraph from you whether provisions made for payment interest, whatever result, railroad traffic; financial position of State really sound, and bonds undoubted security?"

And do you not know that in reply to said telegram so sent that the governor of Florida sent by cable the following information:

"Bonds recently recalled by the company; no provision will therefore be made for interest."

And do you not know that on the 8th day of February, 1871, that E. M. L'Engle addressed to said Holje and Boissevain an elaborate letter, advising them and all persons through them, that said Florida State bonds were fraudulent; illegal and void, and were not good or valid securities, and do you not know that the charges of fraud and 3752 illegality, so pronounced in the United States and England, were reported and published, in whole or in part, by the papers published in Amsterdam and other places? Please state with care and particularity, all that you know or were informed on the subject of the fraudulent issue of said bonds.

Cross-interrogatory number eight. Do you not know that the first disposal of said bonds was made by John Collinson, Hopkins and Company, and Boissevain and others, on or after the 19th day of November, 1870, and that the last sale or disposition of said bonds was made on or previous to the 21st day of July, 1871? And do you not know that none of the said bonds numbered about twenty-eight hundred (2800) were sold within the time above named? If you say you ever saw, sold or purchased, or held any of said bonds, numbered above twenty-eight hundred (2800), previous to the year 1873, state where it was, who owned the same, and what disposition was made of said bond or bonds, and by whom. Please give the names of the parties, and state all the facts and circumstances.

3753 Cross-interrogatory number nine. Do you not know that said Florida State bonds, in consequence of the charges of fraud and illegality circulated against them, were not regularly sold in the market, either in London or Amsterdam, but on the contrary do you not know that said bonds were nominally taken into account by Hopkins and Company at about one-half of their par value, or say at £100 sterling, or about five hundred ($500) dollars for a thousand ($1,000) dollar bond? And do you not know that the same were taken on speculation by John Collins, at about £38 sterling, or about $190 per bond advance, which said advance was a speculative profit shared in by the said Hopkins and Company, Collinson, Boissevain and others, in London and Amsterdam, who formed a syndicate for that purpose? Please state fully when, and in what manner, you were connected with the purchase and sale of said bonds.

Interrogatory number ten. Do you not know that about the sum of $400,000 of the gross proceeds of the sale of said bonds were deducted to pay the interest as it accrued from time to time and to 3754 float said bonds in the market? State fully your knowledge and information on this subject of the sale and purchase of said bonds.

Cross-interrogatory number eleven. If you say bonds varied in price, do you not know that such price, or decline in price, was wholly caused by yourself and others, who were speculating in them on the market, which you created for speculative purposes? Do you not know that parties speculating in said bonds would sell them at one time and purchase at another for purely speculative purposes, and thereby change the market up or down to suit their own purposes; and that it was only by such speculation that the price of said bonds were effected upward or downward in the market? Or if you say that the said market price of said bonds was affected by any other cause, state fully and distinctly what such cause was, giving the particulars thereof.

3755 Cross-interrogatory number twelve. Give the exact names and address of the persons, if any, who placed said bonds on the market, and spoke to you about the "termini" of the Jacksonville, Pensacola and Mobile Railroad. And were you at any time advised of the existence of a body corporate called and styled the Florida Central Company? And, if yea, state who spoke to you about such railroad company, when such conversation occurred, and what was said. Please give the name of the person or persons who spoke to you about said Florida Central Company and state and set forth the reason therefor with all the details.

Cross-interrogatory number thirteen. Do you not know that said bonds were offered in the market in the Netherlands by said John Collinson, Hopkins and Company, Boissevain and others, after the same had failed in England because of the charges of fraud and illegality alleged and charged before the public in the issue of said bonds; and do you not know that said bonds were propounded to the public by a prospectus first printed and used in England, and then translated into the Dutch language and used in the Netherlands; and is not the printed 3756 paper annexed hereto, marked B, a correct copy of the original prospectus in English, before the same was translated into the Dutch language? And produce a copy of the translated prospectus as used in Amsterdam, and elsewhere in Holland, in the offering of said bonds on the market.

Cross-interrogatory number fourteen. Do you now own, or did you ever own, any of said Florida State bonds? And if you say you did, or do now, own any of said bonds, state the exact number thereof, and state when you made the first purchase, and when you made the last purchase of said bonds, or any of them, and state the precise amount you paid for said bonds at each and every time you was a purchaser thereof. And state from whom you made such purchase, or purchases, and what induced you to make the same. And state whether such sale and purchase was written or verbal, and if written produce the same or a copy thereof as part of your answer. And state fully, and in detail, all the facts and circumstances attending your purchase of said bonds.

3757 Cross-interrogatory number fifteen. Do you not know that the interest on said bonds was paid up to and including January, A. D. 1873, out of the proceeds of the bonds, and from no other source or fund, and that a large amount of the proceeds of said bonds were set apart for that purpose, and that the payment of interest ceased as soon as the proceeds of the said bonds set apart for that purpose was exhausted?

Cross interrogatory number sixteen. Do you not know that soon after the payment of interest on said bonds ceased in the year 1873, and in the month of October of that year, that a committee, composed of some of said syndicate, which speculated in said bonds, and who placed the same on the market in Amsterdam and Rotterdam, that is to say, G. M. Boissevain, A. J. Milders, A. Strow, N. J. den Tex, and Joseph Zadocks, were appointed a committee or board of trustees, under special

articles of association, to assume charge of all litigation affecting said bonds, and to represent in that behalf and to bind the holders of said bonds? And if you state such was the fact, then state whether said
3758 committee still exists with their process so delegated unrevoked.
State fully your knowledge on this subject.

Cross-interrogatory number seventeen. Do you not know that on or about the 12th day of January, 1877, that one Frank K. R. Sherwin, Henry R. Jackson, and Charles H. Simonton, for themselves and associates, entered into a speculation and adventure, called the memorandum plan, which is made part of the bill of complaint filed in this cause, marked Schedule D, and do you not know that said Sherwin and his associates, as a part of said adventure and speculation, did, previous to the said 12th day of January, 1877, to wit, under date of the 15th day of October, 1876, form a pretended company, or body coporate, called the Jacksonville and Mobile Railroad Company, with a capital stock of $3,000,000 and a bond issue of $2,808,000? And do you not know that the said Sherwin, Jackson, Simonton and their associates were, by said plan to have and retain two thirds part or upwards of the benefits derived from said memorandum plan, or so-called Jacksonville and
3759 Mobile Railroad Company, and the holders of said Florida
State bonds were to have one-third part or less of the proceeds of said bonds? Please state fully all you know, if anything, about the existence of said memorandum plan and formation of said so-called Jacksonville and Mobile Railroad Company.

Cross-interrogatory number eighteen. Do you not know that the expense of proceeding under said memorandum plan, to secure the sale by the governor of Florida, as trustee of the Jacksonville, Pensacola and Mobile, and Florida Central Railroads, was and is to be borne by the said Sherwin and his associates, in consideration of their receiving two-thirds part and upwards of the benefits to be derived therefrom? And do you not know that the sale and real object of this suit is to carry said so-called memorandum plan, adventure, and speculation into effect?

Cross-interrogatory number nineteen. Are you not interested in the result of this suit, personally and pecuniarily? And, if yea, state the exact amount, nature, and extent of such interest, and when, and
3760 in what manner you acquired such interest.

Cross-interrogatory number twenty. Do you or not know Frank R. Sherwin, Charles D. Willard, and Jacobus Wertheim; and have you made their acquaintance in connection with said memorandum plan and the prosecution of this suit? And have you not been conversed with by said Sherwin, Willard, and Wertheim, about the prosecution of this suit, and your testimony to be given in the same? And have you or not been talked to and conversed with by said Sherwin, Willard and Wertheim, or any one else, about your testimony and the purport and tenor thereof in this cause? And give the name and address of each person who has spoken to you about the same previous to this, your examination. And have you or not been furnished or shown, and had read to you the same interrogatories upon which you have been examined by the complainants in this suit, or have you not been shown, or had read to you, interrogatories of the same or similar tenor and
3761 effect, previous to your being sworn and examined in this suit
under the present commission? State the name or names, and give the address of each and every person who so spoke to you, showed, or read to you any paper about the subject-matter of your examination; and state when, and where, and under what circumstances it occurred;

and state who applied to you to give your testimony in this cause, and when and where it occurred.

Cross-interrogatory number twenty-one. Did you or not execute any power of attorney, or give any authority, written or verbal, to one Frank R. Sherwin at any time, and especially previous to or on the 22d day of September, 1876, authorizing him to represent you or any other holder of Florida State bonds, or empower him to petition the State of Florida, through the governor thereof, as your trustee, to seize and sell the Jacksonville, Pensacola and Mobile Railroad, and the Florida Central Railroad; or had you any knowledge of said Sherwin preparing and presenting said petition in your name at the same time it was done, if such, in fact, did transpire?

3762 Cross interrogatory twenty-two.

(NOTE. This and the succeeding interrogatories, addressed especially to the witness, J. Fred. Schutte.)

Are you or are you not the same J. Fred. Schutte who is a party complainant in this suit? Are you or are you not the same J. Fred. Schutte who made a sworn affidavit before the United States consul at Amsterdam on the first day of March, A. D. 1877, in which you stated upon oath you were the holder, and only the holder, of one hundred and three (103) bonds of the State of Florida, issued under the act of January 28, 1870, a copy of which said sworn statement, containing the list and numbers of said bonds, is made part of this question, marked C? And are you or are you not the same J. Fred. Schutte who made another sworn statement and executed another power of attorney, dated the 26th day of July, 1878, wherein you, at the last named date, state you are the holder or owner of four hundred and forty-seven (447) additional numbers of said bonds, a copy of which said power of
3763 attorney, with the numbers of said additional bonds, is made part of this question, marked D? And are you or are you not the same J. Fred. Schutte who, on the 5th day of August, 1878, upon your oath, executed two additional affidavits and powers of attorney, one of which described you as the holder or owner of fifty-eight (58) additional of said bonds, and the other as the holder and owner of thirty-nine (39) additional of said bonds? The numbers of the bonds described in said two papers are made a part of this question and appended hereto, marked E and F, respectively.

Cross-interrogatory number twenty-three (addressed to the witness, J. Fred. Schutte). If you say you are the same J. Fred. Schutte who is one of the complainants in this suit, and who made the several statements mentioned in the preceeding interrogatory number twenty-two, then please state—

I. From whom and when did you obtain possession of the said 103 bonds described in the paper "C," made part of the last preceding question number twenty-two. Please give the exact deates when you acquired the same, and state the exact price you paid therefor giv-
3764 ing the name or names of the persons from whom you received them, with a verified account of the sale and purchase thereof.

II. From whom and when did you obtain possession of the 447 bonds described in the paper D, made part of the preceding question, number twenty-two? Give the exact date thereof and the name and address of the person or persons from whom you received them; and if you say you purchased said bonds, then give the exact price you paid, and to whom, together with a verified copy of account of sale and purchase so made by you.

III. From whom and when did you obtain possession or purchase, if you say you did purchase, the 58 bonds described in the paper "C," made part of said question No. 22? State the exact date, together with a verified copy of the account of said sale and purchase, if any such was made.

IV. From whom and when did you obtain possession or purchase, if you say you did purchase, the 38 bonds described in the "F," made
part of the last preceding interrogatory No. 22? State the exact
3765 date, and also the exact price, if any, you paid therefor, a' present
a part of your answer, a verified copy of such sales and purchase.

V. State who, besides yourself, if any one, is interested in the said several lots of bonds so held by you and described in the said papers C, D, E, and F, giving the exact name and address of each party, with the extent and amount of their interest therein, and how and in what manner the same was acquired.

Cross-interrogatory number twenty-four (addressed to the witness, J. Fred. Schutte). Do you not know that none of said bonds, numbered above 2800, were sold in the market in the manner that these numbered from 1 to 2800 were handled and speculated in? But on the contrary, do you not know that said bonds numbered above 2800 were taken to account and in pledge by John Collinson and G. M. Boissevain and others, who advanced the money thereon, to pay certain private debts, and to pay the interest due January 1st, 1873, on the remainder of said
bonds to float and keep up the price of the same in the market
3766 for speculative purposes? And do you not know that said Boissevain
and Collinson and others, engaged in placing said bonds in the market, are still interested therein, and are still in part or in whole the owners thereof? And do you not know that all the bonds numbered above 3000, held by you, and especially the bonds numbered above 3000, described in your power of attorney to Jacobus Wirtheim and C. D. Willard, dated July 26th, 1878, were received by you from said Boissevain and others connected with him for the purposes of this suit, and for the promoting the sale of said Florida railroads, under said memorandum plan.

Cross-interrogatory number twenty-five (addressed to the witness, J. Fred. Schutte). Do you not know that a large majority of said Florida State bonds involved in this suit and held by yourself and others for the purpose of said memorandum plan, besides those held on account by said Collinson and Boissevain, have been purchased at mere nominal prices—say five or six cents on the dollar—by the parties prosecuting
this suit, and are you not personally interested therein?

3767 Cross-interrogatory number twenty-six (addressed to the witness, J. Fred Schutte). Why did you not state the whole interest you had in the said bonds in your affidavit sworn to on the 1st day of March, 1877 (paper "C" is cross-interrogatory number twenty-two), and what motive had you in acquiring or becoming the holder of any more of said bonds after that date, or since the said bonds have been declared fraudulent, void, and unconstitutional by the supreme court of the State of Florida? State in what manner you expect to realize on said bonds, and were they or not placed in your hands by Jacobus Wertheim, Frank R. Sherwin, C. D. Willard, or others, co operating with Williard or others, co-operating with them to be held by you for the purposes of this suit.

Cross-interrogatory number twenty seven (addressed to the witness, J. Fred Schutte). Do you not know that the bonds numbered above 3,000 represented by you, as the holder thereof, are the same bonds

described as the property of G. M. Boissevain, and Dr. Nicholas Jacob den Tex, in the petition addressed to the governor of Florida, by
3768 your attorney in fact, C. D. Willard, on the 31st day of March, 1877, and described in the affidavit of said Boissevain and Den Tex, sworn to before the United States consul. And if you say they are the same bonds described and numbered in said petition and affidavit, then state what was their motive for transferring said bonds to you, and what was your motive for receiving and holding the same? State fully and in detail the facts in reference to your possession of said bonds, and whether you have not acquired such possession in reference to said memorandum plan since the commencement of this suit?

Cross-interrogatory number twenty-eight (addressed to the witness, J. Fred Schutte). Are you or not bound to defray the expense of this suit? And if you say you are not so bound, then state who is to provide the means for the prosecution of this suit? And do you not know that the same is prosecuted for the sole purpose of absorbing and appropriating the said Jacksonville, Pensacola and Mobile and Florida Central
3769 Railroads into a corporation called the Jacksonville and Mobile Railroad through the medium of the memorandum plan, to which you are a party in interest?

Cross-interrogatory number twenty-nine (addressed to the witness, J. Fred. Schutte). Do you or not know that a large number, and in fact, a majority of said Florida State bonds have been obtained from those who originally purchased them upon the market at mere nominal prices, say from five to seven cents on the dollar, by parties interested in the said memorandum plan, and the prosecution of this suit; and, if yea, state to the best of your knowledge, information, and belief what number of said bonds have been so purchased, and the prices paid therefor.

JAS. B. STEWART,
Solicitor for Defendant.

3770
DEFINITIVE PROSPECTUS.

A.—*Annex referred to in the affidavit of J. Wertheim, LL. D., dated 28th day of May*, 1877.

1870.

FLORIDA STATE LOAN.

Issue of 4,000,000 dollars authorized by act of the legislature, dated 28th of January, 1870, in bonds to bearer of 1,000 dollars each, bearing interest at the rate of 8 per cent. per annum.

Principal and interest payable in gold, free from all United States taxes.

Payments will be made at the Florida State agency in the city of New York of the principal at par on January 1st, 1900, and the interest on January 1st and July 1st, in each year.

The bonds, with accrued interest since 1st July (being £6 18*s.* 2*d.*) are offered at the price of £183 per $100, making the interest equal to nearly 9½ per cent. per annum.

3771 Payment on application £10 per 1,000 dollar bond, and the remainder on allotment. Should no allotment be made the application money will be returned in full.

Messrs. are authorized to receive subscriptions for the Florida State bonds to the amount of $14,000,000.

The State of Florida pledges its credit for the above, guaranteeing payment in gold of both principal and interest.

The governor of Florida (Harrison Reed) makes the following statement:

That the real property therein, taken at its present minimum value, is $50,000,000, on which a tax of ½ of one per cent. is annually levied, being $250,000.

That an addition of $30,000 to $50,000 is receivable from specific taxes on polls, specific licenses, etc.

That there are four hundred miles of railroad and a thousand miles of telegraph line in operation, oyster beds and fisheries along a thousand miles of the co'st, equal to the best in the world; foreign corporations doing business in the State, insurance companies, etc.; all of which pay no taxes, and from which large tributes can, if necessary, be levied.

3772 As further security for her debt, the State of Florida possesses already 11,000,000 acres of public lands, and will receive, when the government surveys are completed, over 5,000,000 acres additional.

The money to be now raised is solely to be devoted to railroad purposes, and will be paid on completion of every twenty miles, at the rate of $16,000 per mile, the State being secured by first mortgage liens conditional upon the payment by the company of principal and interest.

The Jacksonville, Pensacola and Mobile Railroad, to aid in constructing which the money will be applied, is a line 450 miles in length, of which 250 miles are completed, fully equipped, and given over to traffic. The full paid capital stock is $6,550,000, and the present earnings on the finished portion of the road show a net return of over $1,380,000 per annum. This railway company has mortgaged to the State its entire property, including all real estate, road-bed, iron, equipments, and all franchises, as additional security for the prompt payment
3773 of principal and interest of these bonds.

The total debt of the State of Florida is $1,011,756, held by the United States Government, and within the State itself.

All the original documents connected with this loan have been submitted to Messrs. Ashurst, Morris & Co., solcitors, of 6, Old Jewry, London, who have stated that they are fully satisfied that they are in perfect order, and that the bonds are properly issued.

Subscription lists will be simultaneously opened in London, Frankfort, Amsterdam, and Rotterdam, and prospectuses and forms of application can be obtained in London of Messrs.

Copy of the bond.

UNITED STATES OF AMERICA.

No. .] STATE OF FLORIDA. [No. .

It is hereby certified that the State of Florida justly owes to or bearer, one thousand dollars, redeemable in gold coin of the United States at the Florida State agency, in the city of New York, on the first day of January, 1900, with interest thereon at the rate
3774 of eight per centum per annum, payable half yearly at the said Florida State agency, in gold, on the first days of July and January in each year from the date of this bond, and until the principal be paid, on surrendering the proper coupons hereto annexed.

Tallahassee, January 1st, 1870.

{ FLORIDA GREAT SEAL. }

HARRISON REED, *Governor.*
S. B. CONNER, *Treasurer.*

Issued in accordance with the act of the legislature of Florida, approved January 28th, 1870.

Form of coupons.

State of Florida will pay to bearer forty dollars, in gold, at the State agency, in the city of New York, for interest due.
No. |

S. B. CONNER, *Treasurer.*

Indorsement.

STATE OF FLORIDA.

No. .| Thirty-year eight per cent. bond. [$1.000.

3775 Payable January 1st, 1900. Interest payable 1st July and January, in gold, at Florida State agency, in the city of New York.

This bond is one of a series issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company to the extent of $16,000 per mile upon completed road. The State of Florida holding the first mortgage bonds of said railroad company for a like amount as further security to the holder hereof.

HARRISON REED,
Governor of Florida.

In the execution of the foregoing and annexed commission for the examination of witnesses in the cause therein entitled, this exhibit (marked B) was produced and shown to Gideon Maria Boissevain, Frederick William Oewel, Jan Fred. Schutte, P. A. L. Van Ogtrop, A. L. Warfbain, J. H. Warring, A. C. Wertheim, F. H. Ziegebaar and C. C. Boissevain, Dz., and by them deposed unto at the time of their examination by

D. ECKSTEIN,
Commissioner.

3776 C.

Affidavit.

On this first day of March, A. D. 1877, before me, Charles Mueller, United States consul for Amsterdam, and the dependencies thereof, personally appeared Jan Fred. Schutte, of the firm of J. Fred. Schutte & Co., Amsterdam, and made oath in due form of law, and declared that his firm is bona fide holder of one hundred and three bonds 8 per cent. Florida, issued 1870, each bond of d's 1,000, numbered as follows:

7, 51, 89, 127, 179, 267, 291, 354, 386, 395, 424, 447, 457, 471, 480, 495, 539, 562, 580, 587, 674, 675, 677, 727, 742, 758, 790, 792, 813, 820, 974, 1016, 1021, 1088, 1160, 1190, 1191, 1225, 1278, 1281, 1290, 1297, 1373, 1393, 1394, 1448, 1454, 1572, 1582, 1663, 1677, 1748, 1769, 1772, 1799, 1957, 1980, 1990, 1996, 2002, 2018, 2024, 2036, 2166, 2155, 2172, 2206, 2207, 2228, 2238, 2241, 2272, 2283, 2291, 2302, 2303, 2344, 2386, 2389, 2502, 2507, 2537, 2561, 2760, 2763, 2773, 2806, 2821, 2886, 2915, 2936, 2938, 2940, 3032, 3037, 3093, 3141, 3142, 3143, 3148, 3168, 3169,
3777 3182. And also solemnly declare that the said bonds, numbered as above, were purchased by said firm at the market of Amsterdam as an investment.

Further, personally appeared before me, Charles Mueller, United States consul for Amsterdam, the *year* and year above written, H. Van Booven and J. H. Warmsing, and made oath in due form of law that the statements set forth by J. Fred. Schutte, in foregoing affidavit, are true in every particular to their certain knowledge.

J. FRED. SCHUTTE.

W. VAN BOOVEN.
J. H. WARMSING.

Sworn and subscribed to before me the day and year above written.

{ AMERICAN CONSULATE SEAL, AMSTERDAM, HOLLAND. }

CHARLES MULLER,
U. S. Consul.
(J. FRED. SCHUTTE.)

At the execution of the foregoing and annexed commission for the examination of witnesses in the cause therein entitled, this exhibit
3778 (marked C) was produced and shown to Jan Fred. Schutte, and by him deposed unto at the time of his examination by

D. ECKSTEIN,
Commissioner.

D.

To whom it may concern:

Jan Frederik Schutte, Hureugracht, 127 Amsterdam, Kingdom of the Netherlands, owner and holder of four hundred and seven Florida eight per cent. bonds, numbered:

6, 23, 38, 51. 89, 99, 109, 115, 127, 134, 147, 152, 174, 179, 185, 236, 247,
250, 252, 256, 257, 267, 282, 284, 286, 290, 291, 292, 354, 375. 386, 393,
395, 408, 416, 422, 424, 428, 438, 447, 450, 457, 461, 479, 480, 484, 491,
494, 495, 497, 499, 529, 536, 537, 557, 567, 578, 582, 583, 601, 623, 632,
656, 668, 669, 671, 675. 676, 677, 683, 686, 689, 690, 691, 692, 696, 707,
708, 716, 719, 733, 737, 753. 761, 768. 769, 772, 773, 777, 778. 790,
3779 795, 799, 828. 889, 895, 912, 928, 929, 954, 956, 960, 970, 980, 981,
1008, 1014, 1015, 1021, 1024, 1032, 1044, 1065, 1068, 1077, 1088, 1097,
1103, 1113, 1119, 1120, 1130, 1149, 1150, 1164, 1174, 1188, 1190, 1199, 1222,
1237, 1238, 1243, 1256, 1271, 1274, 1275, 1278, 1279, 1281, 1290, 1298, 1303,
1311, 1313, 1315, 1317, 1321, 1329, 1331, 1333, 1326, 1337, 1347, 1348, 1361,
1364, 1369, 1378, 1381, 1382, 1385, 1386, 1387, 1389, 1401, 1405, 1415. 1416,
1417, 1421, 1431, 1439, 1442, 1443, 1447, 1455, 1457, 1461, 1466, 1467, 1470,
1480, 1484, 1505, 1522, 1555, 1567, 1568, 1581, 1582, 1584, 1587, 1594, 1597,
1618, 1619, 1630, 1631, 1641, 1646, 1648, 1654, 1658, 1675, 1677, 1720, 1722,
1723, 1724, 1725, 1730, 1732, 1738, 1748, 1762, 1844, 1851, 1852, 1855, 1861,
1862, 1866, 1875, 1882, 1912, 1915, 1924, 1928, 1933, 1934, 1951, 1954, 1958,
1959, 1982, 1985, 1990, 1991, 1999, 2010, 2018, 2022, 2038, 2039, 2040. 2041,
2049, 2065, 2087, 2088, 2098, 2102, 2120, 2129, 2130, 2135, 2143, 2158, 2176,
2177, 2189, 2197, 2199, 2206, 2209, 2211, 2212, 2221, 2223, 2228, 2238,
3780 2241. 2243, 2255, 2266, 2283, 2290, 2296, 2307, 2326, 2339, 2346, 2366,
2367, 2375. 2382, 2383, 2386, 2389, 2390, 2407, 2427, 2434, 2448, 2454,
2456, 2465. 2467, 2478, 2479, 2495, 2510. 2513, 2521, 2559, 2561. 2571, 2581,
2589, 2596, 2614. 2641, 2644. 2647, 2648, 2658, 2659, 2660, 2666, 2668, 2671,
2680, 2703, 2713, 2716, 2719, 2726, 2731, 2734, 2735, 2736. 2760, 2762, 2763,
2766, 2773, 2774, 2792, 2795. 2800, 2806, 2810, 2812, 2816, 2818, 2821, 2833,
2863, 2881, 2886, 2889, 2892, 2901. 2915, 2930, 2936, 2938, 2940, 2941, 2949,
2952, 2958, 2959, 2967. 2969, 2982, 2985. 2989, 3002, 3003, 3004, 3005, 3012,
3014, 3018, 3020, 3029, 3030, 3032, 3034, 3037, 3038, 3039, 3040, 3042, 3043,
3045, 3048, 3051, 3052, 3054, 3060, 3061, 3067, 3068, 3070, 3072, 3076, 3077,

3078, 3082, 3084, 3086, 3093, 3098, 3104, 3110, 3111, 3115, 3116, 3119, 3123,
3124, 3129, 3132, 3138, 3141, 3142, 3143, 3145, 3148, 3151, 3152, 3153,
3781 3157, 3158, 3164. 3168, 3169, 3170, 3180, 3182, 3189, 3191, 3192. 3193,
3772, 3773, 3774, 3775, have made, constituted, and appointed, and do confirm by these presents, so far as necessary, our former constitution and appointment, making, constituting, and appointing Jacobus Wertheim, LL. D., advocate, of Amsterdam, and Charles D. Willard, solicitor and counsellor at law, at Washington, D. C., United States of America, jointly or separately, as they may deem advisable, my solicitor and attorney, to take such proceedings in the U. S. courts as they, or either of them, may deem best for my protection as a holder and owner of said bonds, and especially to prosecute and to terminate the proceedings instituted and now pending in the U. S. courts for the northern district of Florida, United States of America, under and in the suit commenced by the said Charles D. Willard in the court, entitled J. Fred. Schutte et alii. vs. The Western Division of the Western North Carolina Railroad Company and the Jacksonville, Pensacola and Mo-
3782 bile Railroad Company and others, under which suit so entitled
by Charles D. Willard, as the attorney-in-fact for said complainants, Hon. Joseph P. Bradley, associate justice of the United States Supreme Court, did appoint Col. Calvin H. Allen receiver of the said Jacksonville, Pensacola and Mobile Railroad, on the 14th day of August, A. D. 1877.

The said Jacobus Wertheim and Charles D. Willard, as said solicitors, jointly or separately, as they may determine, are especially hereby authorized and empowered to prosecute said cause to a final hearing, and to obtain and to execute a sale of the Florida Central and of the said Jacksonville, Pensacola and Mobile Railroad, as therein prayed in said bill, and [or] to take such other proceedings for my protection as they may deem best for my interest, hereby ratifying and confirming all that my said solicitors and attorneys, or either of them, may do or cause to be done in the premises, as I could if personally present at the
3783 doing thereof.

Amsterdam, 26th July, 1878.

J. FRED. SCHUTTE.

Witness to signature:
P. EV. BATENBURG.

For legalization of the signature of Jan Fred. Schutte, of the firm of J. Fred. Schutte & Co.

Amsterdam, 26th July, 1878.

{ AMERICAN CONSULATE, }
{ AMSTERDAM, NOTARAL. }

CHARLES MUELLER,
U. S. Consul.

(J. FRED. SCHUTTE.)

At the execution of the foregoing and annexed commission for the examination of witneses in the cause entitled, this exhibit (marked D) was produced and shown to Jan Fred. Schutte, and by him deposed unto at the time of his examination by—

D. ECKSTEIN,
Commissioner.

EXHIBIT E.

List of bonds described in the affidavit of J. F. Schutte, dated August 5th, 1878.

45, 35, 40, 54, 88, 129, 131, 163, 165, 223, 277, 279, 325, 328, 362, 378,

430, 432, 513, 514, 521, 524, 538, 544, 545, 562, 579, 580, 581, 613,
3784 636, 685, 693, 748, 782, 525, 882, 952, 991, 1034, 1115, 1152, 1156,
1161, 1173, 1177, 1180, 1208, 1226, 1288, 1392, 1583, 1585, 1611,
1655, 1660, 1721, 1843.

J. FRED. SCHUTTE.

At the execution of the foregoing annexed commission for the examination of witnesses in the cause therein entitled, this exhibit (marked E) was produced and shown to Jan Fred. Schutte, and by him deposed unto at the time of his examination by—

E. ECKSTEIN,
Commissioner.

EXHIBIT F.

List of bonds described in the affidavit of J. Fred. Schutte, dated August 5th, 1878.

1881, 1921, 1923, 2056, 2101, 2105, 2116, 2150, 2168, 2204, 2257, 2317, 2325, 2426, 2429, 2433, 2464, 2517, 2529, 2552, 2587, 2588, 2625, 2637, 2627, 2077, 2777, 2779, 2784, 2803, 2873, 2895, 2911, 2927, 2944, 2950, 2990, 3122, 3176.

J. FRED. SCHUTTE.

3785 At the execution of the foregoing and annexed commission for the examination of witnesses in the cause therein entitled, this exhibit (marked F) was produced and shown to Jan Fred. Schutte, and by him deposed unto at the time of his examination by

D. ECKSTEIN,
Commissioner.

UNITED STATES OF AMERICA,
Northern district of Florida:

I, Philip Walter, clerk of the United States circuit court, in and for the northern district of Florida, do hereby certify that the foregoing is a true copy of the original cross-interrogatories and exhibits on file in my office.

Witness my hand and the seal of said court, at the city of Jacksonville, in said district, this third day of March, 1879.

[SEAL OF COURT.]

PHILIP WALTER,
Clerk.

3786 *Deposition of Jan Frederik Schutte.*

On the 29th day of March, 1879, the said JAN FREDERIK SCHUTTE, being first duly sworn by the said commissioner (by interpretation of William Anderson, an interpreter specially sworn by the said commissioner, truly and faithfully to interpret the oath and interrogatories to be administered and the answers to be given thereto by the witness), to testify the truth, the whole truth, and nothing but the truth, relative to the cause specified in said commission, made answer to the said interrogatories and cross-interrogatories by interpretation as beforesaid, as follows:

To the first interrogatory, this witness saith: My name is Jan Frederik Schutte, aged 45 years, and I am a commission agent in stocks.

2. To the second interrogatory: At Amsterdam, in Holland.

3. To the third interrogatory: I have been a member of the stock exchange in Amsterdam, since 1858, and have from that date
3787 dealt largely in foreign and domestic securities.

4. To the fourth interrogatory: I know perfectly well that the Florida 8 per cent. State bonds, so called, were sold in Amsterdam, and that the Exhibit A referred to is a correct copy of said bonds.

5. To the fifth interrogatory: The bonds were put upon the market by the banking-houses of Holje & Boissevain, of Amsterdam, and A. J. & M. Milders, of Rotterdam, Holland, upon a printed prospectus issued to the public over their signatures, bearing date December 19th, 1780, a copy of which I herewith annex as part of my answer, printed in Dutch and translated into English, marked J. F. S., No. 1. There were also open for inspection at the banking-house of Holje & Boissevain, at the same time, the act of the legislature of Florida of January 28th, 1870, duly authenticated under the great seal of the State of Florida, authorizing the issue of said bonds; a map issued by the Jacksonville, Pensacola and Mobile Railroad Company, showing the railway as commencing at Jacksonville and running west 250 miles; the opinion
3788 of the supreme court of Florida, showing the legality of the bonds, and various other documents of a like public character.

6. To the sixth interrogatory: No authority from the officers of the stock exchange was necessary.

7. To the seventh interrogatory: I have answered this already.

8. To the eighth interrogatory: In December, 1870, at from 80 to 80½ per cent.; there was a very large number of buyers at such prices, and the bonds passed through many hands at those prices.

To the ninth interrogatory: First at about 80, and afterwards rising as high as about 86 per cent.

10. To the tenth interrogatory: They declined as soon as the coupon due on the 1st of July, 1873, was not paid.

11. To the eleventh interrogatory: I know only what was stated in the prospectus and exhibited on the map, open for inspection at Holje & Boissevain's at the time when the bonds were first put
3789 on the market. I recollect perfectly well that 250 miles were said to be completed, and to belong to the Jacksonville, Pensacola and Mobile Railroad Company, which the map I have mentioned very clearly showed.

12. To the twelfth interrogatory: I have already stated all I know about this.

13. To the thirteenth interrogatory: I never heard of any such statement until after default in payment of the coupon in July, 1873.

14. To the fourteenth interrogatory: The bonds were considered a good investment, with double security, viz: the State of Florida and the railway, 250 miles long and in operation, as represented, and I never heard that the Jacksonville, Pensacola and Mobile Railroad Company had not the right to sell or depose of said bonds.

15. To the fifteenth interrogatory: This I have already answered.

16. To the sixteenth interrogatory: I never heard anything about this.

17. To the seventeenth interrogatory: Such payments were
3790 made semi-annually until default; each coupon was forty dollars and payable in New York. We sold the coupons to the bankers and brokers, who collected them, because no notice was given in Holland.

18. To the eighteenth interrogatory: Holje and Boissevain informed the public in Holland by advertisement in the financial papers that the

governor of Florida had appointed an agent in New York to pay such interest. The publication of such notice confirmed the confidence in the bonds.

19. To the nineteenth interrogatory: I am one of the complainants, and know all my co-sufferers, and we join together to vindicate our rights against robbers who stole our property. I would never have joined people unless I knew they were of high standing on the exchange of Amsterdam.

20. To the twentieth interrogatory: I know that a large number of the complainants purchased the bonds and did so believing they
3791 were making a good investment. I know it because some of them bought at the exchange when I was present.

21. To the twenty-first interrogatory: I purchased and sold for my own account, and for others. I did so at several times, and at various prices, from 80 per cent. downward. I do not remember the names of the persons for whom I purchased.

22. To the twenty-second interrogatory: They were introduced in the market in the manner I have already stated.

23. To the twenty-third interrogatory: I never heard of any such claim.

24. To the twenty-fourth interrogatory: I never heard of any such notice or claim.

25. To the twenty-fifth interrogatory: Had such a notice been published, it would have been considered a forgery, but if confirmed in an authentic way, the bonds would have lost all credit in the market.

26. To the twenty-sixth interrogatory: I have already said that the law respecting the bonds was opened for inspection at the bank-
3792 ing house of Holje & Boissevain, together with other documents, showing the validity of the same, and the opinion of the judges of the supreme court of Florida, the governor of Florida, and others, at and during the time of the sales.

Final. To the final interrogatory: I have nothing further to add.

Cross-examined by and in behalf of the defendants, the Florida Central Railroad Company.

1. To the first cross interrogatory: I have already said all I know about this.

2. To the second cross-interrogatory: I have never heard anything about this before.

3. To the third cross-interrogatory: I never before heard of any such person as F. W. Brevard, or of the person to whom such alleged letter purports to have been sent, and have never before heard such a matter mentioned.

4. To the fourth cross-interrogatory: This is the first time I
3793 have heard of the impeachment of the governor of Florida, or that I have heard it spoken of.

5. To the fifth cross-interrogatory: No person was ever to my knowledge expelled, or required to resign, becaus' of his connection with the sale of the said Florida bonds.

6. To the sixth cross-interrogatory: I never heard any such telegrams spoken of before.

Cross-examined by and in behalf of the defendants, The Western Division of the Western North Carolina Railroad Company, et al.

1. To the first cross interrogatory: I am a commission agent in stocks, and a member of the firm of J. Fred Schutte & Company, at Amster

dam, Holland, since 1858, and became a member of the stock exchange in the said year. My firm deals in foreign and domestic stocks and bonds.

2. To the second cross-interrogatory: First heard of the Florida 8 per cent. State bonds, so called, in December, 1870, through the prospectus issued to the public in Holland by the banking house of Holje &
3794 Boissevain, of Amsterdam, and A. J. and M. Milders, of Rotterdam. The bonds referred to were represented to be secured by a line of complete railway, commencing at Jacksonville, Florida, running west to Quincy, with branches at Monticello and Tallahassee, and 250 miles long, being then actually in operation, as shown by a printed map duly published and exhibited at said banking houses at the time such prospectus was issued, in December, 1870, together with other documents already spoken of in my previous answers.

3. To the third cross-interrogatory: It would depend on circumstances.

4. To the fourth cross-interrogatory: I know that Holje & Boissevain and A. J. and M. Milders were the bankers, because the prospectus spoken of stated to that effect, and it was so advertised in several financial papers in Holland. I had no connection with putting the said loan on the market, excepting in buying said bonds for many of my cus-
3795 tomers, by their orders, in the regular course of business as well as on my own account. My knowledge was acquired in the manner I have already stated.

5. To the fifth cross-interrogatory: I have no knowledge of John Collinson or of attempts made in England to sell the bonds. I believe the prospectus was printed in Amsterdam. I have already spoken of such papers as I saw respecting the loan, but have no copies thereof. The only prospectus I ever saw or heard of is the one issued by Holje & Boissevain and A. J. and M. Milders, December 19, 1870.

6. To the sixth cross-interrogatory: I never saw any such statements before the bonds were sold, but saw the opinion I have already stated.

7. To the seventh cross-interrogatory: I know nothing about any telegram sent or received by Holje & Boissevain in respect to these bonds, or of any letter from E. M. L'Engle, and have never before heard of any such person as L'Engle.

8. To the eighth cross-interrogatory: I only know that the bonds
3796 were put on the market in Holland, as I have already stated.

9. To the ninth cross-interrogatory: I knew that said bonds wers sold in the market regularly like other securities, first at 80 per cent., and that they afterwards rose as high as 85 or 86 per cent. I know nothing about Hopkins & Co. or Collinson. I bought my bonds in the market in the usual and regular way.

10. To the tenth cross-interrogatory: I know nothing about the payment of the interest, except what I have already stated.

11. To the eleventh cross-interrogatory: I only know that the bonds varied in price from time to time, like other securities did.

12. To the twelfth cross-interrogatory: I have already stated all I know on this matter. I had never heard of any such company as The Florida Central Railroad Company until the present litigation.

13. To the thirteenth cross-interrogatory: I have already answered all I know about the prospectus issued by Holje & Boissevain
3797 and A. J. and M. Milders.

14. To the fourteenth cross-interrogatory: I have already answered this question.

15. To the fifteenth cross-interrogatory: I have already answered as

fully as possible that I know nothing about where the interest money was obtained from.

16. To the sixteenth cross-interrogatory: I know that such a committee was appointed, but that committee no longer exists, the bondholders having directly authorized their attorneys, Jacobus Wertheim and C. D. Willard, to act for them in all proceedings in America which they may deem proper to take for their interest and protection.

17. To the seventeenth interrogatory: I know that such an agreement, called the "Memorandum Plan," dated January 12th, 1877, was entered into, and that the same was and is now approved of by the bondholders. I believe the Schedule "D" is a correct copy of the same, and that The Jacksonville, Pensacola and Mobile Railroad Company was organized as required by said "Memorandum Plan."

18. To the eighteenth cross-interrogatory: I know that the
3798 holders of said State bonds expect to pay their attorneys, Wertheim and Willard, as they have agreed to, for their services.

19. To the nineteenth cross-interrogatory: I am interested as an owner of bonds, as I have stated.

20. To the twentieth cross-interrogatory: I have known Dr. Wertheim for more than twenty-three years. I know Mr. Willard and Mr. Sherwin only since the present legal proceedings commenced. I have talked with my attorneys, Wertheim and Willard, about this suit and about the testimony to be given by me; and Dr. Wertheim has read over to me both the direct interrogatories and the cross-interrogatories proposed to me. Dr. Wertheim requested me to give my testimony in this suit.

21. To the twenty-first cross-interrogatory: The proceedings of the 22d of September, 1876, were taken at the instance of my then sole attorney, Dr. Wertheim, and met my approval.

22. To the twenty-second interrogatory: I am one of the com-
3799 plainants in this suit, and I am also the person who made the affidavits and powers of attorney referred; I believe that the papers marked C and D as well as those marked E and F are correct copies, and that they are true.

23. To the twenty-third interrogatory: I bought such bonds in the regular course of business in the open market, at prices varying from 80 per cent. downwards; but it is impossible for me to state from whom, or the dates when they were so purchased by me.

24. To the twenty-fourth cross-interrogatory: I bought the bonds which I now hold and own without any regard to their number, never even looking at their numbers, and knowing no distinction in the bonds by their numbers. I own and now hold the bonds as identified by numbers in the said powers of attorney and affidavits, and bought them all in regular course of business.

25. To the twenty-fifth cross-interrogatory: I know only at what prices and in what way I myself bought bonds. I know nothing
3800 about what other people paid, except from the daily quotations on 'change. I know nothing of the dealing of Collinson or Boissevain, except what I have already stated.

26. To the twenty-sixth cross-interrogatory: I have never made any concealments as to my dealings in said bonds. I bought my bonds, and I do not know whether Wertheim, or Willard, or Sherwin has any bonds. No bonds were ever placed in my hands by any one of them.

27. To the twenty-seventh cross-interrogatory: The bonds mentioned were only temporarily represented by Boissevain and Den Tex, as mem-

bers of a committee, acting as trustees, which committee was discharged not long ago.

28. To the twenty-eighth cross-interrogatory: I have already answered this question as fully as I can.

29. To the twenty-ninth cross-interrogatory: I know nothing of that sort.

(Signed) J. FRED SCHUTTE.

ALEX. W. ANDERSON.

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness this
3801 29th day of March, 1879, before

{ SEAL AM. CONSULATE, AMSTERDAM. } D. ECKSTEIN,
U. S. Consul and Commissioner.

Deposition of Andrea Godewyk Worfbain.

And on the first day of April, 1879, the said ANDREA GODEWYK WORFBAIN, being first duly sworn by said commissioner to testify the truth, the whole truth, and nothing but the truth relative to the cause specified in the said commission, made answer to the said interrogatories and cross-interrogatories, as follows, viz:

1. To the first interrogatory this witness saith: My name is Andrea Godewyk Worfbain; my age is forty-seven years; I am chairman of the board of the union for the stock exchange and stockbroker.

2. To the second interrogatory: At Amsterdam.

3802 3. To the third interrogatory: Yes. I was elected in December, 1871, member of the committee of the stock exchange, and also engaged and acquainted with the purchase and sale of domestic and foreigh securities.

4. To the fourth interrogatory: Yes. I know that they were put into the market, and believe that the copy shown me is a true copy of the said bond.

5. To the fifth interrogatory: Yes. Messrs. Holje & Boissevain, at Amsterdam, and Messrs. A. J. and M. Milders, at Rotterdam, put these bonds on the market, and they issued a prospectus, dated 19th December, 1870, and laid for public inspection several documents and a map on which the road was indicated; and reliance was placed in the correctness of the statements put before the public.

6. To the sixth interrogatory: No authority was given; none was necessary.

7. To the seventh interrogatory: I have already answered this question in my answer to the preceeding interrogatory.

3803 8. To the eighth interrogatory: I have given, with Mr. T. A. L. Van Ogtrop, deputy member, on the 5th of December, 1877, a certificate sworn to before the United States consul, which answers completely your question.

9. To the ninth interrogatory: The certificate referred to answers this question.

10. To the tenth interrogatory: I have again to refer to my certificate in answer to this question.

11. To the eleventh interrogatory: I had no other information than those received from the bankers Holje & Boissevain on their prospectus and other documents published by them.

12. To the twelfth interrogatory: I must refer to my previous answer.

13. To the thirteenth interrogatory: I have not heard anything about it.

14. To the fourteenth interrogatory: I have never heard anything about it.

15. To the fifteenth interrogatory: This question is answered in my certificate I before referred to.

16. To the sixteenth interrogatory: I' answer to this question I must refer to the prospectus issued in Amsterdam.

3804 17. To the seventeenth interrogatory: The semi-annual coupons of 40 dollars each were sold by the owners and bought by bankers who collected them in America.

18. To the eighteenth interrogatory: No publication was given in Holland to my knowledge.

19. To the nineteenth interrogatory: I know some of the complainants, not all of them; those whom I know are respectable persons and of good standing.

20. To the twentieth interrogatory: I cannot exactly answer this question, but I believe these persons bought those bona fide as an investment.

21. To the twenty-first interrogatory: I may have purchased for account of my customers, but don't remember price and number.

22. To the twenty-second interrogatory: They were first offered to the public by subscription, and the balance may have been sold in the open market.

23. To the twenty-third interrogatory: I don't know anything, nor did I ever receive any information about the matters here questioned.

3805 24. To the twenty-fourth interrogatory: It would has destroyed the confidence of the public in those bonds.

25. To the twenty-fifth interrogatory: It would have injured if not entirely stopped the sale.

26. To the twenty-sixth interrogatory: The bankers have advertised that the laws of Florida referring to this loan laid for public inspection at their office. As to the particulars of what those laws were I do not remember.

Final. To the final interrogatory: I have nothing to add, but I wish to confirm, as part of my testimony, the statement made by me on the 5th of December, 1877, before the United States consul at Amsterdam.

Cross-examined by and in behalf of the defendant, the Florida Central Railroad Company:

1. To the first cross-interrogatory the witness saith: I refer to my statement made the 5th of December, 1877, before the United States consul at Amsterdam.

3806 2. To the second cross-interrogatory: I never saw any such documents as Exhibit A, now produced and shown to me, nor did I ever hear of it.

3. To the third cross-interrogatory: I never knew or heard of any such communication as now exhibited to me marked "B."

4. To the fourth cross-interrogatory: I knew nothing of any such articles of impeachment against the governor of Florida as contained in Exhibit C.

5. To the fifth cross-interrogatory: Nobody has been expelled or in any other way punished on account of these Florida bonds business.

6. To the sixth cross-interrogatory: I don't know anything about such telegraphic correspondence.

Cross examined by and on behalf of the defendant, the Western Division of the Western North Carolina Railroad Company et al.:

1. To the first cross-interrogatory this witness saith: I have answered this question already in answer to the direct interrogatories.

3807 2. To the second cross-interrogatory: I had my information from the prospectus issued at the time by Holje & Boissevain and A. J. and M. Milders.

3. To the third cross-interrogatory: I cannot answer this question.

4. To the fourth cross-interrogatory: Only by the prospectus issued by Holje & Boissevain. I had no connection whatever with the placing of the bonds on the market.

5. To the fifth cross-interrogatory: I don't know that the Florida State bonds were placed at this market after they had failed in England. I only know of the prospectus issued by Holje & Boissevain.

6. To the sixth cross-interrogatory: I never heard of any charges of fraud in the issue of those bonds at the time they were issued and placed on the market.

7. To the seventh cross-interrogatory: I am utterly ignorant of any knowledge of the matters I am questioned about in this interrogatory.

8. To the eighth cross-interrogatory: I have to refer, in answer to this question, to the testimony given before the United States consul 5th December, 1877.

3808 9. To the ninth cross-interrogatory: As to the matters I am questioned on in this cross-interrogatory, I know nothing whatever. I had no connection with any such syndicate, if it ever existed.

10. To the tenth cross-interrogatory: I don't know anything about it.

11. To the eleventh cross-interrogatory: I know that such things happen, but as to whether any such practice prevailed in this instance, I cannot say.

12. To the twelfth cross-interrogatory: I never heard of any Florida Central Company.

13. To the thirteenth cross-interrogatory: I know nothing of the failure of the Florida bonds in the English market, before they were put on the market of Amsterdam, and I know of no other prospectus than that issued in Holland.

14. To the fourteenth cross-interrogatory: I never owned, nor do I now own, any Florida State bonds.

15. To the fifteenth cross-interrogatory: I have no knowledge of the matters I am questioned about in this cross-interrogatory.

16. To the sixteenth cross-interrogatory: Such a committee was formed, and I have no knowledge of its going out of existence.

3809 17. To the seventeenth cross-interrogatory: I don't know anything about such memorandum plan arrangements.

18. To the eighteenth cross-interrogatory: I don't know anything about these matters.

19. To the nineteenth cross-interrogatory: I am not in the least or anywise interested therein.

20. To the twentieth cross-interrogatory: I knew Mr. Wertheim for several years, and have been introduced to Mr. Charles D. Willard, and those gentlemen asked me to give my testimony.

21. To the twenty-first cross-interrogatory: I never gave such power of attorney to Frank A. Sherwin.

(Signed) A. G. WORFBAIN.

Sworn and subscribed before me, this first day of April, 1879.
[SEAL OF CONSUL'S OFFICE.] D. ECKSTEIN,
U. S. Consul and Commissioner.

Deposition of Johannes Herman Warring.

And on this 1st day of April, 1879, the said JOHANNES HERMAN WARRING, first duly sworn by the said commissioner (by inter-
3810 pretation of Alexander William Anderson, an interpreter specially sworn by the said commissioner, truly and faithfully to interpret the oath and interrogatories to be administered to and the answers to be given thereto, by the witness), to testify the truth, the whole truth, and nothing but the truth, relative to the cause specified in said commission, made answer to the said interrogatories and cross-interrogatories, by interpretation, as aforesaid, as follows:

1. To the first interrogatory, this witness saith: My name is Johannes Herman Warring. I am 31 years of age, and commission agent in stocks at Amsterdam.

2. To the second interrogatory: At Amsterdam.

3. To the third interrogatory: I was commission agent in stocks and member of the stock exchange at Amsterdam, and I was engaged in the purchase and sale of bonds and other domestic and foreign securities dealt in on the bourse of Amsterdam.

3011 4. To the fourth interrogatory: Yes; I know that certain bonds, called 8 per cent. Florida bonds, were issued by authority of a law of the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company, of which bonds the Exhibit "A" is a copy.

5. To the fifth interrogatory: The bonds referred to were introduced on the market of Amsterdam by the banking houses of Holje & Boissevain, of Amsterdam, and A. J. and M. Milders, of Rotterdam, according to a prospectus issued and signed by them on the 19th December, 1870. Various authenticated documents, as well as a map showing a continuous line of 250 miles railroad, were laid down for public inspection at the office of Holje & Boissevain. I believe that the prospectus and copies of the map were sent to several firms of brokers.

6. To the sixth interrogatory: At the time of floating the loan there existed no board of directors of the bourse whose authority was required.

7. To the seventh interrogatory: I have answered this in reply
3812 to the foregoing interrogatory.

8. To the eighth interrogatory: In December, 1870, the said bonds were first sold in the open market at about 80½ per cent.; there were large dealings in them by nearly all the stock brokers, and the bonds went from hand to hand with numerous buyers.

9. To the ninth interrogatory: I have already stated the price at which the bonds were at first sold; the price varied from time to time; I believe the highest figure was about 85 per cent.

10. To the tenth interrogatory: Yes; the price declined in 1873, when it was known that the July coupon remained unpaid.

11. To the eleventh interrogatory: I know nothing more than was stated in the prospectus issued by Holje & Boissevain, and A. J. and M. Milders, and shown in the map and other documents laid down for public inspection. I positively know that the bonds were issued on a line of 250 miles of railroad in operation.

3813 To the twelfth interrogatory: I have already fully answered this question.

13. To the thirteenth interrogatory: I state positively that no private or public information was ever given that any portion of the line of railroad indicated in the prospectus, and shown on the map laid down for public inspection, belonged to or was claimed to be owned by a corporation called the Florida Central Railroad Company. No one ever heard anything of the existence of the corporation called "The Florida Central Railroad Company" until the litigation commenced, after the default in the payment of interest.

14. To the fourteenth interrogatory: The bonds were bought because they were considered, according to the prospectus and other documents laid down for inspection at Holje & Boissevain's, to be a first-class security, and because the investment had a double guarantee, viz., the State of Florida and the railway property. We never got any public or private notice from the president, directors, or stockholders of the Florida Central Railroad Company, of any kind whatever, before July, 1873. We never heard that such a company did exist.

3814 15. To the fifteenth interrogatory: Yes; the bonds decline because the coupons which fell due *was* not paid.

16. To the sixteenth interrogatory: I heard nothing but what was stated in the prospectus and other documents to which I have referred; it was afterwards made known that the governor of the State of Florida had appointed a financial agency, and we believed that the money for the interest was derived from the State treasurry.

17. To the seventeenth interrogatory: The interest was paip semiannually, each coupon with $40, until July, 1873, when the default took place; no public notice of the payment of the coupons was given, because such payment was stipulated by the prospectus to be made at New York.

18. To the eighteenth interrogatory: I have already answered this question as fully as I am able.

19. To the nineteenth interrogatory: I know nearly all the complainants since many years, and they are all, as far as I know, of high
3815 standing, and well deserve reputation for honesty.

20. To the twentieth interrogatory: I do not know anything as to the time when and the prices at which the complainants bought their bonds: but what I do know is that they bought them in the open market and for cash down.

21. To the twenty first interrogatory: I do not own a single Florida bond; I bought at several times and at various prices, for my customers, whenever I got orders for these bonds.

22. To the twenty-second interrogatory: The bonds were sold in the open market.

23. To the twenty-third interrogatory: I never heard of any claim as herein referred to, either by private or public notice.

24. To the twenty-fourth interrogatory: I never saw in any newspaper or in any other manner of publication in Holland, by the president, directors, or stockholders of the Florida Central Railroad Company, that any part of the road belonged to them, or that the bonds referred to had been illegally issued. Such a publication, had it been made,
3816 would have had a bad influence on the value of these bonds.

25. To the twenty-fifth interrogatory: If such notice had been given, the bonds would have lost all value and nobody would have bought them.

26. To the twenty-sixth interrogatory: If I recollect well, I think t a copy of the law of the State of Florida mentioned in the bonds was amongst the papers laid down for public inspection at Holje & Boissevain's office.

Sworn and subscribed before me, this first day of April, 1879.
[SEAL OF CONSUL'S OFFICE.] D. ECKSTEIN,
U. S. Consul and Commissioner.

Deposition of Johannes Herman Warring.

And on this 1st day of April, 1879, the said JOHANNES HERMAN
WARRING, first duly sworn by the said commissioner (by inter-
3810 pretation of Alexander William Anderson, an interpreter spec-
ially sworn by the said commissioner, truly and faithfully to interpret the oath and interrogatories to be administered to and the answers to be given thereto, by the witness), to testify the truth, the whole truth, and nothing but the truth, relative to the cause specified in said commission, made answer to the said interrogatories and cross-interrogatories, by interpretation, as aforesaid, as follows:

1. To the first interrogatory, this witness saith: My name is Johannes Herman Warring. I am 31 years of age, and commission agent in stocks at Amsterdam.

2. To the second interrogatory: At Amsterdam.

3. To the third interrogatory: I was commission agent in stocks and member of the stock exchange at Amsterdam, and I was engaged in the purchase and sale of bonds and other domestic and foreign securi-
ties dealt in on the bourse of Amsterdam.

3011 4. To the fourth interrogatory: Yes; I know that certain
bonds, called 8 per cent. Florida bonds, were issued by authority of a law of the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company, of which bonds the Exhibit "A" is a copy.

5. To the fifth interrogatory: The bonds referred to were introduced on the market of Amsterdam by the banking houses of Holje & Boissevain, of Amsterdam, and A. J. and M. Milders, of Rotterdam, according to a prospectus issued and signed by them on the 19th December, 1870. Various authenticated documents, as well as a map showing a continuous line of 250 miles railroad, were laid down for public inspection at the office of Holje & Boissevain. I believe that the prospectus and copies of the map were sent to several firms of brokers.

6. To the sixth interrogatory: At the time of floating the loan there existed no board of directors of the bourse whose authority was required.

7. To the seventh interrogatory: I have answered this in reply
3812 to the foregoing interrogatory.

8. To the eight' interrogatory: In December, 1870, the said bonds were first sold in the open market at about 80½ per cent.; there were large dealings in them by nearly all the stock brokers, and the bonds went from hand to hand with numerous buyers.

9. To the ninth interrogatory: I have already stated the price at which the bonds were at first sold; the price varied from time to time; I believe the highest figure was about 85 per cent.

10. To the tenth interrogatory: Yes; the price declined in 1873, when it was known that the July coupon remained unpaid.

11. To the eleventh interrogatory: I know nothing more than was stated in the prospectus issued by Holje & Boissevain, and A. J. and M. Milders, and shown in the map and other documents laid down for public inspection. I positively know that the bonds were issued on a
line of 250 miles of railroad in operation.

3813 To the twelfth interrogatory: I have already fully answered
this question.

13. To the thirteenth interrogatory: I state positively that no private or public information was ever given that any portion of the line of railroad indicated in the prospectus, and shown on the map laid down for public inspection, belonged to or was claimed to be owned by a corporation called the Florida Central Railroad Company. No one ever heard anything of the existence of the corporation called "The Florida Central Railroad Company" until the litigation commenced, after the default in the payment of interest.

14. To the fourteenth interrogatory: The bonds were bought because they were considered, according to the prospectus and other documents laid down for inspection at Holje & Boissevain's, to be a first-class security, and because the investment had a double guarantee, viz., the State of Florida and the railway property. We never got any public or private notice from the president, directors, or stockholders of the Florida Central Railroad Company, of any kind whatever, before July, 1873. We never heard that such a company did exist.

3814 15. To the fifteenth interrogatory: Yes; the bonds decline because the coupons which fell due *was* not paid.

16. To the sixteenth interrogatory: I heard nothing but what was stated in the prospectus and other documents to which I have referred; it was afterwards made known that the governor of the State of Florida had appointed a financial agency, and we believed that the money for the interest was derived from the State treasurry.

17. To the seventeenth interrogatory: The interest was paip semiannually, each coupon with $40, until July, 1873, when the default took place; no public notice of the payment of the coupons was given, because such payment was stipulated by the prospectus to be made at New York.

18. To the eighteenth interrogatory: I have already answered this question as fully as I am able.

19. To the nineteenth interrogatory: I know nearly all the complainants since many years, and they are all, as far as I know, of high standing, and well deserve reputation for honesty. 3815

20. To the twentieth interrogatory: I do not know anything as to the time when and the prices at which the complainants bought their bonds: but what I do know is that they bought them in the open market and for cash down.

21. To the twenty first interrogatory: I do not own a single Florida bond; I bought at several times and at various prices, for my customers, whenever I got orders for these bonds.

22. To the twenty-second interrogatory: The bonds were sold in the open market.

23. To the twenty-third interrogatory: I never heard of any claim as herein referred to, either by private or public notice.

24. To the twenty-fourth interrogatory: I never saw in any newspaper or in any other manner of publication in Holland, by the president, directors, or stockholders of the Florida Central Railroad Company, that any part of the road belonged to them, or that the bonds referred to had been illegally issued. Such a publication, had it been made, would have had a bad influence on the value of these bonds. 3816

25. To the twenty-fifth interrogatory: If such notice had been given, the bonds would have lost all value and nobody would have bought them.

26. To the twenty-sixth interrogatory: If I recollect well, I think t a copy of the law of the State of Florida mentioned in the bonds was amongst the papers laid down for public inspection at Holje & Boissevain's office.

Final. To the final interrogatory: I have nothing further to add.

Cross-examined by and in behalf of the defendants The Florida Central Railroad Company:

1. To the first cross-interrogatory: I have already answered this as fully as I know.

2. To the second cross-interrogatory: I have never before heard anything about what is spoken of in this question.

3. To the third cross-interrogatory: I have never before heard anything about the matter mentioned in this interrogatory.

3817 4. To the fourth cross-interrogatory: I never heard of what is named and spoken of in this question till I read about it in the newspapers, after the non-payment of the coupon due in July, 1873, became known.

5. To the fifth cross-interrogatory: No one was ever expelled from or requested to resign as member of the stock exchange in Amsterdam, because of his connection with the sale of Florida bonds, but I do believe that if John Collinson were to appear on 'change here and be known, he would very soon be expelled and put out.

6. To the sixth cross-interrogatory: I have never before in any way heard about this.

Cross examined by and in behalf of the defendants The Western Division of the Western North Carolina Railroad Company et al.:

1. To the first interrogatory: I have been a member of the stock exchange of Amsterdam for the last seven years. I deal in stock and bonds.

3818 2. To the second cross-interrogatory: I have already answered this as fully as I can.

3. To the third cross interrogatory: Such bonds are worth what people will give for them; the price would depend on circumstances.

4. To the fourth cross-interrogatory: I have already stated all connection I ever had with such bonds.

5. To the fifth cross interrogatory: I only saw the prospectus issued December 19, 1870, and the other documents which Holje & Bossevain and A. J. and M. Milders had made public; knew nothing about Collinson.

6. To the sixth cross-interrogatory: Before the bonds were sold I never heard anything about this.

7. To the seventh cross-interrogatory: Never were such telegrams shown to me or brought to my knowledge, and I know nothing about them.

8. To the eighth cross-interrogatory: I know nothing about the disposal of the bonds of Hopkins & Co. and Collinson. I know only that the bonds were sold by Holje & Boissevain and A. J. and M.
3819 Milders. I never paid any attention to the numbers of the bonds, and knew no distinction in the numbers above or below 2800.

9. To the ninth cross-interrogatory: I know nothing about illegality or fraud in respect of these bonds; they were sold regularly in the open market.

10. To the tenth cross-interrogatory: I never heard anything of this kind, and never thought so.

11. To the eleventh cross-interrogatory: I only executed the orders of my customers, and have never speculated in Florida bonds.

12. To the twelfth cross-interrogatory: I have already stated all I know about this; I have never heard of a Florida Central Railroad Company.

13. To the thirteenth cross interrogatory: I have already answered, as regards this question, that the prospectus of December 19th, 1870, issued by Holje & Boissevain and A. J. and M. Milders is the only one I ever knew or heard of.

14. To the fourteenth cross-interrogatory: I do not own a single Florida bond.

3820 15. To the fifteenth cross interrogatory: I know the interest was paid up to and including January 1st, 1873, and always thought the money came from the treasurer of the State of Florida, which is all I know.

16. To the sixteenth cross-interrogatory: A committee was appointed by the bondholders for their protection after the default had been made in the payment of the coupon due the 1st of July.

17. To the seventeenth cross interrogatory: I only know that the "memorandum plan" was recommended to be accepted by Dr. Wertheim, the counsel for the bondholders, and I learned afterward from him at a public meeting that the Jacksonville and Mobile Railroad Company was duly formed. I may say that the bondholders were pleased with the memorandum plan.

18. To the eighteenth cross-interrogatory: I know nothing about this.

19. To the nineteenth cross interrogatory: I am not myself principally interested, but only for my clients in order that they make good their losses by getting their bonds paid.

3821 20. To the twentieth cross-interrogatory: I have known Dr. Wertheim for many years, but I do not know Mr. Sherwin. I have met Mr. Willard at Dr. Wertheim's. Dr. Wertheim requested me to give testimony in this cause, and read the interrogatories and cross-interrogatories to me.

21. To the twenty-first cross-interrogatory: I never executed such authority to anybody. I know nothing about what is spoken of in this question.

J. H. WARRING.

ALEX. W. ANDERSON.

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this 1st day of April, 1879, before

D. ECKSTEIN,
U. S. Consul & Commissioner.

CITY OF AMSTERDAM,
Kingdom of the Netherlands, to wit:

3822 I, the undersigned, David Eckstein, United States consul and the commissioner named in the hereunto annexed commission and instruction, do hereby certify that the said commission was executed, and the testimony of the following named witnesses, namely, Gideon Maria Boissevain, Frederick Willem Oewel, Jan Fredrick Schutte, Petrus Antonious Ludovicus Van Ogtrop, Andries Lodewyk Worfbain, Johannes Herman Warring, Abraham Carel Wertheim, Frederick Hendrick Ziegelaar, and Edward Constatine Boissevain, Dzn., taken before me at the United States consulate, in the city of Amsterdam, at the time following, viz: the taking of the said testimony was commenced on the 26th day of March, 1879, and concluded on the fourteenth day of April, 1879. That the said testimony was taken in pursuance and by virtue of the authority and requirements of the said commission and instructions, and upon the interrogatories and cross-interrogatories which are hereunto attached and herewith returned, to be used in a certain cause pending in the United States circuit court of the northern 3823 district of Florida, in equity, wherein Jan Fredrick Schutte, Jan Prins, Adrianus Prins, and others are complainants, against the Western Division of the Western North Carolina Railroad Company and others, defendants. That each of the trustees, before examination was duly sworn by me to testify the truth, the whole truth, and nothing but the truth relative to the cause specified in the said commission; that neither of the parties to the cause specified in the said commission was present or represented by counsel at the taking of the said depositions; that the said witnesses appeared before me, one at a time, and was separately examined, and that the interrogatories and cross-interrogatories were propounded to them, and their answers thereto returned in the English language, excepting as to the witnesses Jan Frederick Schutte and Johannes Herman Warring, who were examined through a sworn interpreter; that the said witnesses made use of written memoranda, prepared beforehand, to which they referred in giving their testi- 3824 mony, and that the reason and object for so doing they stated and explained to be that it served them in giving their testimony more intelligently, in proper language, and saved time, to them a valuable consideration; that the said testimony was correctly taken and reduced to writing by Alexander H. Anderson, British vice-consul in this city, excepting the testimony of Frederick Willem Oewel and Andreas Lodewyk Worfbain, which was reduced to writing by August S. Doceu, clerk at United States consulate, both disinterested persons, in my presence and under my directions; that the testimony of each of the several witnesses was carefully read to them respectively by me, and subscribed by each of them in my presence, and that I, the said commissioner, am not of kin to either party to the said cause, or interested therein.

Dated at Amsterdam, this fourth day of April, A. D. 1879.

D. ECKSTEIN,
U. S. Consul and Commissioner.

3825 *Deposition of Edward Constantin Boissevain, Dzn.*

And the said EDWARD CONSTANTIN BOISSEVAIN, Dz., being first duly sworn by the said commissioner, on this 4th day of April, 1879, to testify the truth, the whole truth, and nothing but the truth relative to the cause specified in the said commission, made answer to the said interrogatories and cross-interrogatories as follows, viz:

1. To the first interrogatory this witness saith: My name is Edward Constantin Boissevain, Danielzoon (the son of Daniel); my age, thirty-eight years. I am a stock-broker.
2. To the second interrogatory: At Amsterdam, Holland.
3. To the third interrogatory: I was engaged in and acquainted with the dealings in foreign and domestic bonds.
4. To the fourth interrogatory: Yes.
5. To the fifth interrogatory: Holje & Boissevain and A. J. & M. Milders put the bonds on the market; Holje & Boissevain and A. J. & M. Milders issued a prospectus, and laid down for public inspection several documents, and a map showing the line of road to an extent of two hundred and fifty miles, lines in operation from Jacksonville 3826 west, in Florida. The prospectus was published also in the lead-

ing financial paper in Holland, in the latter part of December, 1878.

6. To the sixth interrogatory: No authority was given, to my knowledge.

7. To the seventh interrogatory: This I have just answered.

8. To the eighth interrogatory: In December, latter part, 1870, the bonds were sold at the market at the price of eighty per cent. The dealings in said bonds at that time were general among a large class of buyers and also publicity. The bonds changed hands very frequently, and the buyers were numerous.

9. To the ninth interrogatory: The bonds first sold at eighty per cent., rose as high as eighty six per cent., and prices varied from time to time.

10. To the tenth interrogatory: Yes; they declined when the July coupon, in 1873, was not paid.

11. To the eleventh interrogatory: I know only what was stated by the prospectus and the map already mentioned, i. e., that the railroad was constructed two hundred and fifty miles, and in operation, commencing at Jacksonville west, inlcuding branches.

12. To the twelfth interrogatory: I understood at the time that
3827 the railroad spoken of was an additional security of the State
bonds; an authenticated copy of the act of legislature of Florida so stated, which the bankers selling the bonds have exhibited and made publicly known.

13. To the thirteenth interrogatory: I never before heard anything about it.

14. To the fourteenth interrogatory: I bought the bonds, relying on what was said in the prospectus and shown on the map and in other documents exhibited at the time by the bankers selling the bonds being true, and also believing that the Jacksonville, Pensacola and Mobile Railroad Company owned the road spoken of. I have never heard of any claim to the contrary, until the present litigation.

15. To the fifteenth interrogatory: Yes; the bonds declined because the July coupon, 1873, was not paid at maturity.

16. To the sixteenth interrogatory: All I know about this is that the bankers who sold the bonds here gave public notice in the papers that the governor of Florida had appointed an agent in New York City to pay the interest. I know not where the money had to come from.

17. To the seventeenth interrogatory: The payment of interest was
semi annually until the default spoken of. Each coupon was $40,
3828 payable at New York.

18. To the eighteenth interrogatory: The fact that such agent had been appointed by the governor of Florida, and that such payment of interest had been made, strengthened the credit of the bonds. I have already said that confidence was maintained in the bonds in consequence of that official document.

19. To the nineteenth interrogatory: I know many of them, and also that they are of high respectability and credit.

20. To the twentieth interrogatory: I believe such people, like myself, bought these bonds in good faith.

21. To the twenty-first interrogatory: Yes; I bought, on or about the 22d of December, 1870, 45 of said bonds, at the price of 80 per cent.; they were delivered to me and I paid the amount, which bonds I still own, and are numbered: 97, 122, 123, 336, 519, 520, 599, 876, 901, 927, 955, 978, 1182, 1183, 1184, 1185, 1211, 1212, 1213, 1214, 1215, 1216, 1543,

2740, 2741, 2742, 2743, 2744, 2745, 2746, 2747, 2748, 2749, 2750, 2751, 2752, 2753, 2754, 2755, 2756, 2757, 2758, 2759, 2929, and 3015.

22. To the twenty-second interrogatory: I have answered as fully as I can.

23. To the twenty-third interrogatory: No; I never heard of such claim till now.

24. To the twenty-fourth interrogatory: It would have depre-
3829 ciated the bonds if such publication should have been made, and rendered them valueless.

25. To the twenty-fifth interrogatory: If they had done so it would have rendered the bonds worthless.

26. To the twenty-sixth interrogatory: The State law was exhibited, and also the various other public acts in relation to the bonds, notice of which was published in the newspapers.

Final. To the final interrogatory: I have nothing to add.

Cross-examined by and in behalf of the defendants, the Western Division of the Western North Carolina Railroad Company et al:

1. To the first cross-interrogatory: I have answered as fully as I know.

2. To the second cross interrogatory: I never heard anything about that.

3. To the third cross-interrogatory: It is entirely unknown to me.

4. To the fourth cross-interrogatory: I never before heard anything about this.

5. To the fifth cross-interrogatory: It never happened as far as my knowledge goes.

6. To the sixth cross-interrogatory: I never heard before of such telegram.

Cross-examined by and in behalf of the defendants, the Western Division of the Western North Carolina Railroad Company et al:

3830 1. To the first cross-interrogatory: This I have already answered.

2. To the second cross-interrogatory: I have already answered as completely as possible.

3. To the third cross-interrogatory: It would depend entirely on circumstances.

4. To the fourth cross-interrogatory: I have already answered all I know. I bought my bonds as an investment, and have got the same bonds, as already stated.

5. To the fifth cross-interrogatory: I know nothing about said bonds being offered in England, and only know they were sold here, as I have said, and the only prospectus I know or heard of was the one published by Holje & Boissevain, and A. J. and M. Milders, December 19, 1870.

6. To the sixth cross-interrogatory: I never heard before of such fraud.

7. To the seventh cross-interrogatory: This I have already answered. I never before heard of any person named L'Engle, or of any letter written by him, or of any such telegraphic correspondence.

8. To the eighth cross-interrogatory: I know only what I have already told. I never heard or knew of any distinction in the numbers of the said bonds.

9. To the ninth cross-interrogatory: I have answered all I know. I
never knew anything about Collinson, or any member of the firm
3831 of Hopkins & Co.

10 To the tenth cross-interrogatory: I know not where the interest money came from.

11. To the eleventh cross-interrogatory: I only know these bonds varied in prices, for reasons I have already stated.

12. To the twelfth cross-interrogatory: This I have already answered.

13. To the thirteenth cross-interrogatory: I have already answered this.

14. To the fourteenth cross-interrogatory: I own bonds, as I have already answered.

15. To the fifteenth cross-interrogatory: I have answered as much as I know about this.

16. To the sixteenth cross-interrogatory: I know that such committee was appointed, but discharged at the time that Messrs. Wertheim and Willard became the attorneys of the bondholders.

17. To the seventeenth cross-interrogatory: I know that Dr. Wertheim was then authorized at that time to take such steps for the protection as he thought safe, and that he caused the memorandum plan to be executed, which the bondholders approved, and that Schedule D is a correct copy of that plan. I believe that the Jacksonville and Mobile Railroad Company has been organized as required.

18. To the eighteenth cross-interrogatory: I know that the
3832 bondholders expect to pay to their solicitors all that they have
agreed to.

19. To the nineteenth cross-interrogatory: I am a bondholder, and of course deeply interested in the suit. I believe myself to be swindled by the railroad company.

20. To the twentieth cross-interrogatory: I know the gentleman named. I have known Dr. Wertheim for many years. He requested me to give evidence in the case. He did so because he is the counsel for the bondholders, and he read to me the interrogatories.

21. To the twenty-first cross-interrogatory: This I have already answered.

E. C. BOISSEVAIN, Dzn.

Sworn to and subscribed to before me this fourth day of April, 1879.

D. ECKSTEIN,
U. S. Consul and Commissioner.

Desfosition of Petrus Antonius Ludovicus Van Ogtrop.

And on the 31st day of March, 1879, the said PETRUS ANTONIUS LUDOVICUS VAN OGTROP, being first duly sworn by the said commissioner to testify the truth, the whole truth, and nothing but the truth, relative to the cause specified in said commission, made answer to the said interrogatories and cross interrogatories as follows, viz:

1. To the first interrogatory this witness saith: My name is
3833 Petrus Antonius Ludovicus Van Ogtrop; my age forty-four (44)
years; I am deputy member of the board of the union for the
stock exchange at Amsterdam, and stock-broker.

2. To the second interrogatory: At Amsterdam.

3. To the third interrogatory: Yes; I was at that time a member of the committee of the stock exchange; I was also engaged in and acquainted with the dealings in domestic and foreign bonds.

4. To the fourth interrogatory: Yes; I know that they were introduced at the exchange.

5. To the fifth interrogatory: By Messrs. Holje & Boissevain and Messrs. A. J. and M. Milders. These bonds were put on the market; a prospectus was issued on the 19th December, 1870, and several documents, together with a map showing the line of railroad, were laid down by them for public inspection.

6. To the sixth interrogatory: No authority was obtained or required for the free or non-official stock list.

7. To the seventh interrogatory: I have already answered this question.

8. To the eighth cross-interrogatory: On the 5th day of December, 1877, I, together with Mr. A. L. Wortbain, made a sworn certificate before the American consul, at Amsterdam, wherein this question
3834 is answered, and which I now annex hereto, marked P. A. L. V-Q., No. 1, together with a translated copy thereof.

9. To the ninth interrogatory: I have answered this question by the said sworn certificates.

10. To the tenth interrogatory: I have answered this as fully as I can by the said sworn certificates.

11. To the eleventh interrogatory: I had no other information than the prospectus and pamphlets issued by Messrs. Holje & Boissevain and Messrs. A. J. and M. Milders.

12. To the twelfth interrogatory: I never saw anything else but the prospectus and the other publications I have mentioned.

13. To the thirteenth interrogatory: I have never heard anything about this.

14. To the fourteenth interrogatory: I have never heard of any such thing.

15. To the fifteenth interrogatory: I have already answered this question by the sworn certificate I have put in evidence.

16. To the sixteenth interrogatory: I know nothing but what was stated in the said prospectus published by the bankers who emitted the bonds.

17. To the seventeenth interrogatory: The coupons were sold at the exchange to bankers, who collected them for remittances to New
3835 York and London. No public notice was given of the appointment of an agent.

18. To the eighteenth interrogatory: No notice whatever was given, the coupons being only payable at New York.

19. To the nineteenth interrogatory: I know some of the complainants, and those who are members of the stock exchange are of good repute.

20. To the twentieth interrogatory: Some bought them, either for investment on the brilliant prospectus or for speculation.

21. To the twenty-first interrogatory: I have bought some at various prices for account of my clients.

22. To the twenty-second interrogatory: This I have answered by the sworn certificate made part of my reply to the eighth interrogatory.

23. To the twenty-third interrogatory: I have never heard of such information or claim.

24. To the twenty-fourth interrogatory: I cannot say.

25. To the twenty-fifth interrogatory: Had such publication or claim ever been made known, the effect would have been disastrous to the 8 per cent. Florida State bonds.

26. To the twenty-sixth interrogatory: The bankers announced that

they were open for inspection at their offices, but I never saw them.

3836 Final. To the final interrogatory: For the information of the court, I annex hereto, as part of my answer, some original financial newspapers called "Hieuw Algerneen Effecten Blaad," in which the quotations of the 8 per cent. Florida bonds are noted, and wherein extracts from the prospectus, as well as other advertisements of the bankers about the said bonds, are published. This exhibit I mark P. A. L. V. O., No. 2.

Cross-examined by and in behalf of the defendant, the Florida Central Railroad Company:

1. To the first interrogatory this witness saith: All I know as to this I have answered by the sworn certificate forming part of my reply to the eighth direct interrogatory.

2. To the second cross-interrogatory: I have never before seen or heard of the paper marked A, now shown to me.

3. To the third cross-interrogatory: Neither have I ever before seen or heard of the paper marked B, now produced and shown to me.

4. To the fourth cross-interrogatory: The articles of impeachment, marked C, now shown to me, have never before been brought to my knowledge.

5. To the fifth cross-interrogatory: No one was ever expelled from the exchange at Amsterdam, or otherwise punished, in connection with the Florida bonds.

3837 6. To the sixth cross-interrogatory: I have never heard or seen anything about the telegraphic correspondence referred to in this cross-interrogatory.

Cross-examined by and in behalf of the defendants, the Western Division of the Western North Carolina Railroad Company et al:

1. To the first cross-interrogatory this witness saith: I am a stockbroker, and became a member of the stock exchange in 1865. In 1855 I was elected member of the committee of the stock exchange, which I am still.

2. To the second cross-interrogatory: I first saw the printed prospectus I have mentioned on or about the 20th December, 1870.

3. To the third cross-interrogatory: I believe that the price realized by the subscription of the eight per cent. Florida State bonds was a fair price, considering the opinion in our market with regard to securities of the Southern United States at that period.

4. To the fourth cross-interrogatory: I know that Messrs Holje & Boiessevain and Messrs. A. J. and M. Milders emitted the Florida bonds by their prospectus, dated the 19th December, 1870. I had no connection whatever with the emission thereof.

5. To the fifth cross-interrogatory: I have never before seen the prospectus marked B, now shown to me, and know nothing about
3838 the previous failure in placing the bonds on the English market.

6. To the sixth cross-interrogatory: I know nothing as to all these points.

7. To the seventh cross-interrogatory: I know nothing as to all these points.

8. To the eighth cross-interrogatory: I know nothing about these points, and have no means of ascertaining whether I ever bought bonds numbered above 2800.

9. To the ninth cross-interrogatory: I was not interested in the syndicate, and know nothing about the other particulars inquired into by this cross-interrogatory.

10. To the tenth cross-interrogatory: I do not know anything about this.

11. To the eleventh cross-interrogatory: I, for myself, never speculated in these bonds, but I cannot say anything as to what others did.

13. To the twelfth cross-interrogatory: I have never before heard of the Florida Central Company.

13. To the thirteenth cross-interrogatory: I refer to my answer in reply to the fifth cross-interrogatory.

14. To the fourteenth cross interrogatory: I have never possessed a single Florida bond.

3839 15. To the fifteenth cross-interrogatory: I do not know, because the bankers who emitted the bonds never announced this.

16. To the sixteenth cross-interrogatory: Such a committee did exist, but I cannot say whether it is still in existence.

17. To the seventeenth cross-interrogatory: I have never before heard of the "memorandum plan."

18. To the eighteenth cross-interrogatory: I refer to my answer in reply to the seventeenth cross-interrogatory.

19. To the nineteenth cross-interrogatory: I am not at all interested therein.

20. To the twentieth cross-interrogatory: I have known Dr. Wertheim since several years as an advocate of good repute; I have been introduced to Messrs. Sherwin & Willard, and Messrs. Wertheim and Willard have shown me the interrogatories in this matter, and asked me to give evidence thereto, in my quality as deputy member of the board of the Amsterdam stock exchange.

21. To the twenty-first cross-interrogatory: I have never given any power of attorney in this matter, not being interested in the case.

(Signed) P. A. L. VAN OGTROP.

Sworn to and subscribed before me, this 31st day of March, 1879.

[SEAL OF CONSUL.] D. ECKSTEIN,
U. S. Consul and Commissioner.

3840 In the United States circuit court for the northern district of Florida, fifth judicial circuit. In equity.

JAN FREDERICK SCHUTTE, JAN PRINS, ADRIANNUS Prins, et al., complainants,
vs.
THE WESTERN DIVISION OF THE WESTERN North Carolina Railroad Company et al., defendants.

Depositions of Gideon Maria Boissevian, Frederick Willem Oewel, Jan Frederick Schutte, Petrus Antonius Ludovicus Van Ogtrop, Andries Lodewyk Worfbain, Johannes Herman Warring, Abraham Carel Wertheim, Frederick Hendric Zieglaar, and Edward Constantin Boissevain, Dz., all of the city of Amsterdam, in the Kingdom of the Netherlands, witnesses produced and sworn and examined in this cause above entitled, by David Eckstein, United States consul, pursuant to a commission issued to him out of the circuit court of the United States for the northern district of Florida, bearing date the 30th day of January, 1879, and by virtue of instructions directed to him by the court aforesaid, signed by the clerk of the said court, and dated the 1st day of March, 1879, both hereto annexed, upon the interrogatories and cross interrogatories annexed to the said commission and instructions, and hereto returned.

3841 *Deposition of Gideon Maria Boissevain.*

The said GIDEON MARIA BOISSEVAIN, being first duly sworn by the said commissioner to testify the truth, the whole truth, and nothing but the truth, relative to the cause specified in the said commission, made answer to the said interrogatories and cross-interrogatories as follows, viz:

1. To the first interrogatory the witness saith: My name is Gideon Maria Boissevain; aged 41 years; I am a member of the board of commissioners of the bank "Kas Vereeniging," and a member of the Amsterdam board or delegated committee of the Banque de Paris et des Bas of Paris.

2. To the second interrogatory: I have resided since 1837, when I was born, uninterruptedly at Amsterdam, Netherlands.

3. To the third interrogatory: Besides having had since many years the above mentioned occupations, I was established here from 1859 until 1872, under the firm of Holje & Boissevain, being stockholders and general banking and commission business. My partner, being Mr. Holje, retired from the house as early as 1862. I retired from business and liquidated my firm in 1872, for the reason of my health being shaken at
that time. During said period, 1859–'72, I was engaged in the pur-
3842 chase and sale of bonds and other securities, such as were sold at
the bourse or stock exchange before mentioned, and was acquainted with the dealings which took place in the said bourse or stock exchange in domestic and foreign securities. I was then a member of the bourse or stock exchange of the city of Amsterdam; and in 1871 I was appointed by my co members in the stock exchange one of its directors.

4. To the fourth interrogatory: I myself, or rather my firm, introduced in December, 1870, the $4,000,000 8 per cent. Florida loan, a copy of one of the bonds of which loan is annexed to your interrogatory, marked A, in our market. We did so by the authority of John Collison, of 50 Old Broad street, London. We acted for joint account with Messrs. A. J. & M. Milders and A. J. B. Maingay, both of Rotterdam, and in pursuance of an agreement entered *intered* into on this subject with John Collison. The heading of this agreement runs at follows:

FLORIDA STATE LOAN.

$4,000,000.

Memorandum of agreement entered into this fourteenth day of November, one thousand eight hundred and seventy, between Messrs. Holje and Boissevain, of Amsterdam, A. J. & M. Milders and A. J. B.
Maingay, of Rotterdam, hereinafter called the consortior, of the
3843 one part, and John Collinson, of the other part.

It further contains six articles relating to the price to be paid by the consortion (that is, Holje and Boissevain, A. J. and M. Milders, and A. J. Mangay, for the bonds), which by letter of John Collinson of the 19th of December, 1870, was modified, and finally agreed upon at £152 sterling and accrued interest per bond (which was the price paid by us to Collinson for the entire issue of 2,800 bonds, the remaining 406 having been disposed of as stated hereafter), the dates of payment for certain amounts of bonds and options for further amounts, amounting in all to the total amount of four million dollars. We received from Mr. Collinson the following official documents, "or legal copies of the same," relating to the loan in due time for inspection after the prospectus was issued.

Copy of an act to alter and amend an act entitled "An act to perfect the public works of the States," approved June 24th, 1869; passed the Senate January 22d, 1870; passed the assembly January 26th, 1870; approved January 28th, 1870.

(It may be considered superfluous to add a copy of this document to this statement.)

Copy of a request, dated 6th May, 1870, of the Jacksonville, Pensacola and Mobile Railroad Company to the governor of Florida, asking and authorizing him to deliver all the bonds of the State of
3844 Florida to which said company was entitled by law to the financial agents of the company, Messrs. S. W. Hopkins & Co.

(Copy of this document, marked G. M. B., No. 1, goes herewith.)

Copy of an appointment, dated 4th of May, 1870, of Messrs. S. W. Hopkins & Co., as financial agents of the Jacksonville, Pensacola and Mobile Railroad Company.

(Copy of this document, marked G. M. B., No. 2, goes herewith.)

Copy of a declaration of the governor of Florida, dated 6th May, 1870, stating that the Jacksonville, Pensacola and Mobile Railroad Company is entitled to receive from the State $4,000,000 of the bonds of the State, and that, pursuant to the request of the said company, he will deliver these bonds to Messrs. S. W. Hopkins & Co.

(Copy of this document, marked G. M. B., No. 3, goes herewith.)

Copy of an appointment, dated 6th of May, 1870, of S. W. Hopkins & Co., as financial agents of the State.

(Copy of this document, marked G. M. B., No. 4, goes herewith.)

Copy of letter of Littlefield, president of the Jacksonville, Pensacola and Mobile Railroad Company, to Collinson, dated November 28th, 1870, confirming directly to him that S. W. Hopkins & Co. possessed
3845 full authority to sell or otherwise dispose of the $4,000,000 8 per cent. gold bonds of the State of Florida.

(Copy marked G. M. B., No. 5, goes herewith.)

Copy of authorization of John Collinson by S. W. Hopkins & Co., to invite subscriptions for Florida State 8 per cent. loan of four million dollars, dated 17th November, 1870.

To which copy I add copy of the contract for the sale of the said $4,000,000 Florida State bonds, made on the 14th November, 1870, between S. W. Hopkins & Co. and John Collinson, and copies of four letters from S. W. Hopkins & Co. to John Collinson, granting extensions for the terms stated in said contract.

(Copies marked G. M. B., No. 6, goes herewith.)

Nomination by John Colli'son, in accordance with authorization of S. W. Hopkins & Co., dated November 17th, 1870, of my firm and A. J. & M. Milders to bring out for subscription in Holland the Florida State 8 per cent. loan of four million dollars.

And letter of John Collinson, dated 19th day of December, 1870, authorizing to open the subscription during the week, closing on or before Saturday, 24th December, 1870.

(Copies marked G. M. B. go herewith, No. 77.)

Copy of a letter of the solicitors, Ashurst, Norris & Co. to John Collinson, dated November 15th, 1870, relating to the validity and bona fides of the Florida State bonds.

3846 (Copy marked G. M. B., No. 8, goes herewith.)

All these documents were deposited for public inspection at my office, when we invited subscriptions, a statement to that effect being inserted in the prospectus.

So, too, was a map showing the route of the Jacksonville, Pensacola and Mobile Railroad, which we received for that purpose from Mr. Collinson, an original copy of which map, marked G. M. B., No. 9, goes herewith. We also received, besides much verbal information concerning the State of Florida, its resources, etc., and the railroad, several written informations, amongst others:

Copy of a letter of Harrison Reed, governor of Florida, dated June 18th, 1870, confirming the issue of the 8 per cent. State bonds, etc.

(Copy of same, marked G. M. B., No. 10, goes herewith.)

At the same time Mr. John Collinson sent us the draft of the prospectus which was issued by us (translated into Dutch) when we invited subscriptions, the principal contents of which were as per annexed statement, marked G. M. B., No. 11. The prospectus was issued by my firm on the 19th December, 1870, under reference to the official documents before mentioned, the loan being at the same time advertised in the leading financial papers in Holland.

The sales and purchases of the bonds were made on entire
3847 reliance upon the correctness of such statements as were then
published and deposited for public inspection, and which everybody, as well as we, ourselves, considered as proving most undoubtedly, that the bonds of the 8 per cent. Florida State loan were a bona fide government bond, secured by the credit of the State, and besides by the railway property as additional security. Immediately following on the subscription, regular and almost daily transactions on 'change took place in the bonds, the first quotations being, as far as I know, 80½ per cent. on December 27th, 1870. In the first days of January, 1871, however, Mr. Collinson wrote to my firm, "not to push on the loan for a short time in the face of the recent disasters in American securities." We entirely approved this policy, and we, from our side, had called Mr. Collinson's attention to the fact that the January coupons of the Alabama, Chattanooga Railroad bonds, guaranteed by Alabama, had not been paid. Mr. Collinson, in perfect accordance with our desires, made new enquiries regarding the character of the Florida bonds.

In February, 1871, we received intelligence of telegraphic advices, confirming the constitutionality of the loan on, as we considered it to be, the most official and unquestionable way (copies of telegrams, etc., relating hereto, marked G. M. B., No. 12, go herewith). We, from our
side, gave public notice of the information received by advertise-
3848 ment (copy of which, marked G. M. B., No. 13, goes herewith).

In the meantime, transactions in the bonds had gone on 'change at 80¼ to 80½ per cent., almost daily, but without much animation. The news then received brought lots of new buyers in the market, and more still when it had been confirmed by written advices received some weeks afterwards, and which will be mentioned forthwith.

We, agreeably to Mr. Collinson's instructions, resumed our sales, and had no difficulty to complete same up to the amount of 2,800 bonds of $1,000 before the end of July, 1871. According to intelligence and instructions received from Mr. Collinson, the sales were provisionally not to be further extended. So little difficulty had we indeed to sell the bonds, which were quite a favorite investment on account of the twofold security (the credit of the State and the railway property), that we succeeded in selling some at rising prices, namely, very soon at prices ranging from 82 to 84 per cent. The price was so many per cent., the dollar calculates at f. 2.50, two guilders and a half, being the full value of the gold dollar, to which was added the accrued interest.

The further advices which (in April, 1871) we had received, were as follows:

Declaration of the governor of Florida, the secretary of state, 3849 and State treasurer, giving the most solemn confirmation of the perfect legality and constitutionality of the 8 per cent. Florida bonds, and C—of the additional security of the bonds on account of the railway property. (Copy of this document, marked G. M. B., No. 14, goes herewith.)

A certificate of the clerk of the supreme court, State of Florida, city of Tallahassee, given under the seal of the supreme court of the State of Florida, with legalization of the clerk's (Charles H. Forster's) signature by the governor of Florida and the secretary of state, and further legalization by the British, German and Netherlands consuls, stating:

"I, Charles H. Forster, clerk of the supreme court of the State of Florida, do hereby certify that the unanimous opinion of the supreme court of the State of Florida is that railroads are public works within the terms of the State constitution, and that the legislature may authorize the issuing of State bonds for the purpose of perfecting the same."

In witness whereof, &c.

"Tallahassee, 18th February, 1871."

Besides, we received full copies of the opinions of Judges Randall, Heart, and Wescott, chief justice, justice, and associate justice of the supreme court of the State of Florida, as found in volume 13, supreme court of Florida, pages 699 to 722, both inclusive. We at once, under the date of 29th April, 1871, gave full publicity, by a printed circular,
3850 to the declaration of the governor of Florida, adding a communication from the fiscal agents of the State, Messrs. S. W. Hopkins & Co., giving many particulars regarding the general state of affairs in Florida, the Jacksonville, Pensacola and Mobile Railroad, and specially referring to the legality of the bonds as confirmed by the supreme court, and had copies of the opinions of the judges of the supreme court open for inspection at our bank, notice of which was given to the public by advertisement in financial papers.

(A copy of this circular goes herewith, marked G. M. B., No. 15, also a copy of the original communication of Messrs. Hopkins, it having been translated in the circular marked G. M. B., No. 16.)

To conclude at once the history of the emission and sales of the Florida State bonds in our market, I add, that about the last days of 1872, and in January, 1873, Mr. Collinson sold to myself and friends, and at 'change and through other brokers and additional amount of bonds, 406, as appears from what is said hereafter (namely, in addition to the 2,800 bonds sold in 1870 and '71), the price being at the time about 75 per cent. By the following documents be proved the legality of the additional sales, and of the bonds thus sold, as also their bona fides:

Declaration of government of Florida, stating that 224 bonds
3851 were cancelled, and that the balance, namely, $3,776,000, were legal issue, and that the balance of the same, in addition to 2,800 sold before, viz, 976 bonds, were equal obligation on the State of Florida.

(Copy of said document, marked G. M. B., No., 17, goes herewith.)

Appointment of the New York State Loan and Trust Co., of New York, as financial agent of the State of Florida.

(Copy of this document, marked G. M. B., No. 18, goes herewith.)

Appointment of the same company as fiscal agent of the Jacksonville, Pensacola and Mobile Railroad Company for the sale of the said bonds, &c.

(Copy of this document, marked G. M. B., No. 19, goes herewith.)

Acceptance of said company of the appointment as fiscal agents of the State of Florida, and of the Jacksonville, Pensacola and Mobile Railroad Company.

(Copy of this document, marked G. M. B., No. 20, goes herewith.)

Copy of advertisement, running as follows:

FLORIDA STATE BONDS.

Notice is hereby given that on and after the 1st day of January, 1873, the undersigned are prepared to pay the coupons maturing on that date, on the Florida 8 per cent. State bonds, numbered from 1 to 3776,
3852 inclusive (excepting the coupons on bonds numbered 442 and 1736, which have been lost, unnegotiated).

The New York State Loan and Trust Co., New York City (signed for T. A. Lawrence, sec., December 30, 1872, fiscal agents of the State of Florida.

This advertisement of the payment of coupons by the fiscal agent of the State on 3776 (or 3774) bonds was certainly a most undoubtful confirmation of the legality of the issue of the loan to that amount. It appears from a statement of Mr. John Collinson that the entire amount of bonds sold, in addition to the previously sold 2,800 bonds, was 406. In September, 1873, his secretary and he himself writing to me as follows:

50 OLD BROADSTRET, LONDON,
September 15*th*, 1873.

G. M. BOISSEVAIN, Esq.:

DEAR SIR: I regret that I have been unable to send you sooner a complete list of the Florida bonds, issued, as requested by your favor of the 10th inst., but I enclose herewith a paper giving the information I understand that you require.

I remain, yours truly,
(Signed) D. G. BRUCE GARDYNE.

Florida State eight per cent. loan. Distinctive numbers of bonds issued.

No. 1 to 441	441 bonds.
" 443 to 1735	1293 "
" 1737 to 3200	1464 "
3853 No. 3769 to 3776	8 bonds.
Total bonds issued	3206

50 OLD BROADSTREET, LONDON,
September 23*d*, 1873.

G. M. BOISSEVAIN, Esq.:

DEAR SIR: In reply to your favor of the 20th inst., regarding the numbers of the Florida bonds issued, I beg to inform you that the statement forwarded to you, detailing the numbers of 3206 bonds issued was perfectly correct.

I remain, yours faithfully,
(Signed) JOHN COLLINSON.

This information was asked by me from Mr. Collinson, as I desired to make a statement of the numbers of the bonds sold previously to the default in payment of interest in July, 1873, and as some of the numbers of these bonds, not having passed through my hands, were not known to me, I knew, however, and most solemly confirm, that the entire amount of bonds represented here, namely, 3206, was sold previous to said default.

5. To the fifth interrogatory: I have fully answered that question in my reply to the preceding interrogatory, and having annexed thereunto copies of such printed and written statements as are asked for, and I repeat that I made the sales of these bonds in perfect reliance on the correctness of these statements.

3854 6. To the sixth interrogatory. The Dutch stock exchange being, or rather having been at that time, and until quite recently, an open and entirely free market, no such authority was necessary, nor any examination or investigation of such a kind. All new securities were brought in the market without any formalities of the kind.

7. To the seventh interrogatory: The bonds were considered, generally and unanimously, as "a public security and obligation of the State of Florida," and recorded as such in all the price-lists.

8. To the eighth interrogatory: I refer to my answers to the fourth and fifth interrogatories. All the dealings in respect to the bonds were public and general, and among a very large class of buyers. They were, and continued all along to be, the subject of a regular business on "'change," and changed hands frequently.

9. To the ninth interrogatory. I refer to my answers to the fourth and fifth interrogatories. The price went up quietly from 80 to about 84 per cent., or somewhat above, perhaps 86 per cent., and remained about 83 and 84 per cent. for many months. In 1872, 83½ per cent. was still paid.

10. To the tenth interrogatory: These bonds first declined in
3855 the latter part of 1872 and beginning of 1873, in sympathy with
American securities generally. The great fall occurred only after the July, 1873, coupon remained unpaid, and besides in consequence of of the general crisis.

11. To the eleventh interrogatory: I refer to my several statements in answer to the fourth and fifth interrogatories. I never knew but that the Jacksonville, Pensacola and Mobile Railroad was running from Jacksonville to the Apalachicola River, and to be terminated to the western borders of Florida and to Mobile, two hundred and fifty miles, branches included, were stated to be in operation.

12. To the twelfth interrogatory: Referring again to statements as given before, I confirm, and most peremptorily, that by all documents and other information communicated to my firm and by my firm, and otherwise, to the public, it was intimated that the State of Florida had a first lien on the entire line of said road beginning at Jacksonville, and to the length of 250 miles, at the time of the original issue of the bonds.

13. To the thirteenth interrogatory: Nothing of what is referred to in this question was ever heard of until in the later years. We knew
absolutely nothing here at the time of the issue of the loan of
3856 any claims of a Florida Central Railroad Company, or anything
of the kind.

The only notion that ever came to me regarding anything of the kind was in a letter received in March, 1871, from a certain Mr. L'Engle, who said to refer to a telegram which I never received, and who made some statements that were entirely contradicted by all the facts, official documents, and information that had come to our knowledge. On referring

to said letter to Mr. Collinson, and communicating it to him, he told us to consider it as a black-mailing letter, showing us by all the official documents and further information that the statements made in it were perfectly incorrect. Annexed is a copy of Mr. Collinson's writing on this subject, marked G. M. B., No. 21. It was about the same time that we received the governor of Florida's declaration of the 26th of February, 1871, which contradicts entirely and anew, and at the latest date, Mr. L'Engle's sayings. This letter was put aside, and really no notice could be taken of such assertions from an unknown quarter, contradicted most peremptorily by the highest official authority; nor was anything further heard from it. I can only add to this, that really we had no idea or notion that statements such as were received from the governor
3857 of Florida, under the government seal, and duly attested, legalized by all authorities, &c., left any room for the possibility of the facts not being as stated therein.

14. To the fourteenth interrogatory: The 8 per cent. Florida bonds were considered here as being a safe and good State bond, having further security through the government's lien on the railroad property; all the information received by my firm confirmed this, and consequently I, in my turn, did not hesitate in endorsing that opinion to my clients and the public at large.

As a specimen of the manner in which Mr. Collinson wrote and spoke about the loan I annex hereto a paper writing, marked G. M. B., No. 22, containing extracts from letters of Mr. Collinson. No notice was ever made here by the president and directors or the stockholders of the Florida Central Railroad that such corporation was the owner of any portion of the line of railroad commencing at Jacksonville and running westward to Lake City, or that the said corporation disputed the rightfulness and legality of the actions of the Jacksonville, Pensacola and Mobile Railroad Company, in selling and disposing of said bonds, &c. I never, at the time of the issue and sale of the bonds, heard anything of such a claim.

3858 15. To the fifteenth interrogatory: I refer to what I have already said on this subject.

16. To the sixteenth interrogatory: The coupons were to be and have been, as far as I know, regularly advertized by the agents of the State. They were only advertised in New York, being only payable there.

17. To the seventeenth interrogatory: The coupons were paid semi-annually, at $40 per coupon, in New York. No public notice was given here, the coupons not being payable here. People here sold their coupons to bankers, who sent the coupons to New York for collection, either direct or via London, as is habitual with all coupons payable in New York.

18. To the eighteenth interrogatory: I refer to what I have said before on these subjects.

19. To the nineteenth interrogatory: I know the complainants as being highly respectable people here; some of them, indeed, of the very highest standing at our bourse.

20. To the twentieth interrogatory: I know several of the complainants as being holders of the Florida bonds, and can only refer to what I have said in answer to the fourteenth interrogatory.

21. To the twenty-first interrogatory: I refer to my full statement regarding the negotiation of the bonds in our market.

3859 22. To the twenty-second interrogatory: I add to what I have said before on this subject, that at the original subscription for the bonds of the 22d and 23d December, 1870, $475,000 were taken up and paid for at 80 per cent. by Messrs. J. L. Kloos, Van Hellesteyn & Co., J. Van Goor & Co., J. B. Westmoreland & Zoon, Rahnsen & Waller, Westendorp & Co., Joh Ruys & Co., De Lanoy & Zoon, Jan Kalf & Co., Boissevain & Brothers, F. Phillipean, and many other people. The further sales were made in the market at prices ranging from 80 to 84 per cent., with the exception of the sales in January, 1873, made at about 65 per cent., the purchasers being very numerous; to give the names, of which I have no note at hand, would be giving the names of half the brokers in our market, perhaps.

23. To the twenty-third interrogatory: I knew nothing of any claim of the trustees of the internal improvement fund of the State of Florida; no notice, public or private, of the existence of such claim was given in Holland as far as I know.

24. To the twenty-fourth interrogatory: In the eventualities supposed here, a most full investigation would certainly have been made, and the price of the bonds would have given way more or less in the meantime.

25. To the twenty-fifth interrogatory: My answer hereto is exactly the same as to the twenty-fourth interrogatory.

26. To the twenty-sixth interrogatory: I refer to my full statement or publications made here. 3860

Final. To the final interrogatory: I know nor can set forth any other fact.

Cross-examined by and in behalf of the defendants The Florida Central Railroad Company:

1. To the first cross-interrogatory the witness saith: On the 22d and 23d of December, 1870, at Amsterdam and Rotterdam; I have fully answered this question already.

2. To the second cross-interrogatory: I have already given a full answer regarding the letter of Mr. L'Engle, and what I did in connection therewith.

3. To the third cross-interrogatory: I never saw or heard about this paper before, neither do I know the persons named in this question.

4. To the fourth cross interrogatory: As far as I remember, I never saw the document referred to, before. Some information was received here in 1872 regarding the impeachment of Governor Reed, but very few details were given, and it was shortly afterwards that we heard he was tried and acquitted.

5. To the fifth cross-interrogatory: Nothing of this kind happened.

6. To the sixth cross-interrogatory: Referring to previous statements, I beg to add on this subject that it was my firm that addressed 3861 the telegraphic message here referred to to the governor of Florida. But I never received any answer, and having in the mean time received official documents from the governor of Florida, and other officials of the State, giving a full answer to the questions put in my message to the governor of Florida, I was fully satisfied.

Further examination of the witness Gideon Maria Boissevain adjourned until to-morrow, Thursday, March 27th, 1879.

D. ECKSTEIN,
Commissioner.

THURSDAY, *March 27th*, 1879—3 p. m.

The witness Gideon Maria Boissevain reappeared and his examination was resumed.

Cross-examined by and in behalf of the defendant The Western Division of the Western North Carolina Railroad Company et al.:

1. To the first cross-interrogotary the witness saith: I have already answered as fully as possible.

2. To the second cross-interrogatory: I have already answered as fully as I can.

3. To the third cross-interrogatory: I considered at the time of the issue and sale of the 8 per cent. Florida bonds 80 per cent., or thereabout to be a fair price for an 8 per cent., government bond of one of the Southern States, and it was in harmony with the prices obtained at that time in our market for American securities generally, considering, too, that, of course, the market price could not be the net price for the selling railroad company or government; now-a-days such a price would be considered too low, and an offer of such a bond at such a price would not be good proof for the soliciting of the bond, but we ought to remember that at that time only a few years had passed since we bought 6 per cent. United States gold bonds as low as 40 per cent. or thereabout. 3862

4. To the fourth cross-interrogatory: I have answered this as fully as possible already.

5. To the fifth cross-interrogatory: I know that the bonds were bought by John Collinson from the railroad company or its agents, and that John Collinson sold them to my firm and our associates, and we paid Collinson £152 sterling, and accrued interest nett for each bond of $1,000. They were resold by us, as already stated. Among the buyers of such bonds from us were Adrian Stoop and Joseph Zadocks, who paid for the bonds 80 per cent. and upwards on all bonds. Stoop and Zadocks were both large buyers, and were no associates of ourselves.

The prospectus was printed by us in Amsterdam, as already stated. The paper marked B I supposed to be a correct copy of a draft of the prospectus, correct as regards the substantial contents of the same, but was one addition that was changed it, namely, says that subscription lists would be opened at London, Amsterdam, Rotterdam, and Frankfort; but finally no subscription lists were asked for in London and Frankfort on account of the territorial bonds question, which was considered as preventing to do so at London and Frankfort, but not in Holland. 3863

With reference to this subject I beg to call attention to the fact, that in the prospectus that was issued in Holland, and which really was the only prospectus that was ever issued, the special attention was called to that territorial bonds question, a full history of which was related. I am desirous to call the attention to that fact, in order to show that we honestly, and with perfect bona fides, put before the public all the facts, to our knowledge, whether favorable or not so, that might be useful for them to know to appreciate the bonds that were offered to them.

6. To the sixth cross-interrogatory: I never heard of such published statements, and had they been made would certainly have heard of same. It was only a long time after the bonds had been sold that anything of that kind was published.

I have already answered everything I know about the opinions of the judges of the supreme court of Florida. No charges of fraud or illegality were made against such bonds during the time they were being sold. 3864

7. To the seventh cross interrogatory: Regarding any decisions taken or not taken by the directors of the bourse, I refer to what I said before.

I know perfectly well I addressed the telegraphic message referred to here by the governor of Florida, but I never received any answer, and having received in the mean time official documents from the governor of Florida, and other officials of the State giving full answer to said message to the governor, I was fully satisfied.

Regarding the letter of Mr. L'Engle, I have already answered. I have already answered that there were no publications in Amsterdam or elsewhere, to my knowledge, as to fraud about said bonds.

8. To the eighth cross-interrogatory: I have already answered that Collinson bought the bonds from the company, or its agents; the firm of Holje and Boissevain, associated with A. J. & M. Milders, and A. J. B. Mainjay, bought the 2,800 bonds from Collinson as already stated. The 2,800 bonds were all bought and paid for by us previous to July 22, 1871. The 406 bonds were bought by us and others from Collinson, in
January, 1873, as I have already stated as fully as I can. The
3865 406 bonds were sold and resold many times over as the 2,800 were,
and it is impossible for me to give the names of such holders. I
may add, that never was anything known by me or other people in Holland about any difference between the 2,800 and the 406 bonds, or between bonds numbered under or above 2,800.

9. To the ninth cross-interrogatory: I know that the bonds were sold in Holland in the usual manner and perfectly regular way, as already stated. I know nothing about Hopkins & Co.'s dealings with Collinson, or their dealings with the railroad company. I only know that the price which my firm and associates paid to Collison was £152 sterling, and accrued interest, for each bond of $1,000. In the copy of Collinson's agreement with Hopkins & Co., which he gave us to show his authority to sell the bonds, the price to be paid by Collinson to Hopkins was left in blank (see exhibit marked G. M. B., No. 6), but Collinson told us that the price of £152 sterling, which we paid to him, left him only a small margin on the price paid by him to Hopkins & Co. I have no knowledge whatever what Collinson paid or agreed to pay to Hopkins, or the railroad company; neither myself nor any member of the firm, or Messrs. Milders or Mainjay, were associates in any way,
either with Collinson or any member of the firm of Hopkins & Co.,
3866 or any officer or agent of said railroad company in relation to the
sale of said bonds. Myself and associates, Messrs. Milders and
Mainjay, simply bought the bonds from Collinson and paid for them as stated.

10. To the tenth cross-interrogatory: I know that neither myself nor my associates deducted any part of the price we paid for the bonds. We paid the amount in full to Collinson. I have already stated fully about the sale of the bonds. No part of the purchase was retained by us to float the bonds; we never thought of exacting such a condition.

11. To the eleventh cross-interrogatory: The prices varied in these bonds as they did in other securities, the statement given in this question regarding speculative and fictitious prices, is perfectly false. The bonds were sold by us in the very first instance on the 22d and 23d of December, 1870, and thereafter at different times, as I have already stated, to a large number of persons, many of whom are leading citizens, bankers, brokers and business men generally, in Amsterdam, and the provinces, of the very highest respectability. From the very first bargains made in these bonds, the business was perfectly real and bona fide.

12. To the twelfth cross-interrogatory: I have already stated
3867 fully as to who sold the bonds in Holland. Our knowledge of the
railroad, its location, length and so forth, was derived entirely

from the official documents already referred to, and made a part of my testimony. I never heard of the Florida Central Company only as stated already.

13. To the thirteenth cross-interrogatory: I have already answered this fully.

14. To the fourteenth cross-interrogatory: I have already fully stated all the particulars about the purchase and sale of said bonds by my firm and associates.

15. To the fifteenth cross-interrogatory: The coupons were regularly advertised for payment by the agents of the State in New York. Myself and associates had nothing whatever to do with the payment of the interest, and never retained any money for that purpose.

16. To the sixteenth cross-interrogatory: There was a committee appointed by the bondholders to defend their rights, but not to speculate for them on their own account. I was appointed a member with Mr. A. J. Milders, Mr. A. Stoop, Dr. H. J. den Tex, and Mr. J. Zadocks; but that committee does no longer exist, the bondholders having given their power of attorney to Dr. J. Wertheim and Chas. D. Willard.

17. To the seventeenth cross-interrogatory. I know of no specu-
3868 lation or adventure between Sherwin, Jackson, and Simonton. I know only the memorandum plan, which makes a part of the bill of complaint, marked Schedule D. I know the memorandum plan provides for the organization of a company to be called the Jacksonville and Mobile Railroad Company, and have been informed by Dr. Wertheim that such organization took place. I only know what the memorandum plan shows of itself.

18. To the eighteenth cross-interrogatory: The memorandum plan speaks for itself; and I further know only that the bondholders will pay to their counsel what was agreed upon.

19. To the nineteenth cross-interrogatory: I feel a deep interest in this litigation; for the reason that myself and my associates bought and paid for these bonds, as already stated, and immediately thereafter sold the same to a large number of my countrymen in the manner which I have fully stated; I am exceedingly anxious, therefore, to give any assistance I can for having the bonds paid.

20. To the twentieth cross-interrogatory: I have known Dr. Wertheim for about twenty-five years; I know Mr. Sherwin and Mr. Willard, who were both introduced to me by Dr. Wertheim. Dr. Wertheim requested me to give my testimony in this case, he being, with Mr. Willard, the counsel and attorney of the bondholders. Both the interroga-
3869 tories and cross-interrogatories were exhibited to me before my examination by Dr. Wertheim and Mr. Willard.

21. To the twenty-first cross-interrogatory: I know that Dr. Wertheim has given an authority and power to Frank R. Sherwin to represent the bondholders and to file the petition you refer to, and that the authority given by Dr. Wertheim, as counsel for the bondholders, met with the entire approval of the bondholders.

(Signed) G. M. BOISSEVAIN.

Sworn and subscribed to before me this twenty-seventh day of March, 1879.

D. ECKSTEIN,
U. S. Consul and Commissioner.

Deposition of Frederick Hendrick Ziegelaar.

And the said **FREDERICK HENDRICK ZIEGELAAR**, being first duly sworn by the said commissioner, on this second day of April, 1879, to testify the truth, the whole truth, and nothing but the truth, relative to the cause specified in the said commission, made answer to the said interrogatories and cross interrogatories as follows, viz:

1. To the first interrogatory this witness saith: My name is Frederick Hendrick Ziegelaar; I am 40 years of age; and my occupation is a stock broker.

2. To the second interrogatory: From the 1st of May, 1873, I have had a banking-house in this city, and have continued such business since that date. 3870

3. To the third interrogatory: I was engaged in the purchase for customers, and dealing in stocks and bonds, foreign and domestic, such as were dealt in on the stock exchange, and during this time I was familiar with the prices of foreign and domestic stock and bonds, and have been a member of the stock exchange since the 1st of May, 1873.

4. To the fourth interrogatory: I know that Messrs. Holje & Boissevain, bankers in Amsterdam, and Messrs. A. J. & M. Milders, bankers in Rotterdam, Holland, placed an issue of Florida 8 per cent. State bonds, issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company, upon this market in the latter part of 1870, and the paper marked A I believe to be a true copy of the same.

5. To the fifth interrogatory: These bonds were put upon the market by the person' I have named. They issued a prospectus to the public over their signatures, dated the 19th day of December, 1870; advertisements were made by them at the time in the leading financial papers in Holland, according to which the loan was in aid of the Jacksonville, Pensacola and Mobile Railroad Company, as appeared on the back of said bonds by endorsement. The act of the legislature, authorizing the bonds to be issued, stated that the same were in aid of the said railroad company. The act of the legislature duly authenticated, a map of said railroad, which appeared to be published by the company, the decision of the supreme court of Florida, and various other proofs from the governor of the State of Florida and other State officials were properly authenticated and upon file at the office of Holje & Boissevain for inspection of the bankers, brokers, and others, of which notification was made to the public by advertisements in the financial papers in Amsterdam at the time. 3871

The prospectus so issued to the public stated that the Jacksonville, Pensacola and Mobile Railroad was constructed already at that time and 250 miles in operation. The said map showed, and it was so stated and represented in Holland at the time, that the railroad commenced at Jacksonville, on or near the Atlantic coast, and was in operation west 250 miles, via Lake City, Live Oak, and Tallahassee, with branches, and this loan on these bonds were desired to be sold to build the road west, and complete a main trunk line. The bonds, I know, were bought and dealt in at the time upon such representations, believing them to be true, as I did.

6. To the sixth interrogatory: No rule of the stock exchange was necessary at the time in order to deal in the bonds upon the bourse. I do not know if any of the officers of the stock exchange made inquiries about these bonds. 3872

7. To the seventh interrogatory: I do not know.

8. To the eighth interrogatory: They were first bought and sold publicly about the last of December, 1870, or the first part of January, 1871. They were dealt in upon the stock exchange at Amsterdam as a

public security and obligation of Florida. They were dealt in largely at that time, and passed through hundreds of people's hands in the regular way, as other public obligations and securities were. The bonds changed hands frequently, and the buyers were numerous.

9. To the ninth interrogatory: The price at which the bonds first sold was 80 per cent., and varied from time to time, and even as high as about 84 or 86 per cent.

10. To the tenth interrogatory: The bonds decline' greatly when the interest due July 1st, 1873, was not paid.

11. To the eleventh interrogatory: The termini of the Jacksonville, Pensacola and Mobile Railroad was represented by the map exhibited to the public, and by those placing the bonds upon the market, to commence at Jacksonville, and in operation west 250 miles, as I
3873 have already stated.

12. To the twelfth interrogatory: It was represented that the line of railroad spoken of by me was security for the payment of these bonds.

13. To the thirteenth interrogatory: I never heard anything about a Florida Central Railroad. There was no publication of the kind about such company that I ever heard of. I am very sure if such notice had been published I should have heard of it.

14. To the fourteenth interrogatory: The inducement which led me to consider the bonds a good investment was the fact that they were the obligations of the state of Florida, issued by authority, and sustained by the opinion of all the judges of the supreme court of the State, which was published in Amsterdam; also that the bonds were issued by the State in aid of the Jacksonville, Pensacola and Mobile Railroad, represented to the public here by the people who put the bonds upon the market as a great public work and a continuous line of railway from Jacksonville west 250 miles, and the entire line was pledged as security for such bonds to the State, by solemn mortgage, to make the payment of the bonds sure, and the intention and object to complete the line to Mobile and make a leading trunk line in the southern part of
3874 the United States. I never before heard that a Florida Central
Railroad Company ever claimed to own that part of the line from Jacksonville west 59½ miles to a place called Lake City. Had it been known here that such statement was true the bonds could not have been sold, as I believe.

15. To the fifteenth interrogatory: The bonds declined in 1873 when and because the interest due July 1st, 1873, was not paid.

16. To the sixteenth interrogatory: It was published there by the bankers placing the loan that the State of Florida had appointed a financial agent in New York City to pay the interest when due. This gave continued confidence to the bonds in this market.

17. To the seventeenth interrogatory: Interest was paid on the bonds until the time I have spoken of. Such public notice was given by Holje and Boissevaine and A. J. & M. Milders by advertisement in financial papers here, as I now remember, but I have not the notice. Such notice made me believe the bonds a good investment.

18. To the eighteenth interrogatory: I have answered as fully as I know.

19. To the nineteenth interrogatory: I know a large number of
3875 the complainants in Amsterdam and in the Provinces, among whom
are many leading bankers, brokers, and business men of the best standing and high reputation in Holland.

20. To the twentieth interrogatory: I know many of the people who

are complainants in this suit, and saw many of them buy bonds on the stock exchange, and believe they were induced to buy the bonds because they believed them a good investment, and safe.

21. To the twenty-first interrogatory: I have, at various times, bought said bonds, on orders for my customers, at various prices.

22. To the twenty-second interrogatory: First by general public subscription, and afterwards dealt in upon the bourse, as other marketable securities, as well as by private sales. I do not remember who were the first subscribers to the loan.

23. To the twenty-third interrogatory: This is the first time I have ever heard of the internal improvement fund, or trustees of same, of Florida. I should most likely have heard of it if it had ever been made public here.

24. To the twenty-fourth interrogatory: Such notice, if made known as inquired, would have caused a large decline in the bonds, and they would have gone to almost nothing.

3876 25. To the twenty-fifth interrogatory: The bonds would have at once declined, and there would have been no market for them, as I think.

26. To the twenty-sixth interrogatory: The law properly authenticated was printed and exhibited as stated. I have previously answered what I know about the information called for in the question, as much as I know.

Final. To the final interrogatory: I can think of nothing more.

Cross-examined by and in behalf of the defendant, the Florida Central Railroad Company:

1. To the first cross-interrogatory: About the last days of December, 1870, or the first days of January, 1871, in Amsterdam, Holland, at about 80 per cent. on the dollar, to a large number of people, sold by the bankers already named, Holje and Boissevain, and A. J. and M. Milders. I believe 3,206 of such bonds were bona fide sold and dealt in on this market altogether.

2. To the second cross-interrogatory: I never before saw or heard of the printed paper marked A mentioned in this question.

3. To the third cross-interrogatory: I never before heard of any such person as T. W. Brevard, or of any such letter.

4. To the fourth cross-interrogatory: I never before heard that
3877 Governor Reed was impeached, and never before saw or heard of
such a paper as the one marked C. I know nothing about John
Collinson's connection with the sale of such bond.

5. To the fifth cross-interrogatory: Nobody was ever expelled, to my knowledge, for dealing in said Florida State bonds, [illegible] called, issued in aid of the said railroad company.

6. To the sixth cross-interrogatory: I never before heard of such telegrams, and know nothing about them.

Cross-examined by and in behalf of the defendants, the Western Division of the Western North Carolina Railroad Company, et al.:

1. To the first cross-interrogatory: I became a member of the Stock Exchange as I have already stated. The functions I perform are to buy stocks and bonds for customers.

2. To the second cross-interrogatory: I first saw and heard of said bonds through the prospectus spoken of in my direct examination. I only know a railroad was intended to be constructed by the act of legislature. The endorsement contained on each bond over the signature of the governor of Florida, the map already spoken of, and other docu-

ments I have named in my direct examination, I have announced as fully as possible.

3878 3. To the third cross-interrogatory: It would entirely depend upon the state of the market, and all surrounding circumstances.

4. To the fourth cross-interrogatory: I have as answered as fully as I can.

5. To the fifth cross-interrogatory: I never heard of such bonds having been offered in England first and failing before offered here. The only prospectus I ever saw or heard of before in connection with these bonds is the one issued and printed in Dutch, dated December 19th, 1870, over the signature of Holje and Boissevain, and A. J. & M. Milders.

6. To the sixth cross-interrogatory: I never heard about such statements of fraud till after July, 1873. I know in February, 1871, the public was notified that the judges of the supreme court of Florida had unanimously said that the bonds were legal and all right.

7. To the seventh cross-interrogatory: There was never any decision about the bonds, to my knowledge, by the Bourse or Stock Exchange of Amsterdam. I never heard of such telegrams before now. I never heard before of such a letter from E. M. L'Engle.

8. To the eighth cross-interrogatory: I never heard before about John Collinson having anything to do with the sale of such bonds. I never knew any distinction in the bonds numbered below or above 2800.

3879 9. To the ninth cross-interrogatory: I know that the said bonds were regularly sold in the market at Amsterdam and in the provinces in Holland. I never heard anything about Hopkins & Co., or Collinson, at the time of the sale. I have already said that my firm dealt only with said bonds as we did with other well-known securities in the market.

10. To the tenth cross-interrogatory: I know not where the interest came from. I have already answered as fully as I can about the sale of bonds.

11. To the eleventh cross-interrogatory: I suppose the price varied from time to time as other securities did, which is all the reason I can give.

12. To the twelfth cross-interrogatory: I have already given names, and said I never heard before this of any such company as the Florida Central Railroad Company.

13. To the thirteenth cross-interrogatory: I never knew said bonds were ever offered in England at any time. I never saw or heard of any prospectus but the one published by Holje & Boissevain and A. J. & M. Milders, December 19th, 1870, as I have already said.

14th. To the fourteenth cross-interrogatory: I do not own any of said bonds. I have in the past, some time ago, disposed of such as
3880 I had. The rest of this question I have previously answered.

15. To the fifteenth cross-interrogatory: I know not where the interest money came from.

16. To the sixteenth cross-interrogatory: I know such a committee was appointed to protect the interests of the bondholders and to recover some of their money they had been defrauded of. I have heard that the committee was discharged some time ago.

17. To the seventeenth cross-interrogatory: I have heard such a "plan" was adopted. I have no personal knowledge about it, or what is else spoken of in this question.

18. To the eighteenth cross-interrogatory: I know nothing about this.

19. To the nineteenth cross-interrogatory: I was at the time a bond holder, but sold my bonds some time ago. I am not a party to the suit

20. To the twentieth cross-interrogatory: I know the persons named Dr. Wertheim requested me to testify. Mr. Willard showed me the questions upon which I had to give my testimony, and I read them myself previous to my examination.

21. To the twenty-first cross-interrogatory: I never executed any such power of attorney.

F. H. ZIEGELAAR.

Sworn to and subscribed before me this 2nd day of April, 1879.
[SEAL OF CONSUL.] **D. ECKSTEIN,**
U. S. Consul and Commissioner.

3881 *Deposition of Frederick William Oewel.*

And on the 29th day of March, A. D. 1879, at 10 a. m., the said FREDERICK WILLIAM OEWEL, being first duly sworn by the said commissioner to testify the truth, the whole truth, and nothing but the truth relative to the cause specified in said commission, made answer to the said interrogatories and cross-interrogatories as follows, viz:

1. To the first interrogatory the witness saith: My name is Frederick William Oewel; my age (53), fifty-three years; and occupation administrator.

2. To the second interrogatory: I resided during that period at Baambrugge, and had my office in Amsterdam.

3. To the third interrogatory: I was administrator during that period, and was engaged in selling bonds and other securities, and was familiar with this kind of business generally.

4. To the fourth interrogatory: Yes; I do know of the introduction and sale of such bonds, and I believe that the exhibit shown me is a copy of the bonds.

5. To the fifth interrogatory: Said bonds were put upon the market by Messrs. Holje and Boissevain, in Amsterdam, and by Meilders in Rotterdam; certain representations in print; I remember to have
3882 been made, copies of which printed representations I have not now with me, and the purchase and sale of such bonds with and upon the reliance of the correctness of the statements contained in the circulars.

6. To the sixth interrogatory: The bonds in question had an official quotation, but I am not aware that any investigation or examination of said bonds by the Bourse committee had taken place.

7. To the seventh interrogatory: An official quotation was granted.

8. To the eighth interrogatory: I do not remember; the dealings in said bonds were public and general, and among a large class of buyers and sellers.

9. To the ninth interrogatory: I can positively now say, but think I am correct in saying that they sold them between 70 and 80; the price varied from time to time; I do not remember what was the price at any time.

10. To the tenth interrogatory: They did decline after default of the payment of interest, and such bonds declined in consequence of their generally prevailing distrust.

11. To the eleventh interrogatory: I am unable to give any particulars to this question.

3883 12. To the twelfth interrogatory: I remember generalities, but cannot answer in full.

13. To the thirteenth interrogatory: Without reference to papers, which I have not at hand, I am not able to give a positive reply to this question.

14. To the fourteenth interrogatory: I do not know of any unusual inducements made to the dealers in such bonds. The standing of the house which emitted these bonds, and the general confidence prevailing at that time in American securities. I do not remember as to the matters contained in the balance of this question.

15. To the fifteenth interrogatory: I know they did decline, but do not remember the exact period when. The cause in the decline was default in payment of the interest and distrust in the security.

16. To the sixteenth interrogatory: I refer to the printed circular for my answer to this subject, not remembering any other statements as having been made.

17. To the seventeenth interrogatory: Yes; I believe semi-annually, I think it was forty ($40) dollars per bond. I do not remember that any agent was appointed by the governor of Florida for the payment of the interest on the bonds.

3884 18. To the eighteenth interrogatory: Not remembering of the appointment of such an agent or of any publication in Holland of such appointment, I cannot say what, if any, effect it had upon the public.

19. To the nineteenth interrogatory: I know and am acquainted with most of the complainants in this suit. Their occupation is commission houses in stocks, merchants, insurance agents, and so forth, and all of them are, so far as I know, of respectable standing, and enjoying of general confidence and credit.

20. To the twentieth interrogatory: I have no knowledge that any of the complainants that I know made any purchase of any of the bonds in question.

21. To the twenty-first interrogatory: I purchased none of said bonds either for myself or others.

22. To the twenty-second interrogatory: By general public subscription.

23. To the twenty-third interrogatory: I do not remember of any such claim being made by any such corporation. I have a general knowledge of complications and litigations existing about these securities.

24. To the twenty-fourth interrogatory: A great depression would have been thereby caused.

3885 25. To the twenty-fifth interrogatory: Would have had a most depressing effect.

26. To the twenty-sixth interrogatory: I know of no other laws of the State of Florida on the subject as those contained in the printed circular published at the time of the issue of the loan.

Final. To the final interrogatory: I think it of great importance that the judges should be informed that the Dutch people bought and paid bona fide the bonds in question, and that no inducements unusual in our market were ever made by the bankers who emitted the loan.

Cross examined by and in behalf of the defendant The Florida Central Railroad Company:

1. To the first cross interrogatory the witness saith: I am unable to answer, and don't know anything else as to what was published in the circular.

2. To the second cross interrogatory: I never did see the original of

an exhibit shown me, marked A, and I never heard of any such exhibit existing, and therefore I cannot answer more fully to this question.

3. To the third cross interrogatory: I have never heard of or seen the exhibit marked B, now shown me by the commissioner.

4. To the fourth cross-interrogatory: I never saw the articles of
3886 impeachment contained in exhibit and shown me by the commissioner, nor did I ever hear of the mat any time previous. I knew only of general complications which had a depressing effect on the securities.

5. To the fifth cross interrogatory: I know of no members of the bourse or stock exchange who have been expelled, deposed, suspended, or required to resign, or fined, or censured, or otherwise punished for improper practices in connection with the negotiations, or sale, or putting upon the market of the said bonds; that is, the bonds of the State of Florida issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company.

6. To the sixth cross interrogatory: I have no knowledge whatever of any telegraphic correspondence in the year 1870 between Gov. Reed and Mr. Boissevain, or Mr. Boissevain and Gov. Reed, nor any other persons.

Cross-examined by and on behalf of the defendants The Western Division of the Western North Carolina Railroad Company et al.:

1. To the first cross interrogatory the witness saith: I became a member of the bourse or stock exchange of Amsterdam in the year 1869; I am a' administrator or trustee; I am not a speculator in said stock exchange.

2. To the second cross-interrogatory: In the year 1876 Florida
3887 State bonds were first brought to my attention by a printed circular issued by Messrs. Holje & Boissevain, and A. J. & M. Milders. The circular also supplied to me the information as to what the bonds were intended for, which was the construction of the said railway.

3. To the third cross-interrogatory: A bond issued by a State in regard to which no doubt existed as to its perfect validity and title, and bearing 8 per cent. interest, would have sold at this market at about par, for instance, the State of Massachusetts would easily have obtained the face value of any securities it might have issued at that time; whereas the State of Florida being less known, and not standing so high in the estimation of the Dutch public, it was perfectly natural that the bonds should not have been considered worth more than from (70 to 80) seventy to eighty cents on the dollar.

4. To the fourth cross-interrogatory: I knew from the printed circular that I had no connection with the loan.

5. To the fifth cross-interrogatory: I do not know that the Florida State bonds had failed in England before they were put on the market in Holland. I do not know that they were put on the market for speculative purposes by certain parties, with my co-operation and
3883 knowledge, as I in fact had nothing to do with the emission and sale of the bonds. I have never seen the prospectus printed in English now shown me, and I do not know that the prospectus printed in English is a correct copy of the one printed in the Dutch language.

6. To the sixth cross-interrogatory: I did not know of any fraud in those bonds when they were first offered and sold in this market, or of anything fraudulent or irregular in connection with the same. I read nothing at the time in any journal or publication referring to anything

fraudulent about them. Later on I read one publication questioning the validity of said bonds.

7. To the seventh cross interrogatory: I do not know anything regarding those telegrams, nor of the letter of Mr. L'Engle.

8. To the eighth cross interrogatory: I do not know anything contained in this question.

9. To the ninth cross interrogatory: I do not know of the existence of any such syndicate, and was in no way connected with any.

10. To the tenth cross-interrogatory: I don't know of any such arrangements.

11. To the eleventh cross-interrogatory: I do not know of any manœuvres of this kind in connection with the Florida bonds, nor have
3889 I ever myself purchased or sold any of those bonds The value
of said bonds were affected by rumors of their validity, and what I herein say refers to the period some considerable time after the bonds were placed in this market.

12. To the twelfth cross interrogatory: They were placed in this market by Messrs. Holje & Boissevain and A. J. & M. Milders, and as to the rest of this question I know nothing about it.

13. To the thirteenth cross interrogatory: I do not know.

14. To the fourteenth cross-interrogatory: I never had at any time one of those bonds, nor have I now.

15. To the fifteenth cross-interrogatory: I do not know.

16. To the sixteenth cross-interrogatory: I know that the committee was formed to protect the interest of the bondholders, but I do not know any particulars about the committee.

17. To the seventeenth cross-interrogatory: I know that Mr. Sherwin occupied himself with the protection of the bondholders' interest, and was engaged in bringing about a reorganization or settlement. Whether that is meant by the memorandum plan spoken of I do not know.

18. To the eighteenth cross interrogatory: I do not know of any such arrangements.

19. To the nineteenth cross interrogatory: I am not in anywise
3890 directly or indirectly interested therein, and as to the result of
it, I am interested therein to the following extent: When Mr. Sherwin called on me some years ago in reference to this reorganization I volunteered my advice about the course he should take in the matter, and I promised him if he did follow my advice that I should use all my influence with any bondholders to support his proceeding, which I did. Later I learned that my services would be remunerated, and although I would never have asked for any pay, I do believe that I am entitled to receive a remuneration, if the result for the bondholders is satisfactory.

20. To the twentieth cross-interrogatory: Know the persons named in this question, and they have spoken to me in connection with the matter. I have seen the interrogatories previous to my examination, having been shown them by Mr. Willard.

21. To the twenty-first interrogatory: I have never given any such power of attorney, written or printed, to Frank Sherwin.

F. W. OEWEL.

Sworn to and subscribed before me this twenty-ninth day of March, 1879.

[L. S.]

D. ECKSTEIN,
U. S. Consul and Commissioner.

3891 *Deposition of Abraham Carel Wertheim.*

And the said **ABRAHAM CAREL WERTHEIM**, being first duly sworn by the said commissioner, on this second day of April, 1879, to testify to the truth, the whole truth, and nothing but the truth, relative to the cause specified in the said commission, made answer to the said interrogatories and cross-interrogatories as follows, viz:

1. To the first interrogatory this witness saith: My name is Abraham Carel Wertheim; I am 46 years of age, and a member of the firm of Wertheim & Gompertz, bankers.

2. To the second interrogatory: At Amsterdam, Holland.

3. To the third interrogatory: Banker and member of the stock exchange; I was so engaged, and perfectly acquainted with all dealings in stocks and bonds on that market.

4. To the fourth interrogatory: I know of such introduction and sale of such bonds.

5. To the fifth interrogatory: Such bonds were placed on the market in Amsterdam by Holje & Boissevain and A. J. & M. Milders, bankers, in December, 1870. Representations were made publicly, in print, by these bankers at that time, and my conviction is that the representations were made bona fide, and purchases of such bonds on the
3892 reliance of such statements.

6. To the sixth interrogatory: No authority was required, and the quotations of such bonds were allowed on the stock-list upon the reliance of the truthfulness of the representations and statements of the bankers placing the loan on the market.

7. To the seventh interrogatory: I have already answered this question.

8. To the eighth interrogatory: About the latter part of December, 1870, and the early part of 1871, at about 80 per cent. The dealings were public among a large class of buyers. The market in these bonds being a regular and frequent one, they changed hands daily.

9. To the ninth interrogatory: They were sold as high as about 84 per cent., and varied from time to time.

10. To the tenth interrogatory: They declined from 1872 to 1873, on account of general depression in American securities, and when the interest was not paid on the 1st of July, 1873, they then declined heavily.

11. To the eleventh interrogatory: I can only refer to the prospectus issued by the bankers when the loan was put on the market.

3893 12. To the twelfth interrogatory: The prospectus made public a full statement about the length of said railroad. An advertisement was also made, showing the bonds to be a lien upon the railroad 250 miles long in Florida, of the Jacksonville, Pensacola and Mobile Railroad Company.

13. To the thirteenth interrogatory: I never heard of such a company as the "Florida Central Railroad Company" before now, or of any such claim, and they were perfectly unknown to all purchasers of such bonds, and also the directors and members of the Amsterdam Bourse.

14. To the fourteenth interrogatory: The bonds were supposed and believed to be a perfect obligation against the State of Florida, as well as a lien upon said line of railroad, and no information was ever given by the Florida Central Railroad Company, or by anybody else, of any claim on any part of said line of railroad.

15. To the fifteenth interrogatory: I have answered this question before.

16. To the sixteenth interrogatory: The prospectus gave me no information on this point, but the coupons were sold by the owners to bankers and brokers, who sent them for collection to New York, where they were payable.

17. To the seventeenth interrogatory: Yes; payments were
3894 semi annual, at 8 per cent. yearly, and payments were made in
New York as I have stated. Notice was given here publicly by
advertisement that an agent in New York had been appointed by the
governor of Florida to pay the interest on such bonds. The dealers in
said bonds accepted such notice as true, and the statement itself con-
firmed their reliance on the value of the bonds in this market.

18. To the eighteenth interrogatory: Such notice confirmed belief in the bonds being sold, and a lien on the line of railroad.

19. To the nineteenth interrogatory: I know several of the complainants as high-standing people, who bought the bonds as an investment, in full confidence as a good security, and have held them till this day, relying upon the ultimate payment of the same.

20. To the twentieth interrogatory: One of my customers bought for himself and his friends several hundreds of said bonds at about 80 per cent. Their names are Simon Fadooks & Son, of Dordrecht. The bonds were bought in full reliance on their validity, and as an investment, and they told me so at the time.

21. To the twenty-first interrogatory: Yes; the purchases and sales
were made successively and publicly at different times in the
3895 market at Amsterdam.

22. To the twenty-second interrogatory: First by public subscription, and afterwards by sales in the open market. The subscription was publicly open and a large number of the brokers interested themselves in it for their customers.

23. To the twenty-third interrogatory: I never knew about such a claim, or heard of it before. If such a claim had been made public, it would have rendered the sale of such bonds impossible and destroyed them completely in the public opinion.

24. To the twenty-fourth interrogatory: Had such publication been made known, it would have been destructive to the value of the bonds.

25. To the twenty-fifth interrogatory: I have already answered that such notice would have prevented any sales.

26. To the twenty-sixth interrogatory: Notice was made public that the law was open for inspection, with other documents, at the office of Holje & Boissevain, when the loan was offered.

Finals to the final interrogatory: I know nothing further, except that
all was done in Holland in the matter, in the purchase and sale of said
bonds, was in good faith, believing the bonds valid and perfectly
3896 good against the State of Florida, as well as a first lien upon the
250 miles of railway before named.

Cross-examined by and in behalf of the defendant the Florida Central Railroad Company:

1. To the first cross-interrogatory: In the last days of December, 1870, bonds were sold, as I have already answered. I have answered this question as completely as I can in my direct examination.

2. To the second cross-interrogatory: I have never heard of any such person before as Mr. L'Engle, and have never heard of such letter before; I am pretty sure no such letter was published in Amsterdam, or I should have *have* heard of it.

3. To the third cross-interrogatory: I have never before heard of such

a document or of such persons. If any such document as this or the one named in the previous question had been addressed to the members or other directors or officers of the Bourse or Stock Exchange of Amsterdam, the same would have been made public at once.

4. To the fourth cross-interrogatory: I never before heard of this. I do not know whether John Collinson was better informed, but certainly he did not publish it.

3897 5. To the fifth cross-interrogatory: Never was any member expelled for such reason or censured, or caused to resign on such account.

6. To the sixth cross-interrogatory: I know nothing about such telegrams; I never before heard of them.

Cross-examined by and in behalf of the defendant the Western Division of the Western North Carolina Railroad Company et al.:

1. To the first cross-interrogatory: I became a member of the Bourse of Amsterdam in 1853; I am a banker.

2. To the second cross-interrogatory: In 1870, from the prospectus of Holje and Boissevain, and A. J. & M. Milders, I first heard of these bonds; I got all my information from such prospectus.

3. To the third cross-interrogatory: For first-rate European bonds the price should be at par; but for American bonds, where at that time the rate of interest was much higher than in Europe, the price of 80 per cent. was high enough.

4. To the fourth cross-interrogatory: I have stated from whom and how I obtained my information; I had no connection with the concern.

3898 5. To the fifth cross-interrogatory: I do not know of any attempt to put these bonds on the market in England; I only knew Holje & Boissevain and A. J. & M. Milders in connection with such loan; and the only prospectus I know or ever heard of was the one issued in Dutch, with the signatures of the above-named bankers and brokers, and dated on December 19th, 1870.

6. To the sixth cross-interrogatory: I ignore completely any such statements of this kind; I never heard of them; if any such charge or fraud had been so made, a sale of the bonds on this market would have been impossible.

7. To the seventh cross interrogatory: No decision of any kind was ever made by the Bourse; I did not know anything of such telegrams. I never heard of them before, or of such letter addressed to Holje & Boissevain.

8. To the eighth cross-interrogatory: I do not know of any sales by John Collinson or Hopkins & Co. at any time; I do not know of any distinction between bonds over or below 2,800; no difference was ever made on the market.

9. To the ninth cross-interrogatory: I ignore completely any transactions between Collinson and Hopkins & Co. about such bonds; I do not know anything about it.

10. To the tenth cross interrogatory: I do not know.

3899 11. To the eleventh cross-interrogatory: The general price of these bonds in the market changed at different times, as in other securities. They had no decided character for mere speculation, but for investment they were looked upon as solid bonds; I never speculated in them, not being a speculator.

12. To the twelfth cross-interrogatory: I have already answered this question.

13. To the thirteenth cross-interrogatory: I knew nothing of the kind. I have answered as best I can before.

14. To the fourteenth cross-interrogatory: I never had such bonds for myself, but purchased them, and held them from time to time for my customers in the regular course of our banking business.

15. To the fifteenth cross-interrogatory: I do not know.

16. To the sixteenth cross-interrogatory: There was a committee elected by the bondholders officially at a meeting in the usual way, and the members of that committee were all known as very respectable men. Such committee has since retired, the bondholders employing counsel to act for them.

17. To the seventeenth cross-interrogatory: I know nothing and never heard anything of any such matter.

18. To the eighteenth cross-interrogatory: I know nothing of this.

19. To the nineteenth cross-interrogatory: I have no interest whatever in this suit.

3900 20. To the twentieth cross-interrogatory: I do not know these gentlemen. I was requested by Dr. Wertheim to give my testimony, and to give such information as I have done, without any attempt or intimation from any person as to what I should testify. I have never before the 29th of March last, seen or read such interrogatories.

21. To the twenty-first cross-interrogatory: I never gave power of attorney to Mr. Sherwin.

(Signed) **A. C. WERTHEIM.**

Sworn to and subscribed to before me this second day of April, 1879.

D. ECKSTEIN,
U. S. Consul and Commissioner.

3901 EXHIBIT L. F. S., No. 1.—*Referred to in the testimony of Jan Fred. Schutte.—L. Eckstein commissioner.*

(Translation.)

UNITED STATES OF AMERICA.

Loan of the State of Florida. Issue of 4,000,000 *dollars.*

Issued in accordance with an act of the legislature of the State, dated the 28th day of January, 1870.

Bonds of 1,000 dollars to bearer, bearing interest at the rate of eight per cent.

Redeemable the 1st January, 1900.

Capital and interest in gold. Exempt from all taxes of the United States.

The payment will be effected at the office of the financial agency of the State of Florida in New York of the capital on the 1st January, 1900, of the interest in half-yearly coupons of 40 dollars, on the 1st January and 1st July of each year. Both in gold. 3902

The bonds are issued, the dollar computed at $2.50, at the rate of 8 per cent.; interest commencing 1 January, 1871. Messrs. Holge & Boissevain, at Amsterdam, and Messrs. A. J. & M. Milders, at Rotterdam, are authorized to take subscriptions on the said 4,000,000 dollars eight per cent. Florida bonds.

The State of Florida is the debtor of these bonds, and guarantees the payment in gold of both capital and interest.

The following statements are derived from the communications of the governor of Florida, (Mr. Harrison Reed.) and of the financial agent of the State, (the documents relating thereto, and a copy of the act hereafter mentioned are open for inspection at Messrs. Holge & Boissevain's.)

The present minimum value of the real property on which taxes have to be paid amounts 50,000,000 dollars. According to the new charter an annual tax has to be raised sufficient to cover the interest of the debt and further expenses of the State. A tax of only ½ per cent. on said amount of real property, with some other special taxes, will be adequate for both purposes, and for the forming of a sinking fund for the debt.

There are in the State of Florida four hundred miles of railway, a thousand miles of telegraph lines; along the coast extending over a length of a thousand miles, these are oyster-beds and fisheries, equal to the best in the world, various steamboats' insurance, and other companies are established in the State. Should a call be made on these resources for a contribution to the taxes, as is the case in other States, an interest liability ten times heavier than the present might be covered without rendering it necessary to impose heavier taxes on the population.

The State, moreover, possess 11,000,000 acres of lands, and will, when the government surveys are completed, acquire 5,000,000 acres more, which lands will constitute a future security for its debt.

The debt now to be issued is created in accordance with an act of the legislature, dated the 28th of January, 1870, on behalf of the Jacksonville, Pensacola & Mobile Railroad, according to the provisions of 3903 said act, namely: this company receives 16,000 dollars in bonds per completed mile of its road, and on the other hand, gives the State an equal amount in first-mortgage bonds, bearing the same rate of interest, which are held by the State as a special guarantee for the holder of State bonds.

The Jacksonville, Pensacola & Mobile Railroad Company, whose capital stock amounts to $6,550,000 paid upon, will altogether construct 450 miles of railroad—250 miles thereof now quite completed and opened for traffic.

The net receipts in six months ending the 31st July, 1870, on 237 miles, amounted to $182,546; consequently more than sufficient for the payment of the interest amount.

For the greater security of the payment of the capital and interest, the Jacksonville, Pensacola & Mobile Railroad has issued first mortgage bonds to an amount of $16,000 per mile on the now completed 250 miles. These bonds have now been surrendered to the State of Florida, which, in accordance with the provisions of the aforesaid act, has in consideration thereof issued the said $4,000,000 State bonds.

The total amount of the previous debt of Florida is only $1,011,756, being partly indebted to the Government of the United States, and for the rest in the hands of the inhabitants of the State.

Besides this debt, however, there exists $1,300,000 so called Florida territorial bonds, partly in possession of English holders. These bonds were issued in 1835 by some banks that, with the approval of the legislature of the then "Territory," were to issue these bonds against mortgages on real property, which were in consideration thereof to be deposited at the said banks, Florida, being then as before said Territory, could not as such contract debt without the approval of the Federal Government, which approval was never granted; besides which, the approval of the legisature of the Territory for the issue of these bonds was given only under certain conditions, which were never carried out.

It has also been decided by the legal authorities in America, as well as by a committee of bankers and merchants in London, that these bonds do not constitute any claim against Florida; but the committee of foreign bondholders in London has expressed its opinion that the State of Florida, although in law not liable for these bonds, would do well to indemnify the holders.

3904 Consequent thereon, the financial agents of Florida and the holders of the said bonds, with the co-operation of the said committee of foreign bondholders, have come to an arrangement, based mainly on the issue of land warrants against the said bonds, which arrangement has now been submitted to the approval of the government of Florida and is generally considered a favorable one.

J. F. S., No. 1.

The contents of the bond are as follows:

UNITED STATES OF AMERICA.

No. . STATE OF FLORIDA. No. .

It is hereby certified that the State of Florida justly owes to or bearer one thousand dollars, redeemable in gold coin of the United States at the Florida State agency, in the city of New York, on the first day of January, 1900, with interest thereon at the rate of eight per centum per annum, payable half-yearly at the said Florida State agency in gold, on the first day of July and January in each year, from the date of this bond and until the principal be paid, on surrendering the coupons hereunto annexed.

Tallahassee, January 1st, 1870.
[FLORIDA GREAT SEAL.]

HARRISON REED,
Governor.
S. B. CONOVER,
Treasurer.

Issued in accordance with act of the legislature of Florida, approved January 28th, 1870.

Contents of the coupon.

The State of Florida will pay to bearer forty dollars in gold at the State agency in the city of New York for interest due on bond for $1,000.

S. B. CONOVER,
Treasurer.

No. .

3905 Endorsement on the back:

STATE OF FLORIDA.

No. .] *Thirty-year eight per cent. bond.* [$1,000

Payable January 1st, 1900. Interest payable 1st July and January, in gold, at Florida State agency, in the city of New York.

This bond is one of a series issued in aid of the Jacksonville, Pensacola & Mobile Railroad Company to the extent of $16,000 per mile upon completed road. The State of Florida holding the first mortgage bonds of said railroad company for a like amount, as further security to the holder thereof.

HARRISON REED,
Governor of Florida.

The subscription for said 8 per cent. Florida bonds is opened at our offices, on Thursday, the 22d and Friday the 23d December, in the morning, from 10 till 2 o'clock.

The price of subscription, the dollar computed at $2.50, is 80 per cent. interest, commencing from the 1st January, 1871. At the time of subscription, 10 per cent. of the amount subscribed has to be paid, to be taken into account on the further payment.

The future payment has to be effected in one sum, three days after the assignment, against a provisional certificate, which will within a few days be taken in exchange for the original bonds.

In the event of an excess of subscription they will be proportionately reduced. A commission of ¼ per cent. will be allowed to brokers and stock agents on the amount assigned to them. Prospectuses and subscription lists are procurable at our offices.

Amsterdam, 19 December, 1870.
Rotterdam.

HOLGE & BOISSEVAIN,
A. I. &. M. MILDEUS.

Translated from the original Dutch printed documents this 14th day of November, 1877.

ALEX. W. ANDERSON,
Translator and British Vice-Consul, Amsterdam.

3906 *Exhibit translation referred to in testimony of P. A. L. V. Ogtrop.—P. A. L. V. O., No. 1.—D. Eckstein, commissioner.*

AMSTERDAM, 5th *December*, 1877.

The Beshnur der Verceinging voor den Effektenhandel, (directors of the Union for the Stock Exchange,) declare:

That an 8 per cent. Florida loan was brought upon the market in 1870 by the firms of Holge & Boissevain and Milders & Co. at the rate of 80 per cent.

That according to the statement of the emittents the bonds sold at the exchange, 3,206 in number, were numbered as follows, viz: 1–441, 443–1735, 1737–3200 and 3769–3776.

That the said bonds were bought and sold bona fide at the exchange, the said bonds being considered as a State loan.

That in the first time with large dealings, and purchases and sale, many times over and over again, the said bonds rose to about 86 per cent., that is, at a premium of 6 per cent., as will appear from the daily price lists of that time.

That when in July, 1873, the coupon was not paid, the said bonds fell considerably, and that in consequence of the proposed reorganization having been adopted by the bona-fide holders thereof, the dealings therein have now again been resumed.

The directors aforesaid,

(Signed) P. A. L. VANOGTROP,
Deputy Member.

(Signed) A. L. WARFBAIN,
Chairman.

I hereby certify that the above is a true and correct translation of the original Dutch document, marked A, hereunto annexed.

ALEX. W. ANDERSON,
Translator and British Vice-Consul.

AMSTERDAM, *6th December*, 1877.

3907 UNITED STATES CONSULATE,
Amsterdam, Dec. 6, 1877.

Sworn for authentication of the signature of Alex. W. Anderson, translator and British vice-consul.

{ SEAL AMERICAN CONSULATE, AMSTERDAM, NOT. }

CHARLES MUELLER,
U. S. Consul.

Translated into English, Amsterdam, 6th December, 1877.

ALEX. W. ANDERSON,
Translator and British Vice-Consul.

Vereeniging voor den Effektenhandel, ye Amsterdam.

Exhibit P. A. L. V. O.—No. 1, *original.—Referred to in testimony of P. A. L. V. Ogtrop.—D. Eckstein, commissioner.*

AMSTERDAM, *5th December*, 1877.

Her Repluar der Vereeniging voor der Effektenhandel vablaart dat, in 1870 eene opett leening Florida door de firmaas Holge en Boissevain en Milders & Co., pegen den Kvers va 80 per ct. is dan de markt gebrayt dat wegens opgave van de mullenlen, de ver Noeurze verkoehle Slukken, ben getute van 3206 ware genonimerd als wlgt No. 1 441 2, 443, 1735, No. 1737–3200, N. 8769, 3776, dat du oblegatum be goeder troua aun de Beurs tyt gekuht en verhandeld daar die oblegahen als Staubleening Wedenbekhoueerd dat canvankelyh, by levendegen handel enly herhaulden Omret du obligatien to ongeveer 3620 dat is to 6 per ct. agu zyn gessegen zoo als uit d Pryscorander vandeimtyd blyken wrr; dat due oblegatien noen is July, 1873, de coupon niet wora betauld zeer gedaald zyn en thans weder eenign handel hebben arlgeloke made norgestelde reorganisatie doorde bonafide houders is aangenoms.

P. A. L. V. Ogtrop, Her Bepnea wornm.

A. L. WARFBAIN,
Quender.

3908 UNITED STATES CONSULATE, AMSTERDAM.

Sworn and subscribed to before me by A. L. Warfbain, chairman, and P. A. L. Van Ogtrop, deputy member of the board of the exchange committee, at Amsterdam, this fifth day of December, A. D. 1877.

CHARLES MUELLER,
U. S. Consul.

3909 *Exhibit G. M. B., No.* 1.*—Referred to in the evidence of G. M. Boissevain.—D. Eckstein, commissioner.*

Be it known unto all whom it may concern:

I, Edwin Augustus Burwash, notary public by royal authority, duly admitted and sworn, residing and practicing in the city of London, England, do hereby certify and attest that the paper writing hereunto annexed, marked with the letter A, is a true, faithful and literal copy of a certified copy of an original order made by the Jacksonville, Pensacola and Mobile Railroad Company, dated 6th day of May, in the year 1870, I having carefully collated the said annexed copy with the said certified copy, and found them to agree in every respect.

In witness whereof, I, the said notary, have hereunto set my hand, and affixed my notarial seal, in London, this twentieth day of April, in the year of our Lord one thousand eight hundred and seventy-
3910 one.

Quod attestor:

[NOTARIAL SEAL.] **EDWIN A. BURWASH,**
Notary Public.

Gezier wor legalisatie der bovenstaande hand, teckening var der Her Edwin A. Burwash, openbare notaris dezer stad.

{ Zegel van het, Consulaat. } London, der 20th April, 1871, de vice kehsul der Nederlanden, (get) Jan van Drunen.

A.

To the honorable the governor of the State of Florida:

SIR: The Jacksonville, Pensacola and Mobile Railroad Company having made a contract with Messrs. S. W. Hopkins and Co., of the city of New York, dated on the thirteenth day of April, 1870, by which Messrs. S. W. Hopkins and Co. were appointed financial agents of said railroad company, for the purpose of selling the bonds of the State of Florida, to which said company is entitled by law, and purchasing and providing iron and supplies for the purpose of completing said
3911 railroad, and Messrs. S. W. Hopkins and Co. being about to
furnish to said company a large amount of money, iron and supplies for said purpose, and being by the terms of said contract entitled to receive all the bonds of the State of Florida, to which this company is or may be entitled, as well for their security for the advances so to be made as for the selling and disposing of said bonds under said contract, and said bonds being yet unexecuted, you will please deliver to said S. W. Hopkins and Co., the financial agents of said railroad company, all the bonds of the State of Florida, to which said railroad company is entitled by law, and all the bonds of said State to which it may from time to time become entitled by law, accepting their receipt therefor, as the financial agents of this company.

In witness whereof the said company has caused its president to affix his signature hereto, and the corporate seal of said company, on the 6th day of May, in the year 1870.

3912 (Signed) **M. S. LITTLEFIELD,**
President Jacksonville, Pensacola and Mobile Railroad Company.

{ JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY. }

UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

I, Eleazer Miller, a notary public, within and for the county and State above named, do hereby certify that the foregoing is a true and correct copy carefully compared by me of an original order made by the Jacksonville, Pensacola and Mobile Railroad Company; that the foregoing is a true and correct copy of the whole of said order, and that the signature thereto is known to me to be the genuine signature of the *of the* president of said railroad company, and that the seal thereto is known to me to be the seal of the said company.

(Signed) ELEAZER MILLER,
[*National* STAMP.] *Notary Public, New York County.*
May 14th, 1870.
No. 1708.

3913 Legalization of the signature of Eleazer Miller, by the consul of England, at New York.

Legalization of the signature of Eleazer Miller, by Charles E. Loew, clerk, at New York.

Legalization of the signature of Eleazer Miller, by the consul of Germany.

Exhibit G. M. B. No. 2.—Referred to in the evidence of G. M. Boissevain.—D. Eckstein, commissioner.

Be it known unto all whom it may concern:

I, Edwin Augustus Burwash, notary public by royal authority, duly admitted and sworn, residing and practicing in the city of Lond., England, do hereby certify and attest that the pape' writing hereunto annexed, marked with *with* the letter B, is a true, faithful, and literal copy of the duly verified copy of the original appointment of Messieurs S. W. Hopkins & Co., a' financial agents and attorneys of the Jacksonville,
Pensacola and Mobile Railroad Company, dated fourt' day of
3914 May, in the year one thousand eight hundred and seventy, I
having carefully collated the said annexed copy with the duly verified copy aforesaid, and found it to agree therewith in every respect.

In witness whereof I, the said notary, have hereunto set my hand and affix' my notarial seal, in London, this twenty-second day of November, in the year of our Lord one thousand eight hundred and seventy.

Quod attestor:
[NOTARIAL SEAL.] EDWIN A. BURWASH,
Not. Pub.

Gezier wor legalizatie van de bovestaande handteekening van der Heer Edwin A. Burwash, openbaren notaris alhies.

{ Zegel van het, Consulaat. } London, 23 November, 1870, de vice-consul der Nederlanden, Jan van Drunen.

Know all men by these presents, that the Jacksonville, Pensacola and
Mobile Railroad, a corporation organized under the laws of the
3915 State of Florida, one of the United States of America, have made,
constituted, and appointed, and by these presents do make, constitute, and appoint Messrs. S. W. Hopkins and Co., of the city of New York, and London, England, its financial agents, and true and lawful attorneys for said company, and in its name, place, and stead to sell, dispose of, transfer, and deliver to the purchasers thereof, all or any part of the bonds of the State of Florida to which said company is now or may hereafter become entitled under the laws of said State; and to purchase for said company all such materials, iron and other supplies, for the purpose of building and equipment of the railroad of said company, as said company shall from time to time direct, giving and granting unto the said S. W. Hopkins and Co., the financial agents and attorneys of said company, full power and authority to do and perform every act and thing whatsoever requisite and necessary to be done and per-

formed as such financial agents, as fully, to all intents and purposes, as the said company, by its board of directors and officers, might or could do, with power of substitution and revocation, hereby ratifying and confirming all that the said S. W. Hopkins and Co., or their substitute, shall lawfully do or cause to be done as such financial agents of said company, by virtue hereof. 3916

In witness whereof, the said Jacksonville, Pensacola and Mobile Railroad Company has caused these presents to be signed by its president, and the corporate seal of said company to be affixed hereto, on the fourth day of May, in the year one thousand eight hundred and seventy.

(Signed) MILTON S. LITTLEFIELD,
President Jacksonville, Pensacola and Mobile R. R. Co.

In presence of—
(Signed) ROLLIN STEWARD.
(Signed) J. N. GREENE.

In the eleventh line, first page, between the words "York" and "its," the words "and London, England," was added before signing; also, on the seventeenth line, second page, the word "Florida" was erased and the word "Mobile" was written, before signing of this instrument. 3917

(Signed) M. S. LITTLEFIELD,
President Jacksonville, Pensacola and Mobile R. R. Co.

In presence of—
(Signed) R. STEWARD.
(Signed) J. N. GREENE.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

I, Eleazer Miller, a notary public within and for the county and State above named, do hereby certify that the foregoing is a true and correct copy, carefully compared by me, of the original appointment of Messrs. S. W. Hopkins and Co. as financial agents and attorneys of the Jacksonville, Pensacola and Mobile Railroad Company, and that the foregoing is a true and correct copy of the whole of the said original appointment, and that the said original is known to me to be sealed with the seal of the Jacksonville, Pensacola and Mobile Railroad Company, and is known to me to be signed by the president May 12th, 1870. 3918

(Signed) ELEASER MILLER,
Notary Public, New York County.

[NOTARIAL SEAL.]

Legalization of the signature of Eleazer Miller, by Charles E. Loew, clerk of the city and county of New York.

Legalization of the signature of Eleazer Miller, by the consul of England, at New York.

Legalization of the signature of Eleazer Miller, by the consul of Germany, at New York.

Exhibit G. M. B., No. 3.—Referred to in evidence of G. M. Boisevain.—D. Eckstin, commissioner.

Be it known to all whom it may concern:

I, Edwin Augustus Burwash, notary public by royal authority, duly admitted and sworn, residing and practicing in the city of London, Eng-

land, do hereby certify and attest that the paper writing hereunto annexed,
marked with the letter A, is a true, faithful, and litteral
3919 copy of the original declaration of the governor of the State of
Florida, dated Tallahassee, the sixth day of May, 1870. I having
carefully collated the said annexed copy with the said certified copy
and found them to agree in every respect.

In witness whereof I the said notary have hereunto set my hand and affixed my notarial seal in London, the twentieth day of April, in the year of our Lord one thousand eight hundred and seventy-one.

Quod attestor.

[NOTARIAL SEAL.] EDWIN A. BURWASH,
Not. Pub.

Gezier wor legalisatie der bovenstaande handteekening var der Heer Edwin A. Burwash. Openbare Notaris dezer stad.

London, der 20th April, 1871, de vice konsul de Nederlanden, (get) Zan van Drunen.

{ ZEGAL VAS HET
CONSULAAT. }

Whereas the Jacksonville, Pensacola and Mobile Railroad Company
of the State of Florida, is entitled by an act of the legislature of
3920 said State of Florida, to receive from said State at the hands of
the proper executive officer of said State, four million dollars
of the bonds of said State for aid in building a railroad in said State;
and whereas said company will hereafter become entitled to receive
divers other large sums in said bonds from said State to the amount
and upon the conditions set forth in the said act of the legislature of
said State; and whereas the said railroad company has made a contract
with S. W. Hopkins and Co. of New York, by which contract said
S. W. Hopkins and Co. have become the financial agents of said railroad
company for the purpose of selling said State bonds, and purchasing
iron and other materials for said road; and whereas by said contract,
said S. W. Hopkins and Co. agree to advance to the said company
divers large sums of money; and whereas the said company has duly
executed to the said S. W. Hopkins and Co., as financial agents thereof, an
order directly to me the governor of the said State of Florida, for the
3921 delivery to them, as such financial agents of said company, of
all of said four million dollars of bonds, to which said company
is now entitled, and of all other bonds to which said company may hereafter
become entitled by law; know all men by these presents, that I,
Harrison Reed, governor of the said State of Florida, do hereby declare
and make known to all whom it doth or may concern that I will, on behalf
of said State respect the appointment of said S. W. Hopkins and
Co., as financial agent of said company, and I do hereby accept the
terms and conditions of said order, and that I will deliver to said S. W.
Hopkins and Co.. as financial agents of said company, immediately
upon the same being signed and executed, the said four million dollars
of State bonds, and all other State bonds to which said company may
hereafter become entitled as provided in said appointments and in said
order.

(Signed) HARRISON REED,
Governor of Florida.

3922 I hereby certify that the above signature is the genuine signature
of his excellency, the governor of the State of Florida. In tes-

timony whereof, I have hereunto set my hand and affixed the great seal of the State, at Tallahassee, the capital, this sixth day of May, A. D. 1870.

{ GREAT SEAL OF THE STATE OF FLORIDA. IN GOD WE TRUST. }

(Signed) JOHNATHAN C. GIBBS,
Secretary of State,

(Signed) For GEO. W. DRIGGS,
Assistant Secretary of State.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

I, Eleazer Miller, a notary public within and for the county and State above-named, do hereby certify that the foregoing is a true and correct copy carefully compared by me of the original declaration of the governor of the State of Florida, one of the United States of America.
And that the foregoing is a true and correct copy of the whole of
the said original declaration. And that the snid original is of
3923 known to me to be sealed with the great seal of the State
Florida, and is known to me to be signed by the governor of the
State of Florida. And the certificate of the genuineness of his signature thereto is known to me to be signed by the assistant secretary of state for the secretary of state for said State. May 12th, 1870.

[SEAL.] ELEAZER MILLER,
Notary Public, New York County.

Legislation of the signature of Eleazer Miller, by Edward Mortimer Archibald, esq., consul of England.

SEAL OF HER BRITTANIC MAJESTY'S CONSULATE, NEW YORK.

STATE OF NEW YORK,
City and County of New York:

I, Charles E. Loew, clerk of the city and county of New York, and also clerk of the supreme court for the city and county, the same being
a court of record, do hereby certify that Eleazer Miller sub-
3924 scribed to the certificate of the proof or acknowledgment of the
annexed thereon written, was at the time of taking such
proof or acknowledgment a and for the city and county of New York, dwelling in said city, com sworn and duly authorized to take the same. And further, that I am well with the handwriting of such notary and verily believe that the signature to the certificate of proof of acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 13th day of May, 1870.

[NOTARIAL SEAL.] CHAS. E. LOEW,
Clerk.

Legislation of the signature of Eleazer Miller by the German consul.

Exhibit G. M. B., No. 41.—Referred to in the evidence of G. M. Boissevain.
D. Eckstein, commissioner.

Be it known unto all whom it may concern:

3925 I, Edwin Augustus Burwash, notary public, by royal authority,
duly admitted and sworn, residing and practicing in the city
of London, England, do hereby certify and attest that the paper writ-

ing hereunto annexed, marked with the letter A, is a true, faithful, and literal copy of the certified copy of the original appointment of Messieurs T. W. Hopkins and Co. as fiscal agents of the State of Florida, one of the United States of America; I having carefully collated the said copy with the aforesaid certified copy, and found them to agree in every respect.

In witness whereof I, the said attorney, have hereunto set my hand and affixed my notarial seal in London, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventy.

Quod attestor.

[NOTARIAL SEAL.] **EDWIN A. BURWASH,**
Not. Pub.

Gesier wor legalisatic der bovenstandie hand testening vas der Speer Edwin Augustus Burwash, openbare deser stad London, der
3926 29sten November, 1870, de consul general der Nederlands.

(Get)

{ZEGEL VES HET, CONSULAAR.} **T. W. MAY.**

A.

To all whom these presents may concern:

Know ye that S. W. Hopkins and Co., 71 Broadway, New York, and 53 Broad street, London, England, are hereby constituted and appointed fiscal agents of the State of Florida, for the payment of the interest on the bonds of the said State, issued in accordance with the act of the legislature of said State, entitled an act to alter and amend the act entitled an act to perfect the public works of the State, approved January 28, 1870.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this sixth day of May, A. D. 1870.

{GREAT SEAL OF STATE OF FLORIDA, IN GOD WE TRUST.} (Signed) **HARRISON REED,**
Governor.

By the Governor,
Attest:
3927 (Signed) **JOHNATHAN GIBBS,**
Secretary of State.
Per **GEO. W. DRIGGS,**
Assistant Secretary of State.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

I, Eleazer Miller, a notary public, within and for the county and State above named, do hereby certify that the foregoing is a true and correct copy of the original appointment of Messrs. S. W. Hopkins and Co. as fiscal agents of the State of Florida, one of the United States of America, for the purpose of paying interest on certain bonds mentioned in said appointment, and that the foregoing is a true and correct copy of the whole of the said certified copy, and that the said certified copy is known to me to be sealed with the great seal of the State of Florida, and is known to me to be signed by the governor of said State, and by the assistant secretary of State, for the secretary of State of said
3928 State, May 12th, 1870.

[SEAL] **ELEAZER MILLER,**
Notary Public, New York County.

STATE OF NEW YORK,
City and County of New York, ss:

Legalization of the signature of Eleazer Miller, by Charles E. Loeu, clerk of the city and county of New York. Legalization of the signature of Eleazer Miller, by the consul of England, at New York.

Legalization of the signature of Charles E. Loew, by the consul of Germany, at New York.

Exhibit G. M. B., No. 5.—Referred to in the evidence of G. M. Boissevain.
D. Eckstein, commissioner.

FLORIDA STATE BONDS.

LONDON, *November 28th*, 1870.

JOHN COLLINSON, Esq., *London:*

SIR: In accordance with request I hereby state that Messrs. Hopkins and Co., of 50 Old Broad st., London, possess full authority to
3929 sell or otherwise dispose of the $4,000,000 eight per cent. gold bonds of the State of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, and that any agreement entered into by the said S. W. Hopkins and Co., for the sale of these bonds, will be binding on the above mentioned railroad company.

Believe me, sir, yours obediently,
(Signed) M. S. LITTLEFIELD,
[SEAL J., P. & M. R. R. Co.] *Pres. J., P. & M. R. R. Co.*

Exhibit G. M. B., No. 6.—Referred to in the evidence of G. M. Boissevain.
D. Eckstein, commissioner.

Be it known unto all whom it may concern:

I, Edwin Augustus Burwash, notary public by royal authority, duly admitted and sworn, residing and practicing in the city of London, England, do hereby certify and attest that the paper writing hereunto annexed, marked with the letter C, is a true, faithful, and literal copy of the original letter, with which I have carefully collated the said
3930 copy, and found them to agree in every respect.

In witness whereof I, the said notary, have hereunto set my hand and affixed my notarial seal, in Loudon, this twenty-second day of November, in the year of our Lord one thousand eight hundred and seventy.

Quod attestor:
[NOTARIAL SEAL.] EDWIN A. BURWASH,
Not. Pub.

Gezier voor legalisatic van de boomstaande handteekening van den Heer A. Burwash, openban notarius alheir.

London, 23 November, 1870, de vice consul der Nederlanden (get.), Jan Van Druunen.

{ ZEGAL VAN HET
CONSULAAT. }

C.

[S. W. Hopkins and Co., 58 Old Broad street.]

LONDON, E. C., *Nov.* 17, 1870.

JOHN COLLINSON, Esq.:

DEAR SIR: Agreeably with contract, dated November 14, 1870, you are hereby authorized to appoint and arrange with such bankers

3931 and brokers as you may deem it advisable, to invite subscriptions for Florida State 6 per cent. loan of four million dollars.

We remain, dear sir, your most obedient servants,

S. W. HOPKINS AND CO.

Florida 8 per cent. State loan.

Stamp.] [4,000,000.

Memorandum of agreement made this fourteenth day of November, one thousand eight hundred and seventy, between Messieurs S. W. Hopkins and Co., of 58 Old Broad street, London, agents for the State of Florida of the one part, and John Collinson, of 9 Victoria Chambers, London, civil engineer, of the second part:

1. The said John Collinson agrees to pay to the said Messieurs Hopkins and Company against delivery, on application in London, of each State of Florida eight per cent. one thousand dollars bond, payable on the first January, one thousand nine hundred, with coupons from the first January, one thousand eight hundred and seventy-one, up to
3932 maturity of the bond attached, the price of for each bond, and to pay in addition such interest as shall have accrued on such bond at the date of delivery, calculated by reference of the coupon attached.

2. The said John Collinson shall take from, on Monday, the twenty-first November, one thousand eight hundred and seventy, one hundred and fifty of such bonds, and shall have for ninety days from that date the option of taking one thousand and fifty more of such bonds. In case the said John Collinson should take within that period five hundred and twenty-five of such bonds, he shall for a further period of ninety days at least, from the expiration of the first period, have the option of taking all or any of the remaining five hundred and twenty-five.

3. Should the said John Collinson, by Wednesday, November thirtieth, one thousand eight hundred and seventy, apply for five hundred bonds at least in the aggregate, including the first one hundred and
3933 fifty, then he shall for eighty-one days from that date have the option to take the entire balance, videlicit, three thousand five hundred bonds, and should he at the expiration of the said eighty-one days have applied for one thousand seven hundred and fifty, or more of the said balance, he is to have the option for ninety days additional of taking up any part of the whole of the remainder.

4. The said Messieurs Hopkins and Company agree to deliver to the said John Collinson, on application in London within the period aforesaid, against payments as aforesaid, any portion or the whole of the bonds for four million dollars, as the case may be.

5. The said Messieurs Hopkins and Company agree that until all of the said options shall have lapsed by non-compliance on the part of the said John Collinson, they will not sell or part with any of the said bonds for four million dollars, excepting through him, the said John Collinson.

3934 6. The said John Collinson agrees on or before the first day of December, one thousand eight hundred and seventy, to invite through well known and respectable firms subscriptions for the whole of the said bonds.

7. The said Messieurs Hopkins and Company hereby certify as fiscal agents of the State of Florida that the said bonds have been duly

and legally issued by the said State, and that they have full authority to negotiate them in manner and upon the terms herein provided.

(Signed) S. W. HOPKINS & CO.
(Signed) JOHN COLLINSON.

58 OLD BROAD STREET,
London, E. C., November 17, 1870.

JOHN COLLINSON, Esq.:

DEAR SIR: In reference to our contract with you, dated the fourteenth day of November, 18 0, we do hereby agree to extend the time for the three hundred and fifty bonds stated in section 3 of said contract to Saturday, December 3, 1870, instead of November 30, 1870;
3935 this extension also applies to the options based on the taking of the three hundred and fifty bonds.

We remain, dear sir, yours respectfully,
(Signed) S. W. HOPKINS & CO.

58 OLD BROAD STREET,
London, E. C., Nov. 19th, 1870.

JOHN COLLINSON, Esq., *London*:

DEAR SIR: In reference to our contract with you, dated 14th day of November, 1870, and our letter dated 17th day of November, 1870, we do hereby agree to extend the time for the three hundred and fifty bonds stated in section 3 of said contract, to December 10th, 1870, instead of December 3d, 1870. This extension also applies to the option based on the taking of the three hundred and fifty bonds.

In reference to section 6 of said contract the time is extended to December 10th, 1870.

We remain, dear sir, your obedient servants,
(Signed) S. W. HOPKINS & CO.

3936 58 OLD BROAD STREET,
London, December 1, 1870.

JOHN COLLINSON, Esq., *London*:

DEAR SIR: In reference to our contract with you, dated 14th day of November, 1870, and our letter dated 17th and 19th days of November, 1870, we do hereby agree to extend the time for the three hundred and fifty bonds stated in section 3 of said contract to December 24, 1870, instead of December 10, 1870. This extension also applies to the options based on the taking of the three hundred and fifty bonds. In reference to section 6 of the said contract the time is extended to December 24, 1870.

We remain, dear sir, your obedient servant,
(Signed) S. W. HOPKINS & CO.

58 OLD BROAD STREET,
London, December 16, 1870.

JOHN COLLINSON, Esq., *London*:

DEAR SIR: In reference to our contract with you, dated November 14th, 1870, and our letters dated 17th and 19th November and 1st inst., and in regard to section 3 of said contract you are to decide
3937 on the 24th inst. whether you will take the bonds therein mentioned firm or not.

If you elect to take the 350 bonds as specified above, it is understood that you agree to pay for the same on the 29th inst., thus covering the terms of section third of said contract.

We remain, dear sir, your most obedient servants,

(Signed) **S. W. HOPKINS & CO.**

Exhibit G. M. B., No. 13.

[Advertisement published in Amsterday, Effedenkad, No. 23, dated 23d February, 1871; in Nieuw Algenuns, Effedenkad, No. 16, dated 24th February, 1871, and other papers.]

[Translation.]

UNITED STATES OF AMERICA.

8 *per cent. Florida loan.*

The undersigned have the honor to advertise that in consequence of some difficulties occurred lately in some of the States of the U. S. of America, regarding the position of loans issued in behalf of rail-
3938 roads or other public works, and desiring to give full security regarding the 8 per cent. Florida bonds which they issued to the holders of same, they decided to have the question regarding this loan submitted to the supreme court of Florida, acting therein according to advices of legal and other authorities in the matter of American law and legislation; and they now have much pleasure in stating that it appears from cable messages now to hand that the supreme court have unanimously given their decision that said loan is a constituted State loan.

Amsterdam, Rotterdam, 20th February, 1871.

HOLJE AND BOISSEVAIN.
A. T. AND M. MILDERS.

Exhibit G. M. B., No. 7.—Referred to in the evidence of G. M. Boissevain. D. Eckstein, commissioner.

58 OLD BROAD STREET,
London, November 17th, 1870.

JOHN COLLINSON, Esq.:

3939 DEAR SIR: Agreeably with contract, dated November 14th, 1870, you are hereby authorized to appoint and arrange with such bankers and brokers as you may deem it advisable to invite subscriptions for Florida State 8 per cent. loan of four million dollars.

We remain, dear sir, your obedient servant,

(Signed) **S. W. HOPKINS AND CO.**

To Messrs. HOLJE & BOISSEVAIN, and A. T. and M. MILDERS:

In accordance with the authority of which the above is a true copy, I hereby nominate you to bring out for subscription the said loan in Holland.

(Signed) **JOHN COLLINSON.**

9 VICTORIA CHAMBERS,
VICTORIA STREET, WESTMINSTER, LONDON.
19th December, 1970.

Messrs. HOLJE and BOISSEVAIN,
For the Dutch Consortion, Florida State Loan:

GENTLEMEN: Referring to the enclosed letter from S. W. Hop-

3940 kins and Co., dated December the 16th, I hereby authorize you to open subscriptions for these bonds in Holland during the present week, closing the same on or before Saturday, the 29th inst.

Believe me, gentlemen, yours truly,
(Signed) JOHN COLLINSON.

(Endorsed on back:) Exhibit G. M. B., No. 7, referred to in the evidence of G. M. Boissevain. D. Eckstein, commissioner.

Exhibit G. M. B., No. 8.—Referred to in the evidence of G. M. Boissevain. D. Eckstein, commissioner.

6 OLD JEWRY, LONDON, E. C.
15th November, 1870.

J. COLLINSON, Esq.:

DEAR SIR: We understand from S. W. Hopkins and Co. that you want a note from us stating the result of our perusal of the papers relating to the Florida matter, on which you saw us a day or two since.

3941 We have no hesitation in certifying that the original bonds and papers which were first submitted to us are in perfect order. The originals were given back by us to the parties in order, we believe, to send to the Continent to show to some parties there, but the copies which we produced to you are, we believe, correct, and from the tenor of the documents, there can, we think, be no doubt whatever as to the validity and bona fides of the bonds as certified by the State documents.

Yours truly,
(Signed) ASHURST, MORRIS AND CO.

Exhibit G. M. B., No 10.—Referred to in the evidence of G. M. Boissevain. D. Eckstein, commissioner.

EXECUTIVE OFFICE,
Tallahassee, Fla., June 18, 1870.

SIR: Your letter of the 15th is received, and in reply to the inquiries therein contained, I have the honor to state:

3942 The eight per cent. gold bearing bonds of the State of Florida, alluded to in the communication named, were issued in exchange for the same amount of the eight per cent. gold bonds of the Jacksonville, Pensacola and Mobile Railroad Company, named by a first mortgage on the road, franchises, and all other property of said company, to the extent of $16,000 per mile, for such parts of said road as are now completed and in good running order.

The road for which this exchange was made is a first-class road in every respect and doing a good business, and the State is amply secured. It is one of the great public works of the State provided for in the internal improvement law enacted 1855. It having been held to be a public work by the legislative and judicial department of Florida since that time.

3943 I will further state that the completion of this great trunk line from the Atlantic coast of Florida to the city of Mobile, and the great Florida Gulf port of Pensacola has been for years the prominent object of internal improvement of the State, with all parties and with every administration.

It is unnecessary for me to state that the resources of Florida are fully sufficient to meet all her obligations, and it is the present policy to retrench as much as possible the public expenses, and devote all the energies of the State to the completion of this line of road.

I am, gentlemen, very respectfully, your obedient servant,

(Signed) HARRISON REED,
Governor of Florida.

Exhibit G. M. B., No. 11.—*Referred to in the evidence of G. M. Boissevain. D. Eckstein, commissioner.*

Extracts of draft of prospectul sent by John Collinson to Holje and Boissevain.

1870.

FLORIDA STATE LOAN.

Issue of 4,000,000 dollars. Authorized by act of legislature, dated January 28th, 1870.

3944 The State of Florida guarantees payment in gold of both principal and interest, pledging the public credit of the State.

The governor of Florida (Harrison Reed) makes the following statements:

That there are four hundred miles of said road and *and* a thousand miles of telegraph line in operation; oyster beds and fisheries, along a thousand miles of the coast, equal to the best in the world; foreign corporations doing business in the State, insurance companies, steamship companies, all of which pay no taxes, and from which large tributes can, if necessary, be levied. The Jacksonville, Pensacola and Mobile Railroad, whose share capital consists of $6,550,000 fully paid up stock, is a line 450 miles in length, of which 250 miles are now completed, fully equipped, and given over to traffic. The earnings of 227 miles for the six months ending 31st July, 1870, have produced a net income of $182,546, being more than sufficient to pay the interest on the bonds as additional security for the prompt payment of principal and in-
3945 terest of these bonds. The Jacksonville, Pensacola, and Mobile Railroad Company have issued first mortgage bonds at the rate of $16,000 per mile, on 250 miles of completed road. These bonds have been deposited with the State of Florida, who, in accordance with the act of the legislature of the 28th of January, 1870, have issued in respect of them the above $4,000,000 of State bonds. All the original documents connected with this loan have been submitted to Messrs. Ashuert, Morris and Co., solicitors, of 6 Old Jewery, London, who have stated that they are fully satisfied that they are in perfect order, and that the bonds are properly issued.

Exhibit G. M. B., No. 12.—*Referred to in the evidence of G. M. Boissevain.— D. Eckstein, commissioner.*

Hopkins, 58 Old Broad street, London, to John Collinson (then at Brussels), Bellevue Hotel, Brussels.

LONDON, 17*th January*, 1871.

The act has been declared constitutional by the supreme court.
3946 The decision is unanimous. We are in possession of official cables signed by attorney-general of State, governor of State, and clerk of supreme court. Shall we telegraph them to you?

Collinson, London, 20th Febr'y, 1871, to Hoije and Boissevain, Amsterdam,

Copy of cable message from Tallahassee, from Harrison Reed, governor of State of Florida.

TALLAHASSEE, *February 6th.*

Supreme court this day unanimously decided railroads are public works, and that the State bonds issued in aid thereof are therefore constitutional.

Letter from S. W. Hopkins and Co., London, February 17, 1871, to John Collinson, esq., 50 Old Broad street, London:

We have this day received cab*el* advices from our New York house, stating that the supreme court of the State of Florida has declared the four million 8 per cent. gold bonds, issued in aid of the Jacksonville, Pensacola and Mobile Railroad Co., constitutional. The decision unanimous. We also give you herewith copies of cab*el* messages received from Florida State officials, with reference to same. The originals are subject to your inspection. 3947

Copy cable message from Tallahassee, from Harrison Reed, governor State of Florida.

TALLAHASSEE, *Feb. 16th.*

To HOPKINS, *London:*

Supreme court this day unanimously decides railroads are public works, and that the State bonds issued in aid thereof are therefore constitutional.

Copy of cable message from Tallahassee, February 16, to Hopkins, London.

Unanimous opinions supreme court this day declared it that railroads are public works, within terms State constitution, and legislat*ion* may authorize issuing State bonds for purposes perfecting them.

(Signed) CHAS. E. FOSTER,
Clerk Supreme Court.
B. C. DREW,
Attorney-General, Fla.

3948 *Exhibit G. M. B., No. 13.—Referred to in the evidence of G. M. Boissevain.—D. Eckstein, commissioner.*

Advertisement published in Amsterdamsch Effedenblad, No. 23, dated 23 February, 1871; in Nieuw Algemeen Effedenblad, No. 16, dated 24 February, 1871, and other papers.

[Translation.]

UNITED STATES OF AMERICA.

8 *per cent. Florida Loan.*

The undersigned have the honor to advertise that, in consequence of some difficulties occurred lately in some of the States of the United States of America, regarding the position of loan issued in behalf of railroads or other public works, and desiring to give full security regarding the 8 per cent. Florida bonds which they issued the holders of the same, they decided to have the questions regarding this loan submitted to the supreme court of Florida, acting therein according to advice of legal and other authorities in the matter of American law and legislation, and they now have much pleasure in stating that it appears from cable messages now at hand, that the supreme court have unanimously given their decision, that said loan is a constitutional State loan.

3949 Amsterdam, Rotterdam, 20th February, 1871.

HOLJE & BOISSEVAIN.
A. J. & M. MILDERS.

Exhibit G. M. B., No. 13.—Referred to in the evidence of G. M. Boissevain.—D. Eckstein, commissioner.

3950 *Exhibit G. M. B., No. 14.—Referred to in the evidence of G. M. Boissevain.—D. Eckstein ,commissioner.*

Be it known unto all whom it may concern, I, Edwin Augustus Burwash, notary public by royal authority, duly admitted and sworn, residing and practicing in the city of London, England, do hereby certify and attest that the paper writing hereunto annexed is a true, faithful, literal copy of the original act of denial, and under the seal of the State of Florida, of reports calculated to injure the credit of the State of Florida and the Jacksonville, Pensacola and Mobile Railroad, dated Tallahassee, the capital of the State of Florida, the 26th day of February, 1871, and signed by Harrison Reed, the governor of Florida; Johnathan C. Gibbs, the secretary of state of Florida; and S. W. Connes, State treasurer, I, the said notary, having carefully collated the same and found them to agree in every respect.

In witness whereof I, the said notary, have hereunto set my hand and affixed my notarial seal, in London, this twenty-fourth day of March, in the year of our Lord one thousand eight hundred and seventy-one.

3951 Quod Attestor:
[NOTARIAL SEAL.]
(Signed) EDWIN A. BURWASH,
Notary Public.

Gezier wor legalisatie der bovenstande hand, teekening van der Heer Edwin A. Burwash, openbare notarie.

London, der 31st March, 1871, de vice-konsul der Nederlanden (get.)

{ DEZER STAD ZEGEL VAS
HET CONSULAAT. }
JAN VAN DRUNEN.

Whereas it has come to our knowledge that reports have been circulated and measures taken to injure the credit of the State of Florida in this country and in Europe, through the press and otherwise, and to prevent the sale or injure the value of the bonds issued by the State of Florida to aid and assist in the completion and maintenance of the Jacksonville, Pensacola and Mobile Railroad, under the laws of this State, amongst which are statements and reports that there was no authority
for the issue of said bonds, and that the law under which they
3952 were issued was unconstitutional, for the purpose of settling that
question, the governor did submit the same to the supreme court
of Florida for their opinion, which has been lately rendered, and the

supreme court held that the said bonds were issued with the power vested in the legislation by the constitution.

We further believe that the reports and means used are for the purpose of affecting the credit of the State, retarding the works of internal improvement of the State, by preventing the Jacksonville, Pensacola and Mobile Railroad Company from extending its road to Mobile, thus crippling the great interests of the State in developing its resources, depriving the people of West Florida of means of transportation that this railroad would furnish them, promoting emigration to that portion of the State, and advancing the material, commercial, and agricultural interests of the State, feel it our duty to the State to give official denial to said reports.

We do, therefore, certify—

1. That the bonds of the State of Florida issued to aid the Jacksonville, Pensacola and Mobile Railroad Company were issued in strict conformity to the statutes of Florida, and that said statutes have been declared by the supreme court of Florida, the highest judicial tribunal in the State, being the court of the last appel'ate jurisdiction, to be constitutional by the unanimous opinion of the judges of said court. 3953

2. That the said Jacksonville, Pensacola and Mobile Railroad Company was incorporated by the laws of this State for the purpose of securing the early completion of one of the great lines of railroads in this State forming a part of the internal improvement works of the State connecting the Gulf of Mexico and Atlantic by a line of railroads running east and west through the whole State of Florida, the largest part of said line of railroads being now completed, and there only remains to be completed that part of the line between Mobile, Alabama, and Quincy, Florida, a portion of which is now graded, which, when completed, will give a continuous seaboard line and the shortest route from New Orleans, Louisiana, to Jacksonville, Florida, on the Atlantic Ocean, running east and west through the whole State of Florida; that the title of Jacksonville, Pensacola and Mobile Railroad Company to its line of railroad mortgaged is legal, clear, sound, and beyond question, and the lien is clear, perfect, and prior to any claim of whatever nature or demand, and superior in dignity to all others, and that the State of Florida has been by said company fully secured, as directed by the law, by the delivering of the bonds of the company in exchange for the bonds of the State issued to said Jacksonville, Pensacola and Mobile Railroad Company, in accordance with the requirements of the statutes. 3954

3. That the security which the State offers to capitalists in her bonds issued by aid of the Jacksonville, Pensacola and Mobile Railroad Company is entitled to full faith and credit, and that all attacks on the same are injurious to the welfare of the State, and made for private reasons rather than for the public good.

Given at Tallahassee, the capital of the State of Florida, this 24th day of February, 1871.

3955 (Signed)

HARRISON REED,
Governor of Florida.
JONATHAN C. GIBBS,
Secretary of State Florida.
S. W. CONNER,
State Treasurer.

Attest:
{ SEAL OF THE STATE OF FLORIDA. }

JOHNATHAN C. GIBBS,
Sec. of State.

HER BRITANIC MAJESTY'S CONSULATE, NEW YORK.

I, Edward Mortimer Archibald, esq., companion of the most honorable Order of the Bath, Her Britanic Majesty's consul, do hereby certify that the seal affixed to the annexed certificate is the great seal of the State of Florida, and that Harrison Reed, esquiré, whose true signature is thereunto subscribed, was on the day of the date thereof governor of the said State, to whose official acts such faith and credit are due.

In testimony whereof I do hereunto set my hand and seal of office at the city of New York, this seventh day of March, in the year of our Lord one thousand eight hundred and seventy-one.

3956 Reg. the consul.

[SEAL.] (Signed) J. PIERREPONT EDWARDS,
Vice-Consul.

Legalization of the signature of Johnathan C. Gibbs, by the consul of Germany at New York:

Consulaat Generaal der Nederlanden in de Vereenigde Staten van Noord Amerika.

REED C. BURLAGE.

Ridder der orde van den Nederlandscher leeim consul generaal van Z. M. der Koning der Nederlanden, Prins van Orarje Nassua, Grort Herteg van Luxemburg, &c., &c., in de Vereemigde Staten van Noord Amerika.

Certificert mits dezen: Dat de Heer Harrison Reed is governor van der Staat Florida, en dot aar alle akwerdoor dewzelret als Zordanig gepasseeig rolle geleof en naarde Kan gegeren worden zoowel in als binter Regten.

Gegeren onder my no han handteehening in her regal van der staat.

Te New York, der 7 March, 1871, de consul generaal der Nederlanden. (W. G.)

{ ZEGEL VAN HET CONSULAAT. } REED C. BURLAGE.

3957 *Exhibit G. M. B., No. 16.—Referred to in the evidence of G. M. Boissevain.—D. Eckstein, commissioner.*

FLORIDA.

The area nearly equal to that of the State of New York, with a far more extended coast line, and many and larger rivers, which are navigable to so great an extent that almost any part of the State may be reached by vessels direct; it affords ample facilities for the shipment of its varied products to all the ports and markets of the world.

The richness of its soil is such that the entire year is a perpetual season of growth, vegetation, and advance, able to produce and send to market all the productions of the tropical and temperate zones weeks and months in advance of any other locality, and at a season when all such productions are luxuries and command the very highest prices; and from its proximity (only 3 days) to the great markets of Baltimore, Philadelphia, New York, Boston, and Portland, Florida becomes in fact the garden from which all the northern markets must find their supplies.

3958 Florida is advancing most rapidly in its material improvements, wealth, and luxuries, all which will be the resultant overflow of the advance and improvements in all the territories about her, and by which she is surrounded, and leaves no reason for doubt but Florida will in each decade rival the growth and developments of each quarter of a century at the North. She is now engaged in a great public work in building and completing a grand trunk railroad through her State—the Jacksonville, Pensacola and Mobile Railroad, beginning at Jacksonville, a seaport, and connecting the Atlantic Ocean with the city of Mobile, Alabama, almost a direct line from east to west, and with its branches comprising a total distance of 450 miles, 250 of which are completed, running, and open to traffic.

In order to aid this great public work the State of Florida has loaned her credit to the J., P. & M. R. R. Co., taking a first mortgage on its entire property, including all real estate, road-bed, iron, equipments, and
all franchises as a security to the State.
3959 The fully paid-up capital of the railroad is $6,500,000, and the
traffic on the constructed portion shows a revenue sufficient to
pay the interest on all her obligations. Arrangements are now being made on the Apalachicola River to convey the Fowler entire sugar and cotton products direct through the railroad to the Atlantic ports, instead of freighting same by the Gulf of Mexico, as heretofore.

To those acquainted with the slow, expensive, and perilous navigation of the Gulf, they will at once appreciate that the J., P. & M. R. R. is one of the most important railroad arteries on the American continent, and when completed will give a continuous seaboard line and the shortest route from the Atlantic to the Pacific Ocean, and the main outlet to all intermediate States. Four large steamers have been purchased by the company, paid for, and placed on the Apalachicola River for the transport of cotton.

During the year 130,000 bales were shipped from this river through
the Gulf of Mexico, and it is not extravagant to say that all of
3960 this cotton will pass through the J., P. & M. R. R. C.'s line, being
the shortest, safest, and cheapest route, together with the products of the valleys of the Apolachicola and the Chattahoochee will find their way through the J., P. & R. R. seaboard.

LANDS.

Beyond the river, on through to Pensacola and Mobile, the road passes through a section of one of the finest cotton and sugar lands. From the report of the U. S. Bureau of Agriculture, as telegraphs the London Times of 21st December, 1870, there is an increase of 30 per cent. in the sugar crop of Florida. There is no State in America which will derive more benefit than the State of Florida, and thus open an immense sugar region, by loaning her credit for this great public work.

All the counties next to the Apalachicola River embrace something like 70,000 square miles of productive lands, and contain nearly, if not quite, one fifth of the population, and pay fully one-fifth amount revenue of the State.

No one has ever traveled over the J., P. & M. R. R. line without
3961 being impressed by the productiveness of the soil and the immense
resources everywhere visible in its inexhaustable forests of pine
and its great staple products of cotton and sugar. The river bottoms, alluvial deposits, &c., of the Apalachicola and the Chattahoochee Rivers, from the Alabama line down to the Gulf of Mexico, are equal to the great Mississippi bottoms, and by the construction of this railroad they

will yield a large annual tribute to the revenues of the country. Upon reaching Pensacola the country is covered by the best body timber to be found anywhere in the South. The soil, too, is capable of high cultivation and great productions. At Pensacola over 500 vessels load yearly with timber, and that trade is capable of indefinite development, and a number of immense saw-mills are being constructed along, in anticipation of the railroad.

Hence, from the above notes, it is evident that the local traffic alone will be quite enough to create an immense surplus, and under the internal improvement law of the State of Florida, in connection with the United States of America, the J., P. & M. R. R. are entitled to 2,000,000 acres of land, and the Florida U. S. Senator has just advised the
3962 president of the railroad that he has every assurance from the Washington officials that the company will promptly receive its entitled lands, with the understanding that the same shall go to the sinking fund. These lands lie between the line of the railroad and the Gulf of Mexico, and are covered with the finest body of forest pine timber, and by the construction of several small branch*es* railroads, ranging from 1 to 5 miles, the future value and advantage of this territory is apparent.

CONSTITUTIONALITY.

The question was raised by political opponents of this great public work as to the constitutionality of the State loaning her credit to aid railroads, and the governor at once consulted the supreme court as to the constitutionality of the bonds. The decision was unanimously in favor of the issue, and on the 16th February, 1871, the same was filed on the judicial records of the State; and with reference to the Jacksonville, Pensacola and Mobile R. R. Co., the governor, treasurer, and secretary of state have certified that the title of the Jacksonville, Pensacola and Mobile Railroad Company to its line of railroad, and which has been mortgaged to the State of Florida in exchange for the bonds of
3963 the State of Florida issued to said company, is legal, sound, and perfect, and that the lien of the State on said railroad under said mortgage is perfect, prior to any other claim or lien whatsoever, and that the State of Florida has been fully secured as directed by law by said company by the delivering of the bonds of said company to the State in exchange for the said State bonds issued to said Jacksonville, Pensacola and Mobile Railroad Company, in accordance with the provision of the statutes passed by the legislature of Florida, in return thereto. And it is further certified that said company has been duly created a body corporate and politic by the said legislature of Florida for the purpose of securing by completion of one of the lines of railroad of said State forming a part of the internal improvement works of the State connecting the Gulf of Mexico and the Atlantic Ocean by a line of railroad.

And it is further certified that the acts of the legislature of Florida creating said corporation and authorizing the issue of the bonds of said State to said company to aid in the construction of said railroads
3964 are constitutional and valid and have been so declared in a regular judicial proceeding by the supreme court of Florida, the highest tribunal in said State, and the court of last resort therein, by the unanimous opinion of all the judges of said supreme court. In conclusion, it is simply an historical fact that Spain, France, and England fought for this valuable territory, which was finally purchased by

the United States in 1819, being admitted into the Union as a State in 1845.

We note that the New York Handels-Zeitung and French Bulletin have published articles with reference to this State in the following numbers. The following are from the New York Handels-Zeitung: 16th April, 1870; 28th May, 1870; 4th June, 1870; 18th June, 1870; 25th June, 1870; 2nd July, 1870; 16th July, 1870; 17th September, 1870; 24th September, 1870; 8th October, 1870; 3rd December, 1870; 31st December, 1870; 25th February, 1871; 4th March, 1871; 18th March, 1871.

3965 The following are from the Bulletin de New York: 27th June, 1870; 4th July, 1870; 18th July, 1870; 1st August, 1870; 12th September, 1870; 19th September, 1870; 26th September, 1870; 3rd October, 1870; 10th October, 1870; 28th November, 1870; 20th February, 1871; 27th February, 1871; 6th March, 1871; 13th March, 1871.

Exhibit G. M. B., No. 17.—*Referred to in the evidence of G. M. Boissevain. —D. Eckstein, commissioner.*

Be it known to all whom it may concern: I, Edwin Augustus Burwash, notary public by royal authority, duly admitted and sworn, residing and practicing in the city of London, England, do hereby certify and attest that the paper writing hereunto annexed, marked with the letter A, is a true, faithful, and literal copy of the original certificate, with which I have carefully collated the same and found them to agree in every respect.

3966 In witness whereof I, the said notary, have hereunto set my hand and affixed my notarial seal, in London, this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and seventy-two.

Quod attestor:

[NOTARIAL SEAL.] EDWIN A. BURWASH,
Not. Pub.

Gezier voor legalisatie der lovenstaande handteekening var der Heer Edwin A. Burwach, openbare notaris alhier ter stade.

London, der 27th December, 1872, de vice konsul de Nederlanden.

{ ZEGEL VAS HET CONSULAAT. } JAN VAN DEUNEN.

To all whom these presents shall come or may in any way concern:

I, Harrison Reed, governor of the State of Florida, do hereby declare and make known that of the 4,000 8 per cent. bonds of the State of Florida issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company and numbered 1 to 4000 inclusive, 224, being the bonds numbered 3777 to 4000 inclusive, have been returned to the State of Florida and duly cancelled; and that the balance of said issue of 3967 bonds over and above the 2,800 bonds heretofore sold, and the said 224 bonds so cancelled belong to and may be dealt with by the Jacksonville, Pensacola and Mobile Railroad Company and its assigns for the purposes of the said company; the said bonds being legally and properly issued and forming, with the 2,800 bonds heretofore sold, an equal obligation on the State of Florida.

In witness whereof I have hereunto affixed my name and caused the great seal of the State to be attached this second day of December, A. D. 1872.

{ GREAT SEAL OF THE
STATE OF FLORIDA.
IN GOD WE TRUST. }
HARRISON REED, *Governor*.

Attest:

JOHNATHAN C. GIBBS,
Secretary of State.

Gecier voor legalisatie den aande omme in de slande handteekeningen van den Heer Harrison Reed, governor van deen Staat Florida, den Vereenigde Staten van Noord Amerika, en ven den Heer Johnathan C. Gibbs, secretary of state, den selfden Staat.

3968 New York, 10 December, consul general de Nederlandan.

{ CONSULATE GENERAL
DEN NEDERLANDEN
IN DE U. S. }
RUD. C. BURLAGE.

Exhibit G. M. B., No. 18.—Referred to D. Eckstein, commissioner.

Be it known unto all whom it may concern:

I, Edwin Augustus Burwash, notary public by royal authority, duly admitted and sworn, residing and practicing in the city of London, England, do hereby certify and attest that the paper writing hereunto annexed, marked with the letter A, is a true, faithful, and literal copy of certified copy of the appointment of the New York State Loan and Trust Company as financial agent of the State of Florida, with which I have carefully collated the same, and found them to agree in every respect.

In witness whereof I, the said notary, have hereunto set my hand and affixed my notarial seal in London, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and seventy three.

Quod attestor:

3969 [NOTARIAL SEAL.]
EDWIN A. BURWASH,
Not. Pub.

Gesier war legalisatic der lovenstandil hand testening van den Herr Edwin Augustus Burwash, openbarer notaris deser stad, London, der 24th February, 1873, de consul general der Nederlands.

{ ZEGEL VAS HET
CONSULAAR. }
(Get)
J. W. MAY.

A.

Certified copy.

To whom it may concern:

Know ye that I, Harrison Reed, governor of Florida, have appointed, and by these presents do hereby constitute, the New York State Loan and Trust Company of New York City, of the city of New York, financial agent of the said State of Florida, for the payment of the interest on the bonds of the State, issued in aid of the Jacksonville, Pensacola and Mobile Railroad, falling due on the first day of January next.

3970 In witness whereof I have hereunto set my hand and caused the great seal of the State to be attached, at Tallahassee, the capital, this 21st day of December, A. D. 1872.

HARRISON REED,
Governor of Florida.

By the governor. Attest:

JONATHAN C. GIBBS,
Secretary of State.

UNITED STATES OF AMERICA,
State, County, and City of New York, ss:

Be it remembered that on this 7th day of February, in the year 1873, I, the undersigned, a notary public of the State of New York, residing in the city of New York, duly commissioned and sworn, do hereby certify that I have examined and compared the foregoing paper with the original appointment by his excellency Harrison Reed, governor of the State of Florida (under the great seal of said State, of which it purports to be a copy), and that the same is a true copy of the said original appointment, and of each and every part thereof.

In witness whereof I have hereunto set my hand and affixed 3971 my official seal on the day and year last above written.

{ WILLIAM A. DUMPHY, NOTARY PUBLIC, NEW YORK COUNTY. }
WILLIAM A. DUMPHY,
Not. Pub., New York County.

3972 *Exhibit G. M. B., No. 19.—Referred to in the evidence of G. M. Boissevain.—D. Eckstein, commissioner.*

Be it known unto all whom it may concern:

I, Edwin Augustus Burwash, notary public by royal authority, duly admitted and sworn, residing and practicing in the city of London, England, do hereby certify and attest that the paper writing hereunto annexed, marked with the letter A, is a true, faithful, and literal copy of the certified copy of the appointment of the New York State Loan and Trust Company as fiscal agents of the Jacksonville, Pensacola and Mobile Railroad Company, with which I have carefully collated the same and found them to agree in every respect.

In witness whereof I, the said notary, have hereunto set my hand and affixed my notarial seal, in London, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and seventy-three.

Quod attestor:

[NOTARIAL SEAL.] (Signed) EDWIN A. BURWASH,
Notary Public.

3973 Gezier wor legalisatie der lovenstande hand teekening van der Heer Edwin A. Burwash, openbare notaris dezers tad.

London, der 24th day of February, 1873, de konsul general der Nederlanden.

{ ZEGAL VAS HET CONSULAAT. }
J. W. MAY.

T' whom it may concern:

Whereas at a regular meeting of the board of directors of the Jacksonville, Pensacola and Mobile Railroad Company duly held at the office of said company in the city of Jacksonville, State of Florida, on the twenty-third day of December, 1872, the following resolution was unanimously adopted, viz:

Resolved, That the New York State Loan and Trust Company, whose principal office is in the city of New York, is hereby appointed the fiscal agent of this company and is clothed with full power and authority to do and perform all and every act or acts which shall become necessary to be done or performed, as such fiscal agents, to enable this company
3974 to bring out and place upon the markets of the United States or Europe and to sell and negotiate the bonds of this company, or exchang' the same for the bonds of the State of Florida, which have been heretofore issued by the said State of Florida, and delivered to this company in exchange for its first mortgage bonds, as uthorized by the act of the legislature of said State of Florida, approved January 28, A. D. 1870, upon the terms and at the prices agreed upon by this company or its duly appointed agents or attorneys, to collect and receive all moneys or State bonds from all negotiations or sales of the bonds or securities of or belonging to this company, to pay the interest upon said loan or first mortgage bonds of this company, and generally and specially to do and perform such further acts as fiscal agents as the best interest and wel*fair* of this company may require; and the said the New York State Loan and Trust Company, of New York City, is authorized to appoint an agent or agents in the city of London, England, for the more
3975 expeditiously and economically carrying out the objects to be attained by this appointment.

Now, know ye, that I, Milton S. Littlefield, president of the said Jacksonville, Pensacola and Mobile Railroad Company, by virtue of the authority in me vested by the by laws of said company, and the resolution aforesaid, as hereby, make, constitute, and appoint the said the New York State Loan and Trust Company, of the city of New York, the fiscal agent of the said Jacksonville, Pensacola and Mobile Railroad Company for the purpose mentioned and expressed in the said resolution.

Witness my hand and seal of the said Jacksonville, Persacola and Mobile Railroad Company, at Jacksonville, this twenty-third day of December, A. D. 1872.

[L. S.] M. S. LITTLEFIELD,
President Jacksonville, Pensacola and Mobile R. R. Co.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

3976 I, Samuel D. Thomas, a public notary of the State of New York, duly commissioned and sworn, do hereby certify that I have this day compared the foregoing copy, appointment of fiscal agent, with the original appointment of which it purports to be a copy, and have found the same to be a true and perfect copy of the said original and of the whole and every part of said original appointment of fiscal agent.

Witness my hand and affixed seal this 7th day of February, A. D. 1873.

S. D. THOMAS,
Notary Public, Kings County.

Exhibit G. M. B., No. 19, referred to in the evidence of G. M. Boissevain.

D. ECKSTEIN,
Commissioner.

3977 *Exhibit G. M. B., No. 20.—Referred to in the evidence of G. M. Boissevain.—D. Eckstein, commissioner.*

Be it known unto all whom it may concern:

I, Edwin Augustus Burwash, notary public by royal authority, duly admitted and sworn, residing and practicing in the city of London, England, do hereby certify and attest that the paper writing hereunto annexed, marked with the letter A, is a true, faithful, and literal copy taken and made from the original, with which I have carefully collated the same, and found them to agree in every respect.

In witness whereof I, the said notary, have hereunto set my hand and affixed my notarial seal, in London, this fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-three.

Quod attestor:

[L. S.] EDWIN A. BURWASH,
Not. Pub.

Gezir voor legalisatie der loovenstaade banterkening van der
3978 Her Edwin Augustus Burwash, openbaren notaris dezer stad.
London, der 15th January, 1873, de konsul general der Netherlands.

[L. S.] J. W. MAY.

[H. A. Smythe, president; F. N. Lawrence, secretary. Office of the New York State Loan and Trust Co., No. 119 Broadway (S. W. corner Cedar street).

NEW YORK, *December* 31, 1872.

C. L. CHASE, Esq.,
Agent for the Jacksonville, Pensacola and Mobile Railroad Company:

SIR: We hereby notify you that we have accepted the appointment of fiscal agent of the State of Florida and the Jacksonville, Pensacola and Mobile Railroad Company, and that we have designated our friends Messrs. J. R. Jaffray and Co., of London, to receive on our account and give receipts for us as such fiscal agents for the proceeds of the sale of the 8 per cent. Florida State bonds in aid of the Jacksonville, Pensacola and Mobile Railroad Company as may be paid to them.

3979 Yours, respectfully,

H. A. SMYTHE, *President.*

Exhibit G. M. B., No. 20, referred to in the evidence of G. M. Boissevain.

D. ECKSTEIN,
Commissioner.

Exhibit G. M. B., No. 21.—Referred to in the evidence of G. M. Boissevain.—D. Eckstein, commissioner.

John Collinson to Holje and Boissevain.

LONDON, *March 17th*, 1871.

The letter you have received from Tallahassee has been submitted to Collins, one of the partners of S. W. Hopkins and Co. A great deal of it does not require answering at all, as it contains no statements of facts, and the only points I have been able to detect of any importance in the letter are as follows:

1. Have the bonds been recalled at any time? Answer. When the territorial questions came up, Collins, believing that it would preclude the negotiation of the State bonds, wrote to his house in New
3980 York requesting them, if possible, to exchange those bonds for the railway bonds which had been passed to the State. $1,000,000 of these were actually exchanged when he found that we still intended

to proceed with the negotiations, and consequently he sent fresh instructions to have the said bonds re-exchanged. This was effected, and the $4,000,000 bonds have been all submitted to my inspection in London.

2. Do the stockholders of the railway company approve of the issue of these present negotiations for the sale of the bonds? Answer. The reply to this will be found in the resolutions, of which you have a copy, passed by a meeting of stockholders on the 24th of January, 1871, whereat 42,043 shares out of a total of 65,550 voted (x).

3. Whether bonds have been issued for more miles of road than have been built? Answer. We have the statements of an unknown correspondent against the formal documents from the governor of the State and the president of the company, of which you have copies.

3981 Respecting all the other statements that are contained in the letter as regards the sale of a portion of the line, &c., &c., Collins declared that they are absolutely false.

Annexed copies of the resolutions of the meeting of stockholders referred to, and also of meeting of directors at a meeting of stockholders of the Jacksonville, Pensacola and Mobile Railroad Company held at Tallahassee on the 24th day of January, 1871, the following resolutions were adopted:

Resolved, That the preamble and the several resolutions adopted at a meeting of the directors convened at the call of the vice-president, Col. J. P. Sanderson, on the 10th day of December, A. D. 1870, be, and they are hereby, rescinded, revoked, and repealed, and the directors are required to carry this into effect by resolutions.

Resolved further, That the acts and doings, contracts, and negotiations made by Milton S. Littlefield, president, relative to the sale of the bonds of the State of Florida issued to this company and
3982 delivered to the president under the charter of the company, and the acts of the legislature of Florida for the purpose of aiding and assisting the company in fulfilling the objects of its charter and perfecting the public works of the State, be, and they are hereby, approved, ratified, and confirmed, and every officer of this company is hereby required to furnish the president of this company every aid to complete the sale of the bonds issued by the State of Florida to this company, and to complete the road into Mobile as soon as possible.

Resolved further, That the stockholders at this meeting, representing forty-two thousand and forty-three (42,043) shares of stock, do hereby declare that they have full confidence in their president, M. S. Littlefield, and the directors are requested to pass such resolutions as will carry into effect this expression of confidence, and notify those interested and other parties in this country and abroad that the company sustains their president and his negotiations relative to the sale of the bonds of the State of Florida issued to aid this company.

3983 Resolved further, That the governor of this State be respectfully requested to aid and assist the president of this company in negotiating the bonds of the State now in his possession.

Resolved further, That the directors of this company be instructed to take steps to build the road to the "Spanish Mole" at the earliest practicable moment.

I certify the foregoing to be a true abstract from the minutes of the stockholders of this company.

[L. S.]

T. H. FLAGG,
Secretary.

At a meeting of the directors of the J., P. and M. R. R. Co., held at

Tallahassee, on the 24th day of January, 1871, the following resolutions were adopted:

Resolved, That the preamble and resolutions adopted by this board on the 10th day of December, A. D. 1870, be, and they are hereby, rescinded, revoked, and repealed.

Resolved further, That, in accordance with the resolution of the stockholders held at Tallahassee on the 24th day of January, 1871, the following resolutions were adopted:

3984 Resolved, That the acts and doings, contracts and negotiations made by Milton S. Littlefield, president, relative to the sale of the bonds of the State of Florida issued to this company and delivered to the said president under the charter of the company and the acts of the legislature of Florida for the purpose of aiding and assisting the company in fulfilling the objects of its charter and perfecting the public works of the State be, and they are hereby, approved, ratified, and confirmed, and every officer of this company is hereby required to furnish the president of this company every aid to complete the sale of the bonds issued by the State of Florida to this company, and to complete the road to Mobile as soon as possible.

Resolved further, That this board do hereby declare that they have full confidence in the president of this company, M. S. Littlefield, and that the secretary of this company be instructed to notify those interested, and other parties in this country and abroad, that the company sustained their president in his negotiations relative to the sale of the bonds of the State of Florida issued in aid of this company.

3985 Resolved, further, That the governor of the State of Florida be requested to assist the president of this company in negotiating the bonds of the State now in his possession.

Resolved, further, That the several resolutions adopted at the meeting of the stockholders this day be, and they are hereby, severally adopted, ratified, and confirmed as the resolutions of this board of directors.

Resolved, further, That, in accordance with the instructions of the stockholders, the president be authorized to build and complete the road to the "Spanish Mole" as soon as practicable.

I hereby certify that the foregoing extracts are true copies from the minutes of the board of directors of the Jacksonville, Pensacola and Mobile Railroad Company.

T. H. FLAGG,
Secretary.

Above copies are taken from notarial copies made by E. Burwash, notary public, London.

Exhibit G. M. B. No. 21, referred to in the evidence of G. M. Boissevain.

D. ECKSTEIN,
Commissioner.

3986 *Exhibit G. M. B. No. 22.—Referred to in the evidence of G. M. Boissevain.—D. Eckstein, commissioner.*

Extracts from letters of John Collinson, of London, relative to the 8 per cent. Florida State loan of 4,000,000 dollars.

NOVEMBER 14*th*, 1870.

We are going to make a splended success of this loan; I am sure we have got it at a ridiculosly low price, and it would all be sold, if the parties had known it, to other houses at much higher prices.

NOVEMBER 16*th*, 1870.

Hopkins have now many other good offers for the business. I do not suppose you will let such an excellent opportunity slip throug' your hands.

NOVEMBER 17*th*, 1870.

I enclose you a copy of the letter of prolongation already obtained, as also an authority to name parties to bring out the said loan signed by Messrs. Hopkins, who, in addition to being agents for the railroad company, have also been officially appointed general financial agents of the State of Florida.

3987 NOVEMBER 20*th*, 1870.

Messrs. Hopkins and Co. are responsible persons, and I am quite satisfied with their gu'ranties as regards the present issue of bonds, or should not have taken the obligation on myself in relation to your counsellors that I have done.

DECEMBER 15*th*, 1870.

I believe the loan to be thoroughly good. Exhibit G. M. B., No. 22, referred to in the evidence of G. M. Boissevain.

D. ECKSTEIN,
Commissioner.

3988 (Indorsed:) In the circuit court of the United States, fifth circuit, northern district of Florida. J. Fred Schutte et al. vs. The Western Division of the Western North Carolina Railroad Company et al. Testimony & exhibits taken in Holland before Hon. D. Eckstein, commissioner. Opened & filed this 13th day of May, 1879. P. Walter, clerk.

3989 *Deed of trust, Jacksonville, Pensacola and Mobile Railroad Company to D. G. Ambler, F. H. Flagg, C. S. Chase, trustees. October 2nd*, 1871.

JACKSONVILLE, FLA., 1871.

The office of the trustees will be at Jacksonville, Florida..

W. G. M. Davis, solicitor and counsellor; J. A. Henderson, attorney for trustees; J. H. Gardener, general manager.

The Jacksonville, Pensacola and Mobile Railroad Company is a corporation organized and chartered under the laws of Florida, owning and operating a line of railroad from Jacksonville to Quincy, a distance of one hundred and eighty-five miles, with branch from Tallahassee to St. Mark's, a distance of twenty-two miles, which is in successful operation with ample equipments, &c., and is exclusively authorized and allowed to extend the same from Quincy through the state of Florida to Mobile in the State of Alabama. The Florida construction company is composed of J. H. Gardener, late general superintendent of the Southern Minnesota Railroad, E. G. and C. C. Smith, contractors and bridge-builders, who built the Dubuque bridge across the Mississippi,
3990 residents and owners of machine shops at LaCrosse, Wisconsin, and C. L. Chase, late agent of Southern Minnesota Railroad

Company, for the sale of lands; D. G. Ambler is a banker at Jacksonville, Florida; Francis H. Flagg is a citizen at Tallahasee, Florida, and has been secretary and treasurer of this road from the time of the organiz' of the company which commenced to build the same. The Jacksonville, Pensacola and Mobile Railroad Company have contracted with the Florida Construction Company that the Florida Construction Company will extend and complete the railroad from Quincy to Mobile, building all necessary bridges and wharfs, and depot at Chattahoochee, being paid therefor as the work progresses, in sections of ten miles, and other similar work being done in like proportion in advance of any payments to secure the immediate and prompt completion, equipment, and maintainance of a continuous line of railroad from Jacksonville to Mobile, and to that end that all of the resources of the Jacksonville, Pensacola and Mobile Railroad Company may be faithfully and exclusively applied, the Jacksonville, Pensacola and Mobile Railroad Company have made the following assignment or lease in trust:

3991 *Deed of trust, &c.*

This indenture, made and entered by and between the Jacksonville, Pensacola and Mobile Railroad Company of the first part, and Francis H. Flagg, D. G. Ambler, and Converse S. Chase, of the second part, witnesseth, that whereas the said Jacksonville, Pensacola and Mobile Railroad Company has this day contracted with the Florida Construction Company to complete its line of railroad from the western bank of the Chattahoochee River to a point at or near Mobile, in the State of Alabama, and to build a railroad bridge across said Chattahoochee River, and the said company are desirous of securing the Florida Construction Company aforesaid in the faithful and prompt performance of the several obligations therein undertaken by the said Jacksonville, Pensacola and Mobile Railroad Company; and whereas the said Jacksonville, Pensacola and Mobile Railroad Company have received from the State of Florida certain bonds for the payment of the interest on which as the same may become due they are required by law to provide, and to secure which the State has a statutory lien upon the said rail-
road and all its franchises; now, the said party of the first part,
3992 for and in consideration of the premises, assigns, transfers, and
delivers unto the parties of the second part, their successors or the successors of them, the following described property in trust, and it is hereby expressly stipulated and agreed that the parties of the second part shall only be liable for a faithful application of any and every of the proceeds coming into their custody and under their controll, as hereinafter provided, to wit, all the rolling-stock and equipments of the Jacksonville, Pensacola and Mobile Railroad, and do authorize and empower the said parties of the second part to use the same in the transportation of freight and passengers over the line of the said railroad, and for that purpose do assign to them the sole right to carry freight and passengers over the line of said road from Jacksonville west to the same extent and in like manner as is possessed by the said Jacksonville, Pensacola and Mobile Railroad Company under its charter of incorporation and under the same obligations as public carriers of mails, passengers and freights to which the said company is by law subject, and for such purpose to occupy and use all depots, water tanks,
warehouses, wharfs, machine shops, turn tables, rights of way, as
3993 are now held and possessed by said company or that may be
hereafter acquired, with power to expend money in construction

and repair of the finished portion of said railroad and the rolling-stock and equipments thereof, so as to keep the same in serviceable condition for the purposes aforesaid.

And it is further agreed by and between the said parties that the said parties of the second part shall have the right to collect and receive the earnings of the said railroad for the period hereinafter mentioned and shall apply the same in the manner following, to wit: first, to pay and discharge the running expense and the necessary constructions and repair account and wages and salaries of officers and employees and of the present outstanding liabilities of the said Jacksonville, Pensacola and Mobile Railroad Company to the Freedman's National Savings and Trust Company, at Jacksonville, Fla., and to D. G. Ambler and B. C. Lewisson, not exceeding twenty-five thousand dollars, and to pay the said Florida Construction Company for work, labor, materials, &c., by them done and to be done and expended for the said party of the first part on the line of said railroad between
Quincy and the said Chattachoochee River; second, in case of a
3994 failure on the part of the said party of the first part to provide
the necessary means to pay the interest before mentioned as the same may become due, to apply so much of the remainder of such receipts as may come to their hands to the payment of said interest; third, to pay to said Florida Construction Company such amounts as may become due to them for the fullfillment of their said contract under the terms thereof, and at the time and in the manner therein provided. It is further agreed between the said parties that at the expiration of the term of two years from this date, all the rights, interests, powers, and controll of the said parties of the second part in and to the foregoing described property shall cease and determine, and the same shall be by them delivered to the said party of the first , saving and excepting such as may have been destroyed or expended in the business aforesaid. It is further agreed between the said parties that J. H. Gardner shall be employed as the general manager of the aforesaid business, whose duties shall be prescribed by the parties of the second part.

And whereas, for the purpose of completing, equipping, and
3995 maintaining of the said Jacksonville, Pensacola and Mobile
Railroad, there has been issued to the said railroad company coupon bonds of the State of Florida, signed by the governor and countersigned by the treasurer, sealed with the great seal of the State, bearing eight per cent. interest per annum, of the denomination of one thousand dollars each, to the amount of four millions of dollars, which bonds have been negotiated, and a portion of the proceeds thereof have been received.

And whereas there has been granted, bargained, and sold to the said company large bodies of lands in the State of Florida to further aid in completing, equipping, and maintaining the said Jacksonville, Pensacola and Mobile Railroad;

And whereas the said Jacksonville, Pensacola and Mobile Railroad Company, for the purposes of completing, equipping, and maintaining its aforesaid line of railroad, may hereafter acquire further large bodies of lands by gift, grant, or purchase, and upon such lands now so held, or which may hereafter be acquired, the stockholders of said Jackson-
ville, Pensacola and Mobile Railroad may elect to issue bonds,
3996 mortgages, leases, or conveyances for the purpose of raising the
necessary funds for the purpose of completing, equipping, and maintaining the said line of railroad;

And whereas the said Jacksonville, Pensacola and Mobile Railroad company, by its stockholders, may hereafter elect to issue other bonds, as they are empowered by law so to do, or may be hereafter authorized by law to do, and may receive other and additional bonds to aid in the purposes aforesaid;

And whereas it is necessary to the completion, equipment, and maintenance of the said Jacksonville, Pensacola and Mobile Railroad that there should be a faithful application of all the proceeds arrising from the several sources herebefore recited, and from any and every source whatsoever to the aforesaid purposes.

In pursuance whereof the party of the first part hereby transfers and assigns to the said parties of the second part, in trust as aforesaid, to be applied to the completion, maintenance, and equipment of the aforesaid Jacksonville, Pensacola and Mobile Railroad and the purposes hereinafter mentioned, the proceeds arising from the negotiation and sale of the before-mentioned bonds yet to be received, and which
3997 are now on deposit in London, and to the receipt whereof the
authority of John Collinson, of London, is necessary to be obtained, and such balance of the proceeds of the sale of the remainder of the said sum of four millions of bonds as remains unapplied by the said party of the first part, at the day of the date hereof; and the said party of the first part hereby authorizes and empowers the parties of the second part, their agents or attorneys, to demand and receive the proceeds aforesaid from the hands of those by whom the same are or may be held for and on account of the party of the first part.

And the said party of the first part hereby authorizes and empowers the said parties of the second part, their agents or attorneys, to receive any and every bond or bonds that may hereafter be issued by the said company for the purpose of completing, equipping, and maintaining said road, or that may be given, granted, donated, authorized, or allowed to the same for the said purposes, and to negotiate the sale of the same and receive the proceeds thereof, also to collect and receive the proceeds arising from the sale, mortgage, lease, grant of any and all lands that now belong to or may hereafter be acquired by said company, and shall apply the same to the purposes and in the manner
3998 hereinbefore provided.

And the said parties of the second part are hereby authorized and empowered to pay the liabilities of the said party of the first part that are now existing, and the amounts of which shall be adjusted, ascertained, and certified by the said party of the first part; but in the payment thereof they shall be limited and restrained to the proceeds of the sale of such of the aforesaid four millions of dollars of the bonds of the State of Florida as may come to their hands, exclusive of the said twelve hundred thousand dollars of bonds now on deposit in London, which said twelve hundred thousand dollars of bonds shall be applied exclusively to the completion of said railroad.

Nothing in this contract shall be construed to interfere or conflict with any contract or arrangement that has been heretofore made with John Collinson or Aaron Barnett, or their associates, for the sale or negotiation of bonds that may have been or may hereafter be issued.

Signed, sealed, and delivered in duplicate.

In witness whereof the said party of the first part has, by its president, hereunto signed the same, and attached thereto the corporate seal of the said Jacksonville, Pensacola and Mobile Railroad
3999 Company, this the 2nd day of October, A. D. 1871.

(Interlined in 1st line of 4th page, and erased in 24th line of 7th page and 3rd line of 9th page.)

{ SEAL OF J., P. & M. R. R. C. } MILTON S. LITTLEFIELD,
President J., P. and M. R. R.

Witnesses:
JOHN A. HENDERSON.
W. G. M. DAVIS.

We, the trustees named in the foregoing assignment and conveyance, do hereby signify our acceptance of the said office of trustee, with all the powers and duties, and for the purpose in the same mentioned and contained.

Witness our hands and seals this 2nd day of Oct., A. D. 1871.

C. L. CHASE. [L. S.]

Witnesses:
JOHN A. HENDERSON.
W. G. M. DAVIS.

4000 THE JACKSONVILLE, PENSACOLA AND Mobile Railroad Company, impleaded with Milton S. Littlefield, Calvin Dibble, et al., defendants,

ads.

THE STATE OF FLORIDA, SAMUEL T. DAY, governor of the State of Florida, Horatio Bisbee, jr., attorney-general, and others, trustees of the internal improvement fund of Florida, plaintiffs.

The Jacksonville, Pensacola and Mobile Railroad Company, one of the defendants in the above entitled action, by R. B. Van Valkenburgh, its attorney, for answer to the complaint of the plaintiff therein, says:

First. It admits that on the 20th day of March, 1869, the Pensacola and Georgia Railroad Company was a corporation organized and existing under the laws of the State of Florida, with a line of road completed from Lake City to Quincy, engaged in the business of common carriers.

Second. It admits that on the day aforesaid the Tallahassee Railroad was a corporation then existing under the laws of said State, with a line of railway completed from Tallahassee to St. Mark's, Florida, and engaged in the business of common carriers.

4001 Third. It admits that the said Pensacola and Georgia Railroad Company and the said Tallahassee Railroad Company accepted and issued bonds and became subject to the provisions of the act of the legislature of the State of Florida, and became liable to pay one-half of one per cent., semi-annually, on the outstanding bonds of the said companies respectively, to be invested as a sinking fund to pay the principal of said bonds, in manner and form as the same is charged in the third subdivision of the said complaint.

Fourth. It admits that the trustees of the internal improvement fund, for the reasons mentioned, as set forth in the fourth subdivision of said complaint, sold the said roads at the same time for the sums and to the purchasers, in manner and form as is stated in said fourth subdivision of the said plaintiff's complaint.

Fifth. It admits that the terms of sale of said railroads and property thereof was cash, or its equivalent, and that the deeds and possession of the same were not to be delivered by the trustees until the full payment of the purchase money.

Sixth. It denies the charges and allegations stated in the sixth, 7th,
8th, 9th, 10th, and 11th subdivisions of said complaint, in man-
4002 ner and form therein set out, and alleges, upon information and
belief, the facts to be as follows:

On the sale of said roads by the trustees of the internal improvement fund, the same were respectively purchased by Franklin Dibble, John L. Requa, Edward M. Cheeny, Alonzo Huling, James M. Baker, Wilkinson Call, and Silas L. Niblock, under the name and style of F. Dibble and associates; that the amounts bid therefor were the exact amounts of the outstanding bonds upon the said roads respectively, to wit, the Pensacola and Georgia Railroad bonds at par and the Tallahassee Railroad bonds at between 94 and 95 per cent.

That the said trustees propose to receive the bonds of said companies respectively in payment for the same at the sale.

That one George W. Swepson was the owner of nine hundred and sixty thousand dollars of said bonds, to wit, ($806,600) eight hundred and six thousand six hundred dollars in bonds of the Pensacola and Georgia Railroad Company, and one hundred and fifty-three thousand seven hundred ($153,700) dollars in bonds of the Tallahassee Railroad
Company. That an arrangement was then made between the
4003 said Franklin Dibble and associates, of the one part, and the said
George W. Swepson, of the other part, under which said George
W. Swepson was to pay unto the said trustees the bonds so held by him as a part of the purchase money on said sales for said purchase.

That said F. Dibble and associates were to pay the remainder of the purchase money to said trustees and receive their deed of said roads, to enable them to be incorporated as a railroad company and issue bonds upon said roads; said bonds to be sold in part to pay said Swepson for his advances, commissions, interest, and a large bonus, to wit, one hundred and fifty thousand ($150,000) dollars, for his services. That said associates, or some of them, went to the city of New York for the purpose of meeting the trustees there, and paying to them the remainder of said purchase money, to wit, four and seventy-four thousand ($472,000) dollars, or thereabouts, the nine hundred and sixty thousand ($960,000) dollars in bonds, as aforesaid, having been paid by said Swepson to said trustees on account of such sales. That said associates
there met A. R. Meek and R. H. Gamble, two of said trustees,
4004 who had been duly appointed by said board of trustees commis-
sioners to proceed to New York, receive the purchase money, and
deliver the necessary deeds, and the said George W. Swepson, who had been duly appointed by said board of trustees their financial agent for the purpose of receiving said money and securing, by purchase, the remaining outstanding bonds on the said two roads.

That, at the meeting so held, one Calvin Dibble gave to said trustees, in full payment for the purchase of said roads as aforesaid, his check (having first offered to make payment in money) for the sum of about four hundred and seventy-two thousand (472,000) dollars, on the firm of Dibble, Worth & Co., of the city of New York. The said check was received in full payment of the said purchase money by said Meek and Gamble, two of the trustees as aforesaid, representing the board of trustees, as was by them passed over to said Swepson, financial agent of the board, who received and receipted for the same as cash, and the deeds of said railroads duly executed were delivered to the said F. Dibble and associates by said Meek and Gamble, and possession thereof under said deeds was afterwards taken.

4005 That said Dibble, Worth & Company were a solvent firm, then doing business in the city of New York, and having on deposit money equal in amount to the full face of said check.

That said George W. Swepson was at the time responsible, having the reputation of being worth more than one million of dollars, and then being the owner of stock in the Florida Central Railroad Company, and other property and choses in the State of Florida, worth much more than the amount of said check.

That the amount of said check could have been collected either from Dibble, Worth & Co. or the said George W. Swepson, and that Calvin Dibble, the maker of said check, was a member of the firm of Dibble, Worth & Co.

That said was intended to be paid and was good for the sum mentioned therein, and was given and received in good faith.

That there was no scheme, collusion, conspiracy, or fraud of any kind, but that it was a bona fide business transaction.

That the said A. R. Meek and R. H. Gamble subsequently reported their action in the matter to the board of trustees of the internal 4006 improvement fund, the plaintiffs of this action, and their report was unanimously approved by said board; to which report and the receipt of George W. Swepson, for the sum of four hundred and seventy-two thousand and sixty-five (472,065) dollars, being full balance due said trustees from sale of the Pensacola and Georgia and Tallahassee Railroads, made by said trustees on March the 21st last, this defendant begs leave to refer should it become necessary.

13th. This defendant, further answering, alleges upon information and belief, that by virtue of an act of the legislature of Florida, approved June 24th, 1869, the said Franklin Dibble and associates were constituted a body politic and corporate under the name of the Tallahassee Railroad Company, thus consolidating the Pensacola and Georgia and Tallahassee Railroad Companies of which they had become the purchasers as aforesaid.

That under and by virtue of a like act of the legislature of the State of Florida approved June 24th, 1869, this defendant was incorporated under the name and style of the Jacksonville, Pensacola and Mobile Railroad Company, with power to complete, equip and maintain 4007 a connection by railroad between Jacksonville, Pensacola and Mobile. That about the month of May, 1870, the Tallahassee Railroad was duly and legally consolidated with and became a part of the said Jacksonville, Pensacola and Mobile Railroad Company; that at the time of such consolidation there was in existence and running in connection with said roads another railroad, known as the Florida Central Railroad Company, extending from Jacksonville to Lake City; and the stock in said last named company was divided into five thousand five hundred and fifty (5,550) shares of one hundred dollars each. That one Milton S. Littlefield, at that time the president of this defendant, became and was the owner of a large majority of said stock, to wit, about three thousand four hundred and ten (3,410) shares.

That at the time of the consolidation of the said Tallahassee Railroad with this defendant, it was the intention of the stockholders and directors of said roads to consolidate with the said Florida Central Railroad, and thus make one continuous line of railroad from Jacksonville West to Quincy, as completed under the name and organization of

this defendant, and to further complete and equip the same
4008 through to the city of Mobile.

That said Littlefield, for the purpose of accomplishing that object, contracted to purchase all the outstanding stock not owned by him in said Florida Central Railroad Company, and made provision for the purchase and payment of the same, and did actually purchase and pay for a large amount, to wit, 4,710 shares. That other contracts for purchases for about 490 shares were not actually paid up, but that he had paid there on about 82,000 dollars.

That one John P. Sanderson at that time was president of said Florida Central Railroad Company, and was in favor of the consolidation, as were all of the directors of said company, and all of the known stockholders, as this defendant was informed and verily believes.

That this defendant, being desirous to raise money for the purpose of completing, equipping, and maintaining its said road under the act passed by the legislature of the State of Florida, and approved January 28th, 1870, amending the charter of this defendant, proceeded to issue its bonds payable to the State of Florida, as in said amended act provided, for the purpose of exchanging the same for the State bonds,
4009 which said State bonds were to be sold.

That four millions of dollars of such bonds were issued in substantially the same form, excepting only that as no formal resolution of consolidation had been adopted by the said Florida Central Railroad Company, the one million of bonds issued as a lien upon that portion of this defendant's road was made payable by the said The Florida Central Railroad Company, but at the time of the issue thereof it was represented to the governor of the State of Florida, and other parties, by J. P. Sanderson, the then president of said company, and by M. S. Littlefield, the then president of this defendant, and by other directors and stockholders in the Florida Central Railroad Company, that such consolidation had actually been provided for; that the stockholders and directors had acquiesced therein, and that there was no necessity for such formal resolution on the part of the Florida Central R. R. Co.

Lee 96

That such bonds were issued and delivered by said Florida Central Railroad Company and accepted and received by the governor of this State, under the last aforesaid law of the State, as and for the bonds of this defendant, as a lien upon its property.

4010 That in exchange for said four millions of dollars in bonds issued by this defendant, as aforesaid, this defendant did receive the four millions of dollars of the bonds of the State of Florida, as provided for in the said act, and this defendant admits that at that time, and for a long time subsequent thereto, said roads were considered consolidated, were run and managed and conducted as one road and organization, to wit, the Jacksonville, Pensacola and Mobile Railroad Company.

16th. This defendant admits that Milton S. Littlefield is now the owner of a large portion of the stock of the Florida Central Railroad Company representing his interest in that portion of the Jacksonville, Pensacola and Mobile Railroad Company, but denies, upon information and belief, that George W. Swepson is interested therein.

17th. This defendant admits the execution of the deed of trust as is charged in 17th subdivision of the said complaint.

18th. This defendant admits that the trustees accepted said deed of trust and acted under it, that they paid some of the floating debts of this defendant and expended some money in building the exten-
4011 sion of said road, but the exact amounts so paid and expended

by the trustees this defendant cannot now state; and this defendant further says that said trust expired in October last.

19th. This defendant denies the allegations contained in the 19th subdivision of plaintiffs' complaint.

20th. This defendant admits that at the time of filing said complaint it did own and was in possession of three steamboats running upon the Chattahoochee River.

21st. This defendant admits that said Milton S. Littlefield did make the contract, as charged, with the Gulf Steamship Company, and assigned the stock therein mentioned to Aaron Barnett.

22nd. This defendant admits that Aaron Barnett was a member of said Gulf Steamship Company, and received said stock in trust, but it denies each and every allegation and charge of fraud, deceit, or knowledge of the same, contained in the 22nd subdivision of said complaint.

23rd. This defendant denies that said Milton S. Littlefield has a large number of the first mortgage bonds of the said Pensacola and Georgia Railroad Company belonging to the trustees of the internal improvement fund, as charged in said complaint, and denies, upon information 4012 and belief, that M. D. Papy holds another large number of said bonds as agent of said railroad company, or of George W. Swepson, which said bonds belong to the trustees of the internal improvement fund, as is charged in the 23rd subdivision of said complaint; and this defendant further denies that Milton S. Littlefield, as the president of said railroad company, made a certificate under oath that the length of railroad owned and belonging to said company was two hundred and fifty (250) miles, as is charged in said subdivision of said complaint.

But defendant admits that the governor of the State, by reason of a mistake, issued to this defendant two hundred and twenty four State bonds more than was contemplated by law, and received therefor an equal number of this defendant's bonds, which it now holds as security for the same. But this defendant alleges, on information and belief, that as soon as the mistake was discovered this defendant, by its directors and officers, caused the said overissue of State bonds, to wit, two hundred and twenty four (224) of them, to be cancelled, and the same are cancelled, ready to be delivered to the governor of Florida on his returning to this defendant an equal number of this defendant's bonds.

4013 24th. This defendant denies all charges of extravagance and improvidence in the use of its income and funds, as is charged in the 24th subdivision of the said complaint, and alleges it employes only the necessary officers, attorneys, servants, and employees for the proper transaction of its business, as salaries and wages only reasonable for the services and duties performed.

25th. And this defendant, further answering, denies each and every allegation of fraud, collusion, conspiracy, or deception or knowledge of the same, charged in said original or amended complaint of the plaintiffs in this action, and alleges that it has acted in good faith throughout.

26th. And for a further answer to said original and amended complaint, this defendant denies that it is indebted to said plaintiffs or either or any of them, in the amount or in the manner in said complaint in that behalf stated, or in any amount whatever, because it says that upon the payment of the said sum of money by F. Dibble and associates to the said the trustees of the internal improvement fund, as is before alleged, and the receipts thereof by them and the said George W. Swep-

son, their agent, which payment was in full satisfaction of the
4014 amount bid upon at the sale of the property of said Pensacola
and Georgia Railroad Company and Tallahassee Railroad Company, the said railroad companies were released and exonerated from any further or other payments, either upon the bonds upon the said companies or the sinking funds of the State, and that the defendant acquired and took the said property, franchises and effects of the said Pensacola and Georgia Railroad Company and the said Tallahassee, discharged of and free from any indebtedness to said plaintiffs, or any of them, by reason of said bonds or the law creating such sinking fund.

R. B. VAN VALKENBURGH,
Att'y for Defendants, The Jacksonville, Pensacola and Mobile Railroad Company.

In the circuit court, fourth judicial circuit, Duval County, ss:

Milton S. Littlefield, of Jacksonville, of said county, being duly sworn, says that he is president of the Jacksonville, Pensacola and Mobile Railroad Company, the defendant in foregoing answer named;
that he has read the foregoing answer and knows its contents;
4015 that the same is true of his own knowledge, except as to those
matters stated on information and belief, and as to those matters
he believes to be true.

MILTON S. LITTLEFIELD,
Pres. J., P. and M. R. R. Co.

Subscribed and sworn to before me this 18th day of Ma'ch, A. D. 1874.

CHAS. B. FENWICK. [SEAL.]
Notary Public, State of Florida.

(Indorsed:) Answer of J., P. & M. R. R. *R. R.* Co. In case of State of Florida vs: E. C. Anderson et als. From record in case in S. C. U. S., pages 280 to 285.

4016 *Affidavit.*

On this present day the twenty-eighth of May, 1800 seventy-seven, appeared before me, Charles Mueller, consul of the U. S. of America, residing at Amsterdam, Jacobus Wertheim, LL. D., barrister and deputy judge, who, after having been sworn in due form of law, deposeth and said:

§ 1. I am barrister and deputy judge and also a bondholder of 8 % Florida bonds, issued 1870. I have for my own interest and also requested by several other bondholders, my clients, examined the questions respecting the validity of those bonds, and I became thoroughly acquainted with all the facts of the issue of these bonds.

§ 2. In the year 1870 a prospectus for the issue of four millions V 8 % was published by John Collinson (annex A). It was intended that subscription lists would be simultaneously opened in London, Frankfort, Amsterdam, and Rotterdam.

§ 3. In the above mentioned prospectus (annex A) was said "the J., P. & M. Railway to aid in constructing which the money will be applied, is a line 450 miles in length, of which 250 miles are completed, fully equipped, and given over to traffic."

§ 4. The issue of the loan failed in London and in Francfort.

4017 § 5. The said prospectus (annex A), bearing in John Collinson's
own handwriting the words "definite prospectus," was handed to

Mess. Holje & Borssevain, at Amsterdam, & A. T. & M. Milders, at Rotterdam, and an agreement made with those firms to issue the intended loan in Amsterdam and Rotterdam.

§ 6. The above-named firms framed and published on the 19th December, 1870, a prospectus in Dutch language (annex B), nearly a translated copy of the first named prospectus (annex A), containing the same fact mentioned as in the foregoing § 3.

§ 7. In applying for informations the promotors said, "The J., P. and M. Railroad is a consolidation of the Pensacola and Georgia and Florida Central Railroad Companies, and under their charters the road was built from Lake City to the Chattahoochee River, with branches to Monticello and to St. Mark's, and that the company purchased subsequently the road of the Florida, Atlantic Gulf Company from Lake City to Jacksonville.

§ 8. The information related in the foregoing § 7 was corroborated—

a. By a letter from the executive office, Tallahassee, June 18, '70, signed by his ex. Harrison Reed, governor of Florida (annex C).

b. By a copy of the resolutions carried by the stockholders of the J., P. and M. Railroad, held on the 24 day of Jan'y, 1871, at Tallahassee (annex D).

4018 *c.* By a decree given at Tallahassee the 26th day of February, 1871, by his E. Harrison Reed, governor of Florida, Jonathan C. Gibbs, sec't'y of state, and S. W. Conners, State treasurer (annex E).

§ 9. Under these circumstances, and with such proofs and informations, the loan has been issued and the bonds have been bona fide purchased in the market, the purchasers being intimately connected and believed sincerely.

a. That 250 miles mentioned (annex A & B) completed, fully equipped and given over to traffic, consisted in the roads extending from Lake City to Chattahoochee and from Tallahassee to St. Mark's, known as the J., P. & M. Railroad, and the road extending from Jacksonville to Lake City, known as the Florida Central Railroad.

b. That the bonds also purchased were indistinctly issued to and in constructing the Jacksonville, Pensacola & Mobile Railroad, 450 miles in length, of which 234 miles, not 250 miles as explained in (annex G), consisted in as follows:

From Lake City to the Chattahoochee River	150	miles
Branch to Monticello	4	"
" " St. Mark's	21	"
From Lake City to Jacksonville	59	"
	234	"

Which 234 miles, described as aforesaid, were completed, fully
4019 equipped, and given over to traffic.

c. That there was also a perfect and indissoluble unity of line between the Jacksonville, Pensacola and Mobile and the Florida Central Railroads.

§ 10. The purchasers of the said bonds were since corroborated and entertained in their connection as stated in § 9 by the following proofs:

a, By a certificate delivered on the second December, 1873, by his E. the governor, Harrison Reed (annex F).

b. By an opinion given in New York, June 16th, 1870, by Mr. Geo. Jackson Curtis (annex G).

c. By a petition filed in the Supreme Court of the U. S. in a land suit The State of Florida vs. Edward C. Anderson, sr., and others, by G.

M. Borssevain, A. J. Meadus, A. Stoop, J. Jodoks, Dr. Jam Fey, in their own right, and as the only authorized agents and attorneys of other persons owning and controlling of the State of Florida, which person was duly sworn in behalf of the said petitioners by Mr. Samuel A. Strong, of New York, certifying all the facts stated in said petition to be true and correct (annex H).

d. By a statement and points delivered in support of the bill and on behalf of the holders of State bonds praying to be made parties
4020 in the suit mentioned in *c* by W. W. MacFarland, counsel.

e. By the opinion of the Supreme Court of the U. S., delivered by Mr. Justice Bradley in chancery, October term, 1875, in the case mentioned sut. *c*.

f. By the second annual message of his E. the governor, Ossian B. Hart, to the legislature of Florida, 6th January, 1874, pages 9 to 14, and page 120, statement of bonds in the office of the State treasury, 1 Jan., 1874.

g. By the Railroad Manual, 1874, by Edward Vernon, No. 56 Broadway, room' 21–22, New York.

h. By a report and appendix, directed by the committee for the protecting of the rights of the 8 % Florida bondholders annis 1873–'74, to the said bondholders (annex J. & K.).

The foregoing statement, made by the appearer, and put in writing, has been signed by him after in the presence of me, the undersigned, U. S. consul, in the consulate office, at the day and year as above.

JAS. WERTHEIM.

CHARLES MUELLER,
U. S. Consul.

Further personally appeared before me, Charles Mueller, U. S.
4021 consul for Amsterdam, on the day and year above written, F. H. Zugelaor, partner of the banking house Zugelaor & Vandenbergh, of Amsterdam, and J. Fred. Schutte, partners of the firm Schutte & Company, exchange brokers, of Amsterdam, all of whom being by me sworn in due form of law, did severally, voluntarily, freely and solemnly declare, depose, and say that the statements, as set forth in foregoing instrument of writing, signed and sworn to by Jas. Wertheim, LL. D., & deputy judge at Amsterdam, are, to the best of their knowledge and belief, true and creditable in every respect, faithfully representing the views and convictions of each and all of the Dutch holders of the 8 % Florida bonds in relation thereto.

F. H. ZUGELAOR.
J. FRED. SCHUTTE.

Sworn and subscribed before me,
CHARLES MUELLER,
U. S. Consul.

4021½ (Indorsed:) Affidavit of J. Wertheim. Filed May. P. Walter, clerk.

[Law office of C. D. Willard, 816 F street, n. w., Washington, D. C., United States Supreme Court—Florida Railroad cases.]

4022 FEBRUARY 14TH, 1880.

Messrs. PHILLIPS, MAURY & PHILLIPS:

GENTLEMEN: Your favor of the 7th inst. is received and contents noted. In respect to the documents called for in article 6, in our notice served on you on the 30th ult., I beg to say that when the notice was drawn we did not have the report of the "fraud commission" before us, but since then have obtained the same, and desire now to say that we will waive the production of anything named in paragraph 6, or contained in the "fraud commission" report, considering the same unnecessary.

* * * * * * *

(Signed) Yours, truly,

C. D. WILLARD,
Of Counsel, &c.

4023 Supreme Court of the United States, October term, 1879.

Nos. 1022, 1023, 1024.

THE WESTERN NORTH CAROLINA RAILROAD Company, appellant,
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Florida Central Railroad Company, et al.

and *the*

THE WESTERN NORTH CAROLINA RAILROAD Company, appellant,
vs.
THE JACKSONVILLE, PENSACOLA & MOBILE Railroad Company et als.

and

THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, The Florida Central Railroad Company, et al., appellants,
vs.
J. FRED. SCHUTTE, JAN PRINS, ET ALS., APPELLEES.

P. Phillips, esq., Wm. A. Maury, esq., of counsel for the Flor-
4024 ida Central Railroad Company, appellant:

Please to take notice that under and in pursuance of the order of this court made in the above-entitled cause on the 22nd day of December, 1879,

The following papers, documents, and proofs used on the hearing below and omitted in the transcript now on file in this cause, are necessary for the proper presentation of this cause:

1st. Copy of the constitution of the State of North Carolina, filed in the record in the court below.

2nd. Copy of an act entitled "An act for the relief of Franklin Dibble, A. Haling, E. M. Cheney, and their associates, purchasers of the railroad from Tallahassee to St. Marks, and of the railroad from Quincy to Lake City, and incorporating the Tallahassee Railroad Company," approved June 24, 1869.

4025 3rd. Copy of the act entitled "An act to perfect the public works of the State," approved June 24, 1869.

4th. Copy of the act entitled "An act to alter and amend an act entitled an act to perfect the public works of the State," approved June 24, 1869, approved January 28th, 1870.

5th. Copy of the list of the Florida 8 per cent. State bonds produced at the final hearing in the court below.

6th. Copy of the proclamation of Harrison Reed, governor of the State of Florida, appointing a fiscal agent of said State, through whom the interest on the said Florida 8 per cent. State bonds should be demanded and received by *by* those entitled thereto.

4026 7th. Copy of the following decisions: "The State of Florida, the trustees of the internal improvement fund, et al., vs. The Jacksonville, Pensacola and Mobile Railroad Company et al.," contained in volume 15 of the reports of the supreme court of the State of Florida, pages 201 and 295, both inclusive.

8th. Copy of the following case: "Daniel P. Holland vs. The State of Florida et al., respondents," to be found in volume 15 of the reports of the supreme court of the State of Florida, pages 455 to 553, inclusive.

9th. Copy of the following case: "The State of Florida and the trustees of the internal improvement fund of the State of Florida, respondent, vs. The Florida Central Railroad Company, Edwin M. L'Engle, Robert J. Washington, and Fanny S. Pappy, executrix of the last will and testament of Mariano D. Pappy, deceased, appellants," contained in volume 15 of the supreme court reports of the State of Florida, pages 690 to 732, both inclusive.

4027 10th. Copy of the following case: "The State of Florida and the trustees of the internal improvement fund against The Jacksonville, Pensacola and Mobile Railroad Company and others," contained in volume 16 of the supreme court reports of the State of Florida.

11. Copy of the proceedings of the stockholders of the Tallahassee Railroad Company, at a meeting held on the 24th and 25th days of May, 1870, authorizing the consolidation of the Tallahassee Railroad Company with the Jacksonville, Pensacola and Mobile Railroad Company, to be found in "the minute-book of the stockholders of the Tallahassee Railroad Company, 1869, to May 24, 1870, inclusive," page' 15 and 16; also the "report" in respect to the consolidation of said railroad companies to be found in the same book.

4028 12th. Copy of the resolutions in respect to the consolidation of the Jacksonville, Pensacola and Mobile Railroad Company with the Tallahassee Railroad Company contained in the minute-book of the proceedings of the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company, and in the minute-book of proceedings of the directors of the Jacksonville, Pensacola and Mobile Railroad Company. A copy of the preamble and resolutions passed by the stockholders of the Florida Central Railroad Company on June 20, 1870, authorizing the issue of one million dollars ($1,000,000) of first-mortgage bonds of said company, and also a copy of the resolutions passed by the stockholders of said company on the 13 day of May, 1870, in respect to the same bonds; which resolutions are contained in the minute-book of proceedings of the stockholders of the Florida Central Railroad Company.

4029 13th. Copy of the act of the general assembly of North Carolina appointing commissioners to examine into and make settlement of the affairs of the Western Division of the Western North Carolina Railroad Company. Public laws of North Carolina, pages 154, 155.

14th. Copy of memorandum of agreement and settlement between the Florida Central Railroad Company, George W. Swepson, president of the Jacksonville, Pensacola and Mobile Railroad Company, M. S. Littlefield, president, and Littlefield, majority owner of stock of said companies of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by Woodfin, Condler, Welsh, and W. W. Rollins, &c., approved by the stockholders of said corporation, of second part, dated April 16, 1870.

15th. Copy of the resolutions of the stockholders and directors of the Florida Central Railroad Company, passed June 2, 1870, adopting the bonds of said company, signed by George W. Swepson, president, and Thompson, treasurer.

4030 16th. Copy of resolutions of the stockholders of the Florida Central Railroad Company, authorizing Edward Houston to place the bonds of the company with S. W. Hopkins, passed May 21, 1871.

17th. Copy of answer of Florida Central Railroad Company, pages 79 to 88, both inclusive, to be found in "Transcript of Record," in case of "The State of Florida vs. E. C. Anderson et als., United States Supreme Court."

18th. Copy of the affidavit of Jacobus Wertheim, of May 18, 1877, referred to in his printed deposition, page 9, in answer to question 21, taken before J. H. Durkee, examiner, at Jacksonville, Florida.

MATT. H. CARPENTER,
C. D. WILLARD,
Of Counsel for Appellees.

WASHINGTON, D. C., *January* 23, 1880.

(Endorsed:) Supreme Court of the U. S., October term, 1879.
4031 No. 1022, 1023, 1024. The Western N. C. R. R. Co., app't, 1022, vs. Geo. F. Drew, governor, &c. The Florida C. R. R. Co., et als, and the Western N. C. R. R. Co., app't, 1023, vs. The J., P. & M. R. R. Co., et als., and The J., P. & M. R. R. Co., The Florida C. R. R. Co., et als., app't, 1024, vs. J. Fred. Schutte, J. Prins, et als., appellees.

Service acknowledged by copy. Phillips, Maury & Phillips, 23 January, 1880. Request by appellees for addition to record under order, Dec. 23, 1879. Filed 23 January, 1880.

True copy. Test:

D. W. MIDDLETON,
Clerk Sup. Court, U. S.

4032 Supreme Court of the United States. October term, 1879.

Nos. 1022, 1023, 1024.

THE WESTERN NORTH CAROLINA RAILROAD Company, app't,
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C., The Florida Central Railroad Company, et als.,

and *the*

THE WESTERN NORTH CAROLINA RAILROAD Company, app't,
vs.
THE JACKSONVILLE, PENSACOLA & MOBILE Railroad Company, et als.

and

THE JACKSONVILLE, PENSACOLA AND MOBILE Railroad Company, The Florida Central Railroad Company, et als., app't,
vs.
J. FRED. SCHUTTE, JAN PRINS, ET ALS., appellees.

4033 P. Phillips, esq., Wm. A. Maury, esq., of counsel for the Florida Central Railroad Company.

Please to take notice that the following papers, documents, and proofs used on the hearing below in the above entitled cause, and not included in the record, now on file in the United States Supreme Court, and are necessary for the proper presentation of this cause, in addition to the documents and proofs specified in our previous notice of the 23d inst.:

1st. The testimony taken in Amsterdam, Holland, by the complainants, J. Fred. Schutte, Jan Prins & others, before D. Eckstein, United States consul and commissioner.

2. Copy of resolutions of board of directors of the Florida Central Railroad Company, passed May 25, 1870.

3. Copy of the answer of the Jacksonville, Pensacola and Mobile Railroad Company, filed in the fourth judicial circuit court, 4034 Duval County, Florida, in the case of "The Jacksonville, Pensacola and Mobile Railroad Company, impleaded with Milton S. Littlefield, Calvin Dibble et al., defendant, vs. The State of Florida, Sam'l T. Day, governor of the State of Florida, Horatio Bisbee, jr., attorney-general, & others, trustees of the internal improvement fund, of Florida, plaintiffs," contained in the printed transcript of record of the case of "The State of Florida et al. vs. E. C. Anderson et al.," page 280 to 285.

4. Copy of the deed of trust, executed by the Jacksonville, Pensacola and Mobile Railroad Company, to Francis H. Flagg, D. G. Ambler, and Converse L. Chase, dated October 2nd, 1871, contained in said printed transcript of record, on pages 289, 299, 291, & 292.

5. Copy of the report of Commissioners Woodfin, Candler, and Rollins, to the governor of North Carolina, contained in legislative 4035 documents No. 25 (printed), session 1871 & 1872, State of North Carolina; also document No. 26, including Exhibit B, therein named, contained in the same volume.

6. Copy of extracts from the "fraud commission report" to the leg-

islature of the State of North Carolina, so far as the same refers to the Western Division of the Western North Carolina Railroad Company.

MATT H. CARPENTER,
C. D. WILLARD,
Of Counsel for Appellees.

WASHINGTON, D. C., *January 30th*, 1880.

(Endorsed:) Supreme Court of the U. S., October, 1879. Nos. 1022,
1023, 1024. The West. N. C. R. R. Co., app't, vs. Geo. F. Drew, trustee,
&c., The Fla. Cent. R. R. Co. et als., and The Jacksonville, P. & M. R.
R. Co., The Fla. Central R. R. Co. et als., app't, vs. J. Fred. Schutte,
4036 Jan Prins, et als., appellees. Notice of documents and proofs to
be filed by appellant. Filed 31st January, 1880. D. W. M.,
clerk. Service by copy acknowledged this 31st Jan'y, 1880. Phillips,
Maury & Phillips.

True copy. Test:

D. W. MIDDLETON,
Clerk Sup. Court U. S.

4037 I, Phillip Walter, clerk of the circuit court of the United States
for the fifth judicial circuit, northern district of Florida, do hereby certify that the foregoing pages, numbered from 1 to 951, inclusive, are true and correct copies of the papers & documents specified and demanded in the statements (certified copies of which are hereto attached) filed by the solicitors of the appellees under the order of the honorable the Supreme Court of the United States, made December 22nd, 1879, in said causes, except that of the papers & documents specified and demanded by the appellees under the said order, the following is not now & has not been at any time in my possession, and therefore a copy cannot be furnished.

That is to say, No. 5, on paper filed Jan'y 30, 1880, designated as follows:

Copy report of Commissioners Woodfin et al. to governor of N. C., contained in legislative Doc. 25, of session of 1871 & 1872, of N. C., and the exhibits contained in said volume, &'.

As to the demand for copies of certain proceedings of the directors & stockholders of the Florida Central R. R., this record is complete, except as to certain meetings which are called for which are erroneous, no meeting having taken place on such dates.

And as to the request for copies from the fraud commission report to
the legislature of North Carolina, the demand therefore has
4038 been withdrawn by letter of C. D. Willard, esq., of counsel for
appellees, dated February 14th, 1880, a copy of which withdrawal
is hereto attached.

And I further certify (at the request of solicitors for appellants) that the original papers and documents of which the foregoing transcripts are copies have no evidence in writing upon them showing that they were used upon the hearing in said causes in this court, and that there are no file marks on written evidence thereon showing that they have been filed in these cases or in any case in this court as part of the record, except that the document entitled deposition taken in Holland is endorsed as follows: "In the circuit court United States, fifth circuit, northern district of Florida, J. Fred. Schutte et al. vs. The Western Division of the Western North Carolina Railroad Company et al. Testimony taken in Holland, before Hon. D. Eckstein, commissioner."

Opened & filed this 13th day of May, 1879.

P. WALTER, *Clerk.*

And the document entitled list of bonds is endorsed as follows: "List of bonds, Florida 8 % bonds presented in the U. S. court, May, '79, in Jacksonville, Florida, by Adolph Engler, of N. Y. City, in the case of J. Fred. Schutte et als. vs J., P. & M. R. R. Co. & Florida Central R. R. Co., et als.

Filed.

P. WALTER, *Clerk.*

4039 And the document entitled affidavit of J. Wertheim is also endorsed, thus: "Exhibit C. J. Wertheim. The Western Division of the Western North Carolina Railroad Company vs. Geo. F. Drew governor, trustee, &c., et al."

Filed in evidence and marked Exhibit C, Jac. Wertheim, May 20, 1879.

JOSEPH H. DURKEE,
Special Examiner.

Filed May .

P. WALTER, *Clerk.*

In witness whereof I have hereunto set my hand and affixed the seal of the circuit court of the United States at the city of Jacksonville, in the district and circuit aforesaid, this 8th day of March, 1880, and of our Independence the 104th year.

[SEAL.] PHILIP WALTER, *Clerk.*

4040 Supreme Court of the United States, October term, 1880.

WESTERN DIVISION OF W. N. C. R. R.
vs.
FLORIDA C. R. R. CO. ET AL.

and

WESTERN DIVISION OF W. N. C. R. R. CO.
vs.
JACKSONVILLE, PEN. & M. R. R. CO. ET AL.

and

J. FRED. SCHUTTE ET AL.
vs.
THE J., P. & M. R. R. CO., THE F. C. R. R. CO., THE W. D. W. N. C. R. R. CO., ET AL.

It is hereby stipulated by the undersigned counsel in the causes above entitled that the papers mentioned in the list hereto annexed, shall not be put in the printed record in the said causes. As witness our hands this 22d day of June, 1880. 4041

JOS. B. STEWART,
Sol. for Weste. N. C. & W. D. W. N. C. Co.
WM. A. MAURY,
Sol. for Fla. Cent. R'lw'y Co.
JAMES M. BAKER,
Sol. for J., P. & M. R'lw'y Co.,
By WM. A. MAURY.
C. D. WILLARD,
Of Counsel for J. Fred. Schutte et al., Appellees.

4042 *Original record.*

	Page.	No.
Petition for injunction, case No. 2	152	4
Petition for injunction, case No. 1	170	5
Subpœna to trustees I. I. Fund et al., and return of service	196	10
Answer of Robt. H. Gamble	339	18
Answer of James D. Westcott, jr	346	19
Replication to answer of J. D. Westcott	500	31
Replication to answer of Robt H. Gamble	502	32
Subpœna and return of service on Francis Vose	568	45
Subpœna and return of service on Corley, comm'r of lands and immigration, Drew, gov'n'r, Raney, att'y gen'l, and C. Drew, comptroller	578	50
4043 Cross-bill of trustees I. I. Fund	968	63
Demurrer of J. Fred. Schutte et al. to cross-bill of trustees I. I. Fund	1030	64
Demurrer by Francis Vose to bill of complaint	1034	65
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(Indorsement on cover:) No. 667. The Florida Central Railroad Company, appellant, vs. J. Fred. Schutte et al. No. 668. The Jacksonville, Pensacola & Mobile Railroad Company, appellant, vs. J. Fred. Schutte et al. And No. 669. The Western North Carolina R. R. Co., appellant, vs. George F. Drew & al. Addition to record under order of court. Filed 13 March, 1880.

Supreme Court of the United States,

SUPPLEMENTAL RECORD.

THE FLORIDA CENTRAL RAILROAD COMPANY,
Appellant,
vs.
J. FRED. SCHUTTE, ET AL.
Appellees.

No. 667.

THE JACKSONVILLE, PENSACOLA, & MOBILE RAILROAD COMPANY,
Appellant,
vs.
J. FRED. SCHUTTE, ET AL.,
Appellees.

No. 668.

THE WESTERN NORTH CAROLINA RAILROAD COMPANY,
Appellant,
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C.; THE JACKSONVILLE, PENSACOLA, & MOBILE RAILROAD COMPANY; ET AL.,
Appellees.

No. 669.

AN ACT for the relief of Franklin Dibble, A. Huling, E. M. Cheney, and their Associates, Purchasers of the Railroad from Tallahassee to St. Marks, and of the Railroad from Quincy to Lake City, and incorporating the Tallahassee Railroad Company.

Whereas, at a sale of the Pensacola and Georgia Railroad and the Tallahassee Railroad, on the 20th day of March, 1869, by the Trustees of the Internal Improvement Fund, under and by virtue of the provisions of the Internal Improvement Law, Franklin Dibble, A. Huling, E. M. Cheney, and their associates, became the purchasers thereof;

Preamble.

And whereas, it is essential for the interests of the people of this State that the parties aforesaid, and their associates, shall be invested with such corporate powers as are needful for the operations of said road, as well as more accurately to define their powers and duties, therefore,

The People of the State of Florida, represented in Senate and Assembly, do enact as follows:

Corporation.

Name of Corporation.

Powers.

SECTION 1. That the said Franklin Dibble, A. Huling, E. M. Cheney, and their associates, and their successors and assigns, are hereby made a body politic and corporate, under the name of the Tallahassee Railroad Company, and they, their associates and assigns, as such body politic and corporate, are hereby vested with and shall be entitled to exercise and enjoy the like powers, franchises and privileges as were granted to the Pensacola and Georgia Railroad Company, and the Tallahassee Railroad Company, by the several acts incorporating said Pensacola and Georgia Railroad Company and said Tallahassee Railroad Company, and with the right to hold, operate and enjoy the said railroad, under the name of the Tallahassee Railroad Company, subject to the conditions annexed to the sale of said roads by the Trustees of the Internal Improvement Fund, and by and in the name of the Tallahassee Railroad Company, they, their associates, successors and assigns, may purchase, receive and hold lands and tenements, goods and chattels, of whatsoever character, that shall be necessary or useful for the purposes of said railroads, and the same to grant, sell, mortgage or dispose of, and to sue and be sued, implead and be impleaded, to make a common seal, and at pleasure to break and alter the same, and to establish and put in execution such by-laws and regulations as may be necessary and expedient, not inconsistent with the Constitution and laws of the State of Florida.

ertain provisions of the arter of the nsacola and eorgia R. R. . made applicable to this rporation.

Sec. 2. *Be it further enacted,* That the provisions of this act, incorporating the Pensacola and Georgia Railroad Company, for the protection of its roads from trespass, injury or intrusion, and providing for the punishment of persons who shall trespass upon or injure the same, be, and they are hereby, made applicable to all cases of trespass, injury or intrusion on, to or upon the aforesaid railroads, and the said Tallahassee Railroad Company shall be entitled to all the benefits and protection thereof and therefrom.

mount of Stock be issued.

Sec. 3. *Be it further enacted,* That said Franklin Dibble, A. Huling, E. M. Cheney, and their associates, shall be entitled to declare the amount of which the stock in the said Tallahassee Railroad Company shall consist, and to divide the same into shares, which shares, however, shall not be less than one hundred dollars each.

y rent or m out.

Sec. 4. *Be it further enacted,* That said Tallahassee Railroad Company may, when they shall see fit, rent, lease, farm out or sell, any part of the said railroad to any person or persons, corporators or corporations, upon such terms as may be agreed on, provided said sale, renting or leasing shall not be made to any person or persons, or corporation, owning any railroads out of the State of Florida.

Directors.

Sec. 5. *Be it further enacted,* That the Board of Directors of the said Tallahassee Railroad Company shall consist of nine Directors, of whom the President of said company shall be one. The first directors shall be elected or appointed within one month after the passage of this act, and annually thereafter, at such time as may be fixed by resolution or law, but the said company shall not be dissolved for failure to elect or appoint its directors, so long as the said railroads shall be kept running and in operation, but the directors may be elected or appointed at the next meeting thereafter.

Company may issue bonds.

SEC. 6. *Be it further enacted*, That said company shall have the right to issue coupon bonds, in such denominations and at such rate of interest, annual or semi-annual, and payable at such time and place as they may determine, and may secure the same by mortgage on said railroads, their equipments, depots, workshops, property and franchise, executed in such form and manner as may be determined. PROVIDED, *That any deed of trust, mortgage, conveyance, bond or bonds, or security which may have been executed, made, created or contracted for, as a lien on said railroads or otherwise, by said Franklin Dibble, in behalf of himself and his associates, prior to the passage of this act, shall be valid and effectual to all intents, either at law or in equity, as a lien or mortgage, or security on said railroad, as if the same had been made by virtue of this act, and shall in no wise be affected by any provisions thereof.*

Approved June 24, 1869.

CHAPTER 1716.—[No. 4.]

AN ACT to perfect the Public Works of the State.

The People of the State of Florida, represented in Senate and Assembly, do enact as follows:

SECTION 1. In order to secure the speedy completion, equipping and the maintenance of a connection by railroad between Jacksonville, on the Atlantic coast, and Pensacola, on the Gulf coast, and Mobile, in Alabama, running through the State of Florida, the following named persons, viz.: George W. Swepson, Milton S. Littlefield, J. P. Sanderson, J. L. Re Qua, William H. Hunt, their associates, successors and assigns, are hereby constituted a body politic and corporate, under the name of the Jacksonville, Pensacola and Mobile Railroad Company, and as such shall have and use a common seal, may sue and be sued, plead and be impleaded, may purchase and hold real and personal property, which may be necessary or useful for the purposes of the road, and sell and convey the same in fee or for a less estate, or by way of mortgage or otherwise, and may make and enforce, for the government of the corporation, such by-laws and regulations, not contrary to the Constitution and laws, as they may deem best. The said company is hereby vested with the like powers, franchises and privileges as were and are conferred by the Act to incorporate the Florida, Atlantic and Gulf Central Railroad Company, and the act to amend an act entitled an Act to incorporate the Florida, Atlantic and Gulf Central Railroad Company.

Purposes of Corporation.

Corporators,

General powers

Shall have like powers as were conferred upon the Fla., At. and Gulf Cen. R. R., and the act amendatory thereof.

SEC. 2. The said corporators, associates, successors and assigns, shall have power to fix the capital stock of the company, the shares of which shall be one hundred dollars each, and shall designate the times and places of holding the meetings of the company.

Capital Stock and places of holding meeting.

The first meeting shall be called within thirty days after this act goes into operation, by notice, signed by either of the following named corporators, viz.: George W. Swepson, Milton

First meeting, how to be called.

Term of service and number of Directors. Compensations and duties of President and either officers.

S. Littlefield, J. P. Sanderson. The said corporators, their associates, successors and assigns, shall prescribe the number of directors of this company, and their term of service, and likewise the term of office, compensation and duties of the president, and all other officers.

What a quorum.

A majority of the corporators shall be a quorum to do business.

Powers of the Directory.

SEC. 3. The directors, or a majority of them, shall have power to transact all business of the company, unless otherwise ordered by the stockholders; may declare dividends of profits, if any, and, in general, make and enforce all such rules and regulations, consistent with the by-laws of the company, as they may deem fit.

Exclusive right to build road from Quincy to Mobile.

SEC. 4. The Jacksonville, Pensacola and Mobile Railroad Company shall have the exclusive right, for twenty years, to build a railroad, with one or more tracks, from the terminus of the Pensacola and Georgia Railroad, at Quincy, touching at Mariana, in Jackson County, and at a point within five miles of Enchuana, in Walton County, thence touching at Milton, in Santa Rosa County, to the Alabama State line, in the direction of Mobile, in Alabama, crossing the Pensacola and Louisville Railroad, north of Pensacola, with the privilege of continuing the same to Mobile, and of connecting with any railroad running to Mobile.

Right of construction and right of way.

SEC. 5. The said company shall have the right and privilege to construct said railroad for the transportation of passengers, produce, goods, wares and merchandise, and all other articles whatsoever, through any land of the State of Florida; and the right of way is hereby granted for the same, two hundred feet in width, with the right to take stone, timber, earth and material from any land belonging to the State, to be used in the construction, maintenance and repairs of said railroad.

May rescind conveyances of land and materials.

SEC. 6. The said company is hereby authorized to contract for and receive conveyances of land, timber, and other materials, which may be required by the directors in the construction, operating, maintenance and repair of said railroad; and when the owner and company cannot agree upon the price, or when the owner is an infant, non-resident, or *non compos mentis*, then it shall be lawful for the said company to apply to the sheriff of the county in which said lands or property are located, who shall summon a jury of seven disinterested freeholders, a majority of whom shall be authorized to assess the damages, and return their award or judgment to the First Circuit Court of the County in which the said lands or other property may be located, which shall be entered by the clerk as the judgment of the court, and execution may issue thereon for the amount of said judgment and costs.

How to proceed in case owner and company disagree.

Either party dissatisfied with tho assessment may appeal to the next Term of the Circuit Court, on giving security for the prosecution of the appeal. Before proceeding to the discharge of the duties herein required, the jurors summoned as aforesaid shall take an oath or affirmation, to be administered by the sheriff, that they will well and truly inquire in, and to the best of their judgment assess, the damages accruing to the owner or owners of said land or materials by means of the proposed construction;

Party dissatisfied may appeal.

Provided, that said work and the progress of construction of said road shall in nowise be delayed on account of the proceedings had, or to be had, as aforesaid.

SEC. 7. The property so assessed and paid for by said railroad company, in conformity with the provisions of this act, and all donations from any source for the same, shall forever afterwards belong to and become the property of said railroad company, its successors in fee simple. Subscriptions to the capital stock of said railroad company may be made in lands, labor and material, upon such terms as may be agreed upon by the directors and the owner or owners thereof.

Property acquired to belong to the company in fee simple.

Subscriptions to capital stock may be made in lands, labor and material.

SEC. 8. The directors of said company shall have the right to demand and receive such prices and sums for fare and the transportation of freight, produce and merchandise as may be authorized and fixed by the by-laws of said company.

Price for fare and transportation, how fixed.

SEC. 9. In order to aid the said Jacksonville, Pensacola and Mobile Railroad Company to complete, equip and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvements of the State, the Governor of the State is hereby directed to deliver to the president of the said company coupon bonds of the State to an amount equal to fourteen thousand dollars per mile of the estimated length of

State aid extended to the amount of $14,000 a mile in State bonds.

the road, from Quincy westward to the Alabama line, according to the certificate of the president under the corporate seal, and the same amount per mile for the excess above this estimate, if, after the road shall be definitely located, it shall be likewise certified that the length of the road is greater than the first estimate; but said estimate shall not exceed in length the roadway already completed from Quincy to Jacksonville and from Tallahassee to St. Marks united. The said bonds shall be of the denomination of one thousand dollars, signed by the Governor, countersigned by the Treasurer, sealed with the great seal of the State, shall bear seven per cent. interest, payable semi-annually, and shall be payable to bearer. They shall be dated on the 1st day of July, 1869, and shall be due thirty years thereafter, and principal and interest shall be payable at such place in the City of New York as the Governor shall designate. The coupons for interest shall be payable to bearer, and shall be authenticated by the written or engraved signature of the Treasurer.

Character of the bonds to be issued, how signed, dated and when to fall due.

Coupons payable to bearer.

Bonds of the company to be given to the State in exchange, how issued and character of.

SEC. 10. In exchange for the bonds of the State above described, the president of the company shall deliver to the Governor of the State coupon bonds of the company, bearing a like rate of interest payable to the State of Florida, signed by the president, sealed with the corporate seal; coupons payable to the State of Florida, authenticated by the written or engraved signature of the president. The bonds shall be of such denominations, not less than one thousand dollars, as the said company may choose, and principal and interest shall be payable at the same time and place as the aforesaid State bonds.

State shall have lien on the road, its property and franchises.

SEC. 11. To secure the principal and interest of the said company bonds, the State of Florida shall by this act have a statutory lien, which shall be valid to all intents and purposes as a mortgage duly registered on the part of the road, on the estimated length of which the State bonds were delivered, and all the property of the company, real and personal, appertaining to that part of the line which it may now have, or may hereafter acquire, together with all the rights, franchises and powers thereto belonging; and in case of failure of the company to pay either principal or interest of its bonds, or any part thereof, for sixty days after the same or any instalment thereof shall become due, it shall be lawful for the Governor to enter upon and take possession of said property and franchises, and sell the same at public auction for cash, on such notice as he may prescribe, so as to protect the State.

Upon failure of the company to pay principal or interest of its bonds for sixty days, the Governor may take possession of the road and sell it.

SEC. 12. For the protection and additional security of the State in the issue of the bonds authorized in the preceding section, the Jacksonville, Pensacola and Mobile Railroad Company shall deposit with the State Treasurer good and sufficient security, to be approved of by the Treasurer, for the payment of all interest that may become due on the State bonds issued to them until the completion of said railroad, and shall also give to the State, before the issue of said bonds, as additional security for the faithful application of said State bonds, a lien upon the entire railroad from Quincy to Jacksonville, and from Tallahassee to St. Marks, which lien shall be canceled as the road is completed in sections of twenty miles, to wit: That when twenty miles of the road west of Quincy shall be completed and in running order, twenty miles of the road east of Quincy shall be released from said lien, and so on, in like proportion the said lien shall be released until the completion of the road to the Alabama State line, when said lien shall be fully canceled and discharged.

Approved security for the payment of interest upon the State bonds until the road is compelled to be deposited with Treasurer.

Lien upon the road from Quincy to Jacksonville to be given.

How cancelled.

SEC. 13. The said Jacksonville, Pensacola and Mobile Railroad Company may, at any time before maturity of its bonds, discharge its debt to the State, or any part thereof, by payment in national currency, or in bonds of the State, *provided*, that this shall not be construed to include indebtedness incurred in aid of the rebellion.

How debt of company to State may be paid before maturity.

SEC. 14. It shall be lawful for the several companies owning the roads or part of roads from Quincy to Jacksonville, from Tallahassee to St. Marks, and the branch to Monticello, or either of said companies, by a vote of the owners of a majority of the stock in interest, and with the consent of the owners of a majority of the stock in interest of the Jacksonville, Pensacola and Mobile Railroad Company, to consolidate with the latter company, so as to become one corporation under its name, on such terms as may be agreed on, and said companies are authorized to settle the terms of consolidation by arbitration or otherwise. And with like consent of the

How certain companies may consolidate with the Jacksonville, Pensacola and Mobile Railroad Co.

Companies may arrange as to Schedules.

May mortgage franchises and property.

Jacksonville, Pensacola and Mobile Railroad Company may issue bonds, character of.

owners of a majority of the stock of each company, without such consolidation, they are authorized to make such arrangements with reference to a common management and schedules as may be agreed on, and after consolidation, the said Jacksonville, Pensacola and Mobile Railroad Company shall have the privilege to raise money by way of mortgage or assignment in trust of the railroad and property, franchise and effects acquired by such consolidation, so as to secure the lenders. The said Jacksonville, Pensacola, and Mobile Railroad Company, as to the road or roads, or parts of roads thus acquired, may likewise issue coupon bonds or other evidences of debt with coupons or otherwise, bearing such rate of interest and payable at such time and place and on such terms as the directors may determine, and to each are hereby granted the same priviliges as are herein granted to the Jacksonville, Pensacola and Mobile Railroad Company.

Consolidation of roads shall not relieve roads of their liabilities.

SEC. 15. The consolidation of any of the companies with the Jacksonville, Pensacola and Mobile Railroad Company under the provisions of this act, shall not operate to relieve the road or roads, or part of roads united by such consolidation with the Jacksonville, Pensacola and Mobile Railroad, from their existing liability to pay any debts or obligations of the company owning the same before consolidation, but the Jacksonville, Pensacola and Mobile Railroad Company shall not be responsible for any such debts or obligations.

Rate of freight for State freights.

SEC. 16. The Jacksonville, Pensacola and Mobile Railroad Company, the Florida Railroad Company, and all companies organized under an Act entitled An Act to provide for and encourage a liberal system of Internal Improvements in the State, shall be bound to transport freight for the State at half the usual rates, except in time of war, when the charge for freights shall not exceed 25 per cent. over actual cost. In consideration of this liability and of the undertaking by the company to build the road herein contemplated, no railroad competing with this road for passengers or freight, which has its terminus west of Quincy shall be hereafter built or authorized within this State without the consent of the owners of a majority of the stock in interest of this and all other railroad companies any part of whose road is now completed or authorized to be completed, nor without such consent shall be au-

No road having a terminus west of Quincy shall be built without consent of certain other roads.

thorized to cross or connect tracks, or continue such connection with said Jacksonville, Pensacola and Mobile Railroad: *Provided* that it shall be the duty of the said Jacksonville, Pensacola and Mobile Railroad to connect tracks with any roads which may be made from Apalachicola or St. Andrew's Bay to the main line of the said road of said company: *Provided further*, this shall not be so construed as to prevent the running of a branch from some point on said road to strike Chocktawhatchie Bay between the mouth of Chocktawhatchie river and Boggy Bayou.

May own and run steamship

SEC. 17. The Jacksonville, Pensacola and Mobile Railroad Company, the Florida Railroad Company and the Pensacola and Louisville Railroad Company, shall have power to own and run steamships and other craft to and from any of the ports of Florida, and may enter or depart with or without pilots, and likewise in any of the navigable waters within the jurisdiction of the State.

May construct bridges provided with draws.

SEC. 18. That said Jacksonville, Pensacola and Mobile Railroad Company shall, in the construction of said railroad, have the right to build and construct all bridges necessary to cross any and all rivers, but in crossing navigable rivers suitable draws shall be constructed to admit the passage of all steamboats and other water craft usually navigating such rivers, which draws shall always be kept in good order, and ready to be opened whenever necessary.

Gauge of road and character of road.

SEC. 19. That the gauge of said railroad shall be uniformly five feet, and the iron rail to be used shall weigh not less than fifty-four pounds per lineal yard, and the said railroad shall in all all respects be a first-class road.

When shall be completed.

SEC. 20. The said railroad shall be completed from Quincy to the Apalachicola river by the first day of January next, and the whole line within this State shall be completed within three years from the passage of this act.

Shall provide first and second class cars.

SEC. 21. That said Jacksonville, Pensacola and Mobile Railroad Company and all railroad companies organized under the act of June 16, 1855, relating to internal improvements, shall provide first and second class cars for the accommodation of passengers, for each of which fare shall be charged at proportionate rates, and passengers without distintion, paying fare

Accommodations to be furnished according to classification of tickets.

Penalty for refusal.

for first-class cars, shall be entitled to seats in such cars, and passengers paying fare for second class cars shall be entitled to seats in second class cars, and any conductor, superintendent, or agent of any railroad train of any company mentioned in this act, who shall refuse a seat in a first class car to any person holding a first-class ticket, shall be subject to arrest on the warrant of any judge of any county through which said train may pass and be liable for a fine of not less than $100 or more than $500.

Place of principal office and residence of corporation.

Sec. 22. That the Jacksonville, Pensacola and Mobile Railroad Company, and all other corporations existing under the laws and by the authority of this State, shall, by a public advertisement in a newspaper printed at the seat of government, declare the place within the State at which their principal office of business shall be considered as located, and such place shall thereafter be taken to be the residence of such corporation, and all contracts made by authority of such corporation shall be considered as made in the place at which such principal office is located.

Engineer to be appointed, his duties and salary.

Sec. 23. The Governor shall appoint a competent Engineer to have general supervision of the various roads provided for under this act, and whose duty it shall be to protect the interest of the State, and see that the work is carried on and conducted in all respects in compliance with law, and shall, from time to time, report to the Governor. The salary of such Engineer shall be paid by the companies interested, and shall in no case be chargeable to the State.

Continuance of corporation.

This to be deemed a public act.

Sec. 24. That the corporation of the Jacksonville, Pensacola and Mobile Railroad Company shall be, and continue for the term of thirty-five years from the date of the passage and approval of this act. This act shall be deemed and held a public act.

Aid to line of road from Amelia Island to Tampa Bay.

Sec. 25. That for the further purpose of completing that part of the line of railroad from Amelia Island on the Atlantic to the waters of Tampa Bay, in South Florida, provided for in the Act of January 6, 1855—"To provide for and encourage a liberal system of Internal Improvements in this State"—which remains to be constructed, it is hereby provided that it shall be lawful for any corporate company which may have, or acquire, the right to construct the same; to execute and deliver to the Governor of the State of Florida, for the time being, a deed of trust, conveying to said Governor and his successors in office, all the rights, franchises and privileges possessed by such company, or thereafter to be acquired, and all the tracks, lines, and road-beds upon such road, owned by such company, or thereafter to be acquired, in trust, and as security for the ultimate payment to the holder or holders thereof, of the principal and interest of the bonds of such company, amounting to the sum of fourteen thousand dollars per mile upon such company's road; said bonds to be of the denomination of one thousand dollars each, the principal sum payable in thirty years, and bear interest at the rate of seven per cent. per annum, payable semi-annually, and have coupons or interest warrants attached in accordance thereto; said bonds to be executed by such company under the seal thereof; and the Governor of the State of Florida for the time being is hereby directed to join with the said company in the deed of trust; and he and his successors in office are hereby charged with the execution of the trust contained therein. Said deed of trust shall be recorded in the proper offices for the record of deeds in the several counties through which said company's railroad is to pass.

Conveyance in trust of all property and franchises of company to be made to Governor as security for the bondholder.

Bonds of company, description of.

Governor to join in execution of.

Deed to be recorded.

SEC. 26. As soon as any of such companies shall have built and completed ten consecutive miles of their said railroad, the iron to be of a weight not less than 54 pounds to the yard, such company shall present to the Governor of the State of Florida for the time being the bonds of the said company, such as are described in the preceding section of this act, amounting in the aggregate to fourteen thousand dollars per mile upon the road so prepared, and from time to time thereafter, as often as said company shall have completed any additional five miles, said company may present to said Governor the bonds of such company amounting to fourteen thousand dollars per mile until the whole of such road is completed; and the said Governor for the time being shall make an indorsement on the back of each of said bonds, and shall sign the same as Governor of the State of Florida, which indorsement shall be as follows: "I certify that the within is one of a series of bonds issued by the Company (naming the com-

How bonds to be issued.

To be endorsed by Governor.

Payment of principal and interest guaranteed by the State.

pany), and amounting in the aggregate to the sum of fourteen thousand dollars per mile upon said railroad, secured by deed upon said company's railroad, and all the rights, franchises, and real and personal property of the said company, executed to the Governor of the State of Florida, as Trustee, on the day of , A. D. The payment of the principal and interest of the within bond, according to the terms thereof, is hereby guaranteed by the State of Florida, in pursuance of and obedience to an act of the Legislature of said State, approved the day of , 1869," and the Governor shall deliver the bonds so certified and guaranteed to the president of said company, or other officer authorized by the board of directors of such company to receive the same, and the payment of the principal and interest of said bonds to the holders thereof, according to the terms thereof, is hereby guaranteed by the State of Florida.

May take bond of the State instead of endorsed bonds of the compan in same mann as Jacksonvill Pensacola and Mobile Railro Company.

To be issued as sections of the road are completed.

Sec. 27. That in case any company engaged in building the said unconstructed part of the line between Amelia Island and the waters of Tampa, shall prefer to take bonds of the State instead of indorsed bonds as provided for in the two preceding sections, the Governor of the State is hereby authorized to substitute State bonds similar in character to those issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company, in virtue of the provisions of this act, and in such case the Governor shall demand and receive the company bonds for the same amount in exchange for such State bonds, in the same manner as prescribed in the case of the Jacksonville, Pensacola and Mobile Railroad Company; *provided, however*, that such bonds shall only issue in proportion as sections of the road are completed according to the stipulations of the last preceding section.

Upon default in the paymen of principal or interest, Governor may tak possession of the road, and run or sell it.

Sec. 28. If default shall at any time be made by said company in the payment of principal or interest of the bonds of said company when due, for sixty days after the same may fall due, the said Governor shall take possession of said road, and all the property, real and personal, connected therewith, and all the franchises of said company, and may operate the road for the protection of the State, and for the benefit of the trust, or may sell the same, with all the franchises and property of the company in accordance with the condition of the deed of trust, and according to law, for the benefit of the said trust.

Rights of purchasers in case of sale of roads.

SEC. 29. That in all cases of seizure and sale of the railroad, property, and franchises of any company by the Trustee of the Internal Improvement Fund, under the provisions of the Act to provide for and encourage a liberal system of Internal Improvement, the purchaser or purchasers shall be entitled to do whatever acts may be necessary to enable him or them to exercise and enjoy the franchises granted by the charter of incorporation, under the provisions of the said original charter and the amendments thereto. And in order to prevent doubt it is hereby declared that all the provisions of the Internal Improvement Act above referred to, and which act constituted a contract between the State and the companies, shall continue to apply to the said corporations so newly organized in the same manner as the same were applicable to the corporations which existed under the same charter prior to the sale:

New corporations to be subject to Internal Improvement Act.

Provided, That this section only applies to roads built under said Internal Improvement Act, and shall not authorize the issue of bonds exceeding fourteen thousand dollars per mile as provided in section twenty-six, nor any other pecuniary aid by endorsement or otherwise, and that nothing in this section herein contained shall in any wise effect any special act relating to the sales of the Atlantic and Gulf Railroad or the Pensocola and Georgia and Tallahassee Railroad, or the rights required under said sales.

This action applicable alone to roads built under Internal Improvement Act.

SEC. 30. That the Jacksonville, Pensacola and Mobile Railroad Company, and the Florida Railroad Company shall at reasonable times and for a reasonable compensation draw over their respective roads the passengers, merchandise and cars of each other, and shall give and receive through way bills for freight, through tickets for passengers, and through checks for baggage to and from all points on their respective roads, and shall make no unequal discrimination for or against each other in their joint through passenger and freight rates, or in the division of the same; it being the true intent and meaning of this act to require the said railroad corporations to give as good facilities and as favorable rates, terms and conditions to each other as they enjoy themselves. If the corporations cannot agree upon thestated periods at which their cars shall be so

Passengers and freights of one road to be drawn over other roads upon through way bills for freight.

Through checks required.

Unequal discrimination prohibited.

In case of disagreement matter to be referred to Judge of Circuit Court.

Proceedings in such case.

drawn, and the compensation to be paid, the judge of the Circuit Court of the District in which either of the companies reside, upon the petition of either party and notice to the other, shall appoint three disinterested Commissioners, who are experienced in such matters, who after due notice to and hearing the parties interested, shall determine such rates, terms and conditions, and fix such periods, having reference to the convenience and interest of the corporations and the public to be accommodated thereby; and the award of the Commissioners or a major part of them shall be binding upon the respective corporations interested therein until the same shall have been revised or altered by Commissioners to be so appointed; but no revision or alteration shall be made within one year after the award, without the consent of the companies.

Privileges of this act granted to other roads.

SEC. 31. All the rights, franchises, privileges, and conditions granted and prescribed in this act are hereby granted and applied to any company that is now, or hereafter may be, organized for the purpose of building a railroad from the waters of Tampa Bay and Charlotte Harbor, on the Gulf, by way of Ocala, and ending at Gainesville, on the Florida Railroad, and from Marianna, in the county of Jackson, to the waters of St. Andrew's Bay, in West Florida, and also to the waters of Apalachicola Bay, in West Florida, and to a point on the Chocktawhatchie Bay, between the mouth of Chocktawhatchie river and Boggy Bayou, and from Palatka and Mellonville, on the St. Johns river, to the nearest practicable point on the line of railway from Tampa Bay or Charlotte Harbor to Gainesville, as as far the same can be constitutionally granted. The said railroad company from Palatka is hereby authorized to connect and be entitled to all the benefits of section 30.

Local rates limited.

SEC. 32. That the local rates for freight and passengers on the Jacksonville, Pensacola, and Mobile Railroad, and the Florida Railroad, shall not exceed, at any time, the usual rates for similar distances upon the railroads of adjacent States.

Repeal.

SEC. 33. That all acts or parts of acts inconsistent herewith are hereby repealed.

Approved, June 24, 1869.

An Act to alter and amend an act entitled "An act to perfect the Public Works of the State," approved June 24th, 1868.

The People of the State of Florida, represented in the Senate and Assembly, do enact as follows:

Section to be amended.

Section 1. That section 4 of an act entitled An Act to perfect the Public Works of the State, approved June 24, 1869, which reads as follows: "Sec. 4. The Jacksonville, Pensacola and Mobile Railroad Company shall have the exclusive right for twenty years to build a railroad with one or more tracks, from the terminus of the Pensacola and Georgia Railroad at Quincy, touching at Marianna, in Jackson county, and at a point within five miles of Euchuana, in Walton county, thence touching at Milton, in Santa Rosa county, to the Alabama State line, in the direction of Mobile, in Alabama, crossing the Pensacola and Louisville Railroad north of Pensacola, with the privilege of continuing the same to Mobile, and of connecting with any railroad running to Mobile," be altered and amended so as to read as follows:

Exclusive right to build road from Quincy to Mobile.

The Jacksonville, Pensacola and Mobile Railroad shall have the exclusive right for twenty years to build a railroad, with one or more tracks, from the terminus of the late Pensacola and Georgia Railroad, now the Tallahassee Railroad, at Quincy, Gadsden County, to the dividing line between the States of Florida and Alabama, in the direction of the City of Mobile, Alabama, running through the counties of Gadsden, Jackson, Holmes, Washington, Walton, Santa Rosa, and Escambia, crossing the Pensacola and Louisville Railroad with the privilege of continuing the same to Mobile, and of connecting with any railroad running to Mobile. *Provided, however,* that in the construction of said railroad the line west of the Chattahoochee river shall not in any instance be run, or the road built nearer than fifteen miles of the north line of the State of Florida.

Road not to be run nearer than fifteen miles of north line of State.

Sec. 2. That section 9 of said act, entitled "An Act to Perfect the Public Works of the State," which reads as follows: "Sec. 9. In order to aid the said Jacksonville, Pensacola and

Section to be amended.

Mobile Railroad Company to complete, equip and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvements of the State, the Governor of the State is hereby directed to deliver to the President of the company coupon bonds of the State to an amount equal to fourteen thousand dollars per mile of the estimated length of the road from Quincy westward to the Alabama line, according to the certificate of the President, under the corporate seal, and the same amount per mile for the excess above this estimate, if, after the road shall be definitely located, it shall be likewise certified that the length of the road is greater than the first estimate, but said estimate shall not exceed in length the roadway already completed from Quincy to Jacksonville, and from Tallahassee to St. Marks, united. The said bonds shall be of the denomination of one thousand dollars, signed by the Governor, countersigned by the Treasurer, sealed with the great seal of the State, shall bear seven per cent. interest, payable semi-annually, and shall be payable to bearer. They shall be dated on the first day of July, 1869, and shall be due thirty days thereafter, and principal and interest shall be payable at such place in the City of New-York as the Governor shall designate. The coupons for interest shall be payable to bearer, and shall be authenticated by the written or engraved signature of the Treasurer," be altered and amended so as to read as follows:

State aid extended to the amount of $16,000 per mile in State bonds

Character of State bonds, how signed, date, when to fall due, and where payable.

In order to aid the said Jacksonville, Pensacola and Mobile Railroad Company to complete, equip and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvements of the State, the Governor of the State is hereby directed to deliver to the President of the said company coupon bonds of the State to an amount equal to sixteen thousand dollars per mile for the whole line of road and length of railroad owned by or belonging to said Jacksonville, Pensacola and Mobile Railroad Company, in exchange for first mortgage bonds of said Railroad Company, of the denomination of one thousand dollars, when the President thereof shall certify upon his oath that the road or parts of road for which he asks for an exchange of bonds is completed, and is in good running order. The said bonds shall be of the denomination of one thousand dollars, signed by the Governor, countersigned by the Treasurer, sealed with the great seal of the state, shall bear eight per cent. interest, payable semi-annually, and shall be payable to bearer. They shall be dated on the first day of January, A. D., 1870, and shall be due thirty years thereafter, and principal and interest shall be payable at such place in the City of New York, as the Governor shall designate.

The coupons for interest shall be payable to bearer and shall be authenticated by the written or engraved signature of the Treasurer. Provided however, that when the Jacksonville, Pennsacola and Mobile Railroad Company shall or may determine to pay the interest in gold for or upon their bonds or the bonds designated in the tenth section of an act entitled "An Act to perfect the public works of the State," approved June 24, 1869, upon giving notice to the Governor of such intention, then the State bnods aforsaid and the coupons for interest on said bonds shall be payable in gold, notice of which shall be given by the Governor in some paper published in the City of New York, and at the capital of this State, to be designated by the Governor.

Sec. 3. That section 11 of said act, entitled "An Act to perfect the public works of the State" approved June 24, 1869, which reads as follows: "Sec. 11. To secure the principal "and interest of the said company bonds, the State of Florida "shall, by this act, have a statutory lien, which shall be valid "to all intents and purposes as a mortgage duly registered on "the part of the road, on the estimated length of which the "State bonds were delivered, and on all the property of the "company, real and personal, appertaining to that part of the "line which it may now have, or may hereafter acquire, together with all the rights, franchises and powers thereto belonging, and in case of failure of the company to pay either "principal or interes of its bond, or any part thereof, for sixty "days after the same or any instalment thereof shall become "due, it shall be lawful for the Governor to enter upon and "take possession of said property and franchises, and, sell the "same at public auction for cash, on such notice as he may "prescribe so as to protect the State," be altered and amended so as to read as follows:

To secure the principal and interest of said company bonds, the State of Florida shall, by this act, have a statutory lien, Section to be amended.

Mobile Railroad Company to complete, equip and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvements of the State, the Governor of the State is hereby directed to deliver to the President of the company coupon bonds of the State to an amount equal to fourteen thousand dollars per mile of the estimated length of the road from Quincy westward to the Alabama line, according to the certificate of the President, under the corporate seal, and the same amount per mile for the excess above this estimate, if, after the road shall be definitely located, it shall be likewise certified that the length of the road is greater than the first estimate, but said estimate shall not exceed in length the roadway already completed from Quincy to Jacksonville, and from Tallahassee to St. Marks, united. The said bonds shall be of the denomination of one thousand dollars, signed by the Governor, countersigned by the Treasurer, sealed with the great seal of the State, shall bear seven per cent. interest, payable semi-annually, and shall be payable to bearer. They shall be dated on the first day of July, 1869, and shall be due thirty days thereafter, and principal and interest shall be payable at such place in the City of New York as the Governor shall designate. The coupons for interest shall be payable to bearer, and shall be authenticated by the written or engraved signature of the Treasurer," be altered and amended so as to read as follows:

State aid extended to the amount of $16,000 per mile in State bonds

Character of State bonds, how signed, date, when to fall due, and where payable.

In order to aid the said Jacksonville, Pensacola and Mobile Railroad Company to complete, equip and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvements of the State, the Governor of the State is hereby directed to deliver to the President of the said company coupon bonds of the State to an amount equal to sixteen thousand dollars per mile for the whole line of road and length of railroad owned by or belonging to said Jacksonville, Pensacola and Mobile Railroad Company, in exchange for first mortgage bonds of said Railroad Company, of the denomination of one thousand dollars, when the President thereof shall certify upon his oath that the road or parts of road for which he asks for an exchange of bonds is completed, and is in good running order. The said bonds shall be of the denomination of one thousand dollars, signed by the Governor, countersigned by the Treasurer, sealed with the great seal of the state, shall bear eight per cent. interest, payable semi-annually, and shall be payable to bearer. They shall be dated on the first day of January, A. D., 1870, and shall be due thirty years thereafter, and principal and interest shall be payable at such place in the City of New York, as the Governor shall designate.

Coupons payable to bearer

The coupons for interest shall be payable to bearer and shall be authenticated by the written or engraved signature of the Treasurer. Provided however, that when the Jacksonville, Pennsacola and Mobile Railroad Company shall or may determine to pay the interest in gold for or upon their bonds or the bonds designated in the tenth section of an act entitled "An Act to perfect the public works of the State," approved June 24, 1869, upon giving notice to the Governor of such intention, then the State bnods aforsaid and the coupons for interest on said bonds shall be payable in gold, notice of which shall be given by the Governor in some paper published in the City of New York, and at the capital of this State, to be designated by the Governor.

When the company determines to pay interest in gold; interest on State bonds to be payable in gold.

Section to be amended.

SEC. 3. That section 11 of said act, entitled "An Act to perfect the public works of the State" approved June 24, 1869, which reads as follows: "Sec. 11. To secure the principal "and interest of the said company bonds, the State of Florida "shall, by this act, have a statutory lien, which shall be valid "to all intents and purposes as a mortgage duly registered on "the part of the road, on the estimated length of which the "State bonds were delivered, and on all the property of the "company, real and personal, appertaining to that part of the "line which it may now have, or may hereafter acquire, together with all the rights, franchises and powers thereto belonging, and in case of failure of the company to pay either "principal or interes of its bond, or any part thereof, for sixty "days after the same or any instalment thereof shall become "due, it shall be lawful for the Governor to enter upon and "take possession of said property and franchises, and, sell the "same at public auction for cash, on such notice as he may "prescribe so as to protect the State," be altered and amended so as to read as follows:

To secure the principal and interest of said company bonds, the State of Florida shall, by this act, have a statutory lien,

State shall have lien on the road, franchises and property.

Upon failure of the company to pay principal or interest of its bonds for twelve months, the Governor may take possession of and sell the property and franchises.

State may purchase.

Proceeds of sale to be applied to payment of State bonds issued to the company.

What the purchaser takes by the sale.

Governor put purchaser in possession.

which shall be valid to all intents and purposes as a first mortgage duly registered, on the part of the road for which the State bonds were delivered, and on all the property of the company, real and personal, appertaining to that part of the line which it may now have or may hereafter acquire, together with all the rights, franchises and powers thereto belonging, and in case of failure of the company to pay either principal or interest of its bonds or any part thereof, for twelve months after the same shall become due, it shall be lawful for the Govenor to enter upon and take possession of said property and franchises, and sell the same at public auction after having first given ninety days' notice by public advertisement in at least one newspaper published in each of the following places: the City of New York, in the State of New York; the City of Savannah, in the State of Georgia, and the City of Tallahassee, in the State of Florida, for lawful money of the United States, and for nothing else, except that the State, for its own protection, may become the purchaser at said sale, and may pay on said purchase any evidences of indebtedness the State may hold against said roads, which purchase money, or said evidences of indebtedness, shall be paid on the day of sale into the Treasury of this State, or within ten days thereafter, and all moneys arising from said sale and paid into the treasury of this State, as heretofore prescribed, shall be promptly and exclusively applied to the payment and satisfaction of the bonds issued by the State of Florida under this act; and in case the holders of said bonds do not present them for redemption within ninety days after said sale, the Treasurer shall invest the same, or any part thereof which may be remaining in his hands, in the securities of the United States, to be held by the State of Florida as Trustee for the bondholders, until the said bondholders shall demand the same, upon which demand the Treasurer shall immediately turn over or pay said securities to the bondholders. The purchaser or purchasers of said road shall be by said sale possessed of all the rights, privileges and franchises of said defaulting company, together with the franchise of use and being a body politic, and the Governor shall, upon the payment of the said purchase money into the Treasury of this State as above provided, immediately cause the purchaser or purchasers of said road at said sale to be placed in the actual possession, use and enjoyment thereof, and cause all the books, papers, real and personal property of said company, of every description, together with its franchise of use and being a body politic and corporate, to be turned over to said purchaser or purchasers, and the purchaser or purchasers of said road shall be by said sale possessed of all the rights, privileges and franchises of said defaulting company, together with the franchise of use and being a body politic and corporate, and may use any new corporate name they see fit, and make and use a new seal upon signifying their action in writing to the Governor, and thereafter may exercise all the rights of a body corporate and privileges thereof and of said defaulting company, under said new name, for the term of thirty-five years, to date from the time of the purchase as aforesaid. That any such sale shall be ratified by the Legislature before the same shall become effective.

Purchaser may use new corporate seal.

Sale must be ratified by the Legislature.

Sec. 4. That the Governor shall, for the purpose of further aiding said Jacksonville, Pensacola and Mobile Railroad Company in the speedy construction of its road, deliver to the President of said company coupon bonds of this State of the same character as those above described in this Act, to the amount of sixteen thousand dollars per mile, upon receiving for and from the President of said company first mortgage bonds of like amount on any part or portion of the said road between Quincy and Jacksonville, provided, however, the state bonds under this section shall not be exchanged for first mortgage bonds for a greater length than one hundred miles of any part of railroad between Quincy and Jacksonville, provided, the said railroad company or companies shall not issue first mortgage bonds to a greater amount than sixteen thousand dollars per mile.

State aid extended to $16,000 per mile, for not exceeding one hundred miles on road between Quincy and Jacksonville.

Company not to issue first mortgage bonds to greater amount than $16,000 per mile.

Sec. 5. That section 12 of said act, entitled "An Act to Perfect the Public Works of the State," which reads as follows:

"Sec. 12. For the protection and additional security of the "State in the issue of the bonds authorized in the preceding "section, the Jacksonville, Pensacola and Mobile Railroad "Company shall deposit with the State Treasurer good and "sufficient security, to be approved by the Treasurer, for the

Section repealed.

" payment of all interest that may become due on the State
" bonds issued to them until the completion of the said railroad,
" and shall also give to the State before the issue of said bonds,
" as additional security for the faithful application of said State
" bonds, a lien upon the entire railroad from Quincy to Jack-
" sonville, and from Tallahassee to St. Marks, which lien shall
" be canceled as the road is completed in sections of twenty
" miles, to wit: That when twenty miles of the road west of
" Quincy shall be completed and in running order, twenty
" miles of the road east of Quincy shall be released from said
" liens, and so on in like proportion the said lien shall be
" released until the completion of the road to the Alabama
" State line, when the said lien shall be fully canceled and
" discharged," be, and the said section 12 aforesaid is hereby
repealed.

Section to be amended.

SEC. 6. That section 20 of said Act, entitled "An Act to Perfect the Public Works of the State," which reads as follows:

" SEC. 20. That the said railroad shall be completed from
" Quincy to the Apalachicola River by the first day of January
" next, and the whole line within this State shall be completed
" within three years from the passage of this Act," be so
altered and amended as to read as follows:

When shall be completed.

That the said railroad shall be completed from Quincy to the Apalachicola River by the first day of July, 1870, and the whole line within this State shall be completed within five years from the passage of this Act. Otherwise all chartered rights vested in this Act shall be forfeited to the State.

SEC. 7. That all acts and doings of the Corporators, Stockholders and Board of Directors of the Jacksonville, Pensacola and Mobile Railroad Company, under and by virtue of an act entitled "An Act to Perfect the Public Works of the State," approved June, 24, 1869, in relation to the organization and management of said Jacksonville, Pensacola and Mobile Railroad Company, are hereby approved and confirmed and declared to be of full force and effect.

Chapter 1716 of the laws of which this act is an amendment declared a law of the State.

SEC. 8. That the Act published as Chapter 1716 (No. 4), in pamphlet form, under the direction of the Attorney General, by authority of law, as the acts and resolutions adopted by the Legislature of Florida at its extra session, beginning June 8, 1869, under the Constitution of A. D. 1868, wherein from page 29 to page 38 inclusive is found and published an act entitled "An Act to Perfect the Public Works of the State," approved June, 24, 1869, and printed at Tallahassee, Florida, by Edw. M. Cheney, State Printer, is hereby declared to be an act and law of the State of Florida of which this Act is an alteration and amendment.

SEC. 9. That this Act shall be deemed and held to be a public act, and all laws and parts of laws conflicting with this Act be, and they are hereby, repealed.

Approved, January, 28, 1870.

CONSTITUTION OF THE STATE OF FLORIDA OF 1868.

ARTICLE XIII.

Taxation and Finance.

* * * * * * * * * * * *

SEC. 7. The legislature shall have power to provide for issuing State bond bearing interest, for securing the debt of the State, and for the erection of State buildings, support of State institutions, and *perfecting public works.*

SEC. 8. No tax shall be levied upon persons for the benefit of any chartered company of the State, or for paying the interest on any bonds issued by said chartered companies, counties, or corporations, for the above-mentioned purposes, *any laws to the contrary are hereby declared null and void.*

AN ACT to repeal any and all acts creating, recognizing, or continuing in existence the Western Division of the Western North Carolina Railroad Company.

The General Assembly of North Carolina do enact:

SECTION 1. That Chapter Twenty-four of the private Laws, Special Sessions of 1868, ratified August 19, 1868; Chapter Twenty of the Laws of 1868-69, ratified 29th day of January, 1869, and Chapter One Hundred and Fifty of the Laws of 1871-72, and any and all other acts and parts of acts creating, recognizing, or continuing in existence the Western Division of the Western North Carolina Railroad Company, are hereby repealed.

SEC. 2. That all the property, rights, credits, rights of action and effects that now exist in favor of the said Western Division of the Western North Carolina Railroad Company, or which may result from any existing matters, causes, circumstances or contingencies, shall become absolutely the rights and property of the Western North Carolina Railroad Company; and the said Western North Carolina Railroad Company is hereby authorized and empowered to prosecute, defend and manage any and all suits and actions pending in the courts of this State, in the courts of the United States, or the courts of any other State or Territory, in reference to the property, rights, and credits of the said Western Division of the Western North Carolina Railroad Company. Provided, the said Western North Carolina Railroad Company shall not be liable or responsible for any debt, contract, obligation, or other liability of the said Western Division of the Western North Carolina Railroad Company beyond the sums it shall actually realize and receive from the transfer of property, rights, credits, &c., provided for in this section.

SEC. 3. That all persons who are now or have been acting or assuming to act as officers, directors, agents and attorneys of the said Western Division of the Western North Carolina

Railroad Company, shall, within thirty days after demand upon them by the Governor of the State, turn over and deliver to the Board of Directors of the Western North Carolina Railway Company all books, records, papers, moneys, bonds, property contracts, effects and evidences of debt which may be in their possession or within their control; and upon their failure or refusal to do so shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred dollars or imprisoned, in the discretion of the court; and the Superior Court of any County on the line of the Western North Carolina Railroad shall have jurisdiction of such offense.

SEC. 4. That this act shall not be construed to relieve any person from any criminal prosecution now pending, or which may hereafter be instituted in any court or courts for any criminal offense heretofore committed in relation to the said Western Division of the Western North Carolina Railroad Company, nor shall it so be construed as to abridge or release any rights of action or credits which may now exist or may result from existing circumstances or contingencies in favor of the said Western Division of the Western North Carolina Railroad Company.

SEC. 5. This act shall be in force from and after its ratification.

Ratified the 14th day of March, A. D. 1879.

STATE OF NORTH CAROLINA,
Office of Secretary of State.

RALEIGH, 22d March, 1879.

I certify the above to be a true coyy of the original act on file in this office,

[L. S.]

W. T. SAUNDERS,
Secretary of State.

Supplemental Record A.

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned Calvin H. Allen, of New York City, State of New York; Robert Walker, of Tallahassee; Hubbard L. Hart, Palatka; James H. Paine, of Jacksonville, State of Florida, and Robert P. Dodge, of the City of Washington, District of Columbia, being desirous of acquiring for themselves and such others as shall become associated with them, all of the powers and immunities of a corporation under and in accordance with the provisions of an act of the Legislature of the State of Florida, approved February nineteenth, in the year of our Lord one thousand eight hundred and seventy-four (1874), entitled "An Act to Provide a General Law for the Incorporation of Railroads and Canals," have agreed to the following articles of association, to wit:

ARTICLE I.

The name and style of this corporation shall be The Jacksonville and Mobile Railroad Company.

ARTICLE II.

The object of said corporation shall be to purchase or lease any line or lines of railroad or railroads, or parts thereof, constructed or partially constructed, between the City of Jacksonville, in the State of Florida, and the City of Mobile, in the State of Alabama, with branch roads from Tallahassee to St. Marks, and at Monticello, in the State of Florida, running or passing through the following named counties in the State of Florida, to wit: Duval, Baker, Columbia, Suwannee, Madison, Jefferson, Leon, Wakulla, Gadsden, Jackson, Washington, Holmes, Walton, Santa Rosa, Escambia, thence to the said City of Mobile, in the State of Alabama, the distance in the State of Florida being about four hundred and forty miles, and in the State of Alabama about forty miles. That in case the said Jacksonville and Mobile Railroad Company shall purchase or lease any part of any railroad or railroads, already constructed or partially constructed between Jacksonville and Lake City, and between Lake City and Chattahoochee, together with branch roads between Tallahassee and St. Marks, and at

Monticello, together with any or all of the rolling stock, depots, franchises and all other property thereto pertaining in the State of Florida, then the said The Jacksonville and Mobile Railroad Company is hereby fully empowered and authorized to maintain, operate and equip said line or lines of railway. The said The Jacksonville and Mobile Railroad Company is hereby fully authorized and empowered to construct depots, wharves and warehouses in connection with the business of said Company, and to purchase and own and run steamboats in connection with said railroad. The said The Jacksonville and Mobile Railroad Company is hereby authorized and empowered to construct a railroad between Jacksonville, in the State of Florida, and Mobile, in the State of Alabama, through the counties hereinbefore named, with branch roads at Tallahassee and Monticello, with full power to maintain, equip and operate the same.

Article III.

The business of said Company shall be managed by a Board of Directors of not more than nine (9) or less than five (5) in number, who shall be annually elected on the first Monday in January in each year, until otherwise ordered by the stockholders, and the persons named in these articles of association shall constitute the first Board of Directors.

Article IV.

The capital stock of the said The Jacksonville and Mobile Railroad Company shall be three millions of dollars ($3,000,000), divided into thirty thousand (30,000) shares of one hundred dollars ($100) each.

Article V.

The place of business of said Company shall be in the City of Jacksonville, in the State of Florida, until otherwise ordered.

Article VI.

The said The Jacksonville and Mobile Railroad Company is hereby authorized and empowered to borrow such sum or sums of money, and upon such terms, as said Company or its Board of Directors shall authorize or agree upon and may deem necessary or expedient, and may execute one or more trust deeds or mortgages, or both, if occasion may require, for transferring said railroad, together with the franchises and all the property thereto pertaining or in any manner whatsoever belonging to said Company, or which shall thereafter belong to it as security for any bonds, debts, or sums of money as may be secured by said trust deeds or mortgage as said Company shall deem proper, and said Company shall also be vested with all the powers and privileges contained in the said act of the Legislature of the State of Florida, entitled "An Act to Provide a General Law for the Incorporation of Railroads and Canals," approved February 19th, 1874.

In witness, the parties to these presents aforesaid named, have hereunto set our hands and seal this fifteenth day of October, one thousand eight hundred and seventy-six (1876), and have subscribed for the amount of stock in said Company set opposite our respective names, as follows, to wit:

Name.	*Residence.*	*No. of Shares.*
Robert Walker	Tallahassee, Florida	Ten (10).
Robert P. Dodge	Washington, D. C	Ten (10).
Hubbard L. Hart	Palatka, Florida	Ten (10).
Calvin H. Allen	New York	Ten (10).
James H. Paine	Jacksonville, Florida	Ten (10).

ROBERT WALKER,
ROBERT P. DODGE,
HUBBARD L. HART.

DISTRICT OF COLUMBIA,
Washington City.

Personally appeared before me, Seth A. Terry, a notary public in and for the District of Columbia and City of Washington; Robert Walker, of the City of Tallahassee; Hubbard L. Hart, of Palatka, in the State of Florida; and Robert P. Dodge, of Washington City and District of Columbia, to me well known, who, being by me duly sworn, doth depose, each for himself, and say, that the names subscribed to the foregoing articles of association are the genuine signatures of the persons named therein, and that it is intended in good faith to purchase, lease, or construct, and to maintain, operate and equip the line of railroad or railroads mentioned in the foregoing articles of association.

Sworn and subscribed to before me, this 15th day of October, 1876.

[L.S.] S. A. TERRY,
Notary Public.

CLERK'S OFFICE OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, District of Columbia. } ss.:

I, R. J. Meigs, clerk of the said court, do hereby certify that S. A. Terry, Esq., whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and therein written, was, at the time of taking such proof or acknowledgment, a notary public, in and for the said district, dwelling therein, commissioned, sworn, and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of said S. A. Terry and verily believe that signature to the said certificate of proof or acknowledgment is genuine, and the said instrument is executed and acknowledged according to the laws of this district.

In testimony whereof, I have hereunto set my name and affixed the seal of said court, this —— day of ——, 187 .

[L. S.] R. J. MEIGS,
Clerk.

By M. A. CLANCY,
Assistant Clerk.

STATE OF FLORIDA,
Office Secretary of State. }

I, W. D. Bloxham, Secretary of State, do hereby certify that the foregoing is a correct transcript of the original now on file in this office.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this ninth day of March, A. D. 1878.

[L. S.] W. D. BLOXHAM,
Secretary of State.

Supplemental Record, B.

To his Excellency, George F. Drew, Governor of the State of Florida:

The memorial of J. Fred. Schutte; Jan Prins, Merchant; Adrianus Prins; M. P. Heinrich Ulrici, Underwriter; Elias Fuld: J. Borzo; H. Van Booren; Edward Isaac Asser, LL.D., and Gideon Maria Boissevain, without profession, and Dr. Nicolaas Jacob den Tex, Director of the Royal Netherland Steam Navigation Company, both of Amsterdam, members of and representing the Committee of Eight per cent. Florida Bondholders in Amsterdam, in their own behalf and in behalf of all other persons, holders of the bonds hereinafter mentioned, who may seek like relief with that hereinafter prayed, all of whom are subjects of the King of the Netherlands, respectfully showeth, that they are the owners and holders of certain bonds, each of the denomination of one thousand dollars ($1,000), signed by Harrison Reed, Governor, and countersigned by S. B. Conover, Treasurer, and sealed with the great seal of the State of Florida, which purport to bind the State of Florida to pay the sum of one thousand dollars ($1,000), and with interest, at the rate of eight (8) per cent. per annum, payable semi-annually, the principal to be due and payable in thirty (30) years from the date of said bonds, which is the first day of January, in the year of our Lord eighteen hundred and seventy (1870); said bonds are payable to bearer, and have attached thereto, coupons for interest, payable semi-annually to bearer on the first days of January and July of each year, at the rate aforesaid. In the body of said bonds it is declared that they were issued under and by virtue of several acts of the Legislature of the State of Florida; said bonds have affixed thereto the seal of the State of Florida, and are signed by said Harrison Reed, as Governor of said State, and are countersigned by S. B. Conover, as Treasurer of the State of Florida

Your memorialists herewith file a copy of one of said bonds, and state that all of those which are held by them, as hereinafter alleged, are of like tenor, date and effect as the copy herewith filed, marked "A."

Your memorialists further show unto your Excellency that there were issued by said Harrison Reed, Governor, four thousand (4,000) of said bonds in all; that they were delivered by him to the Jacksonville, Pensacola & Mobile Railroad Company, of said State, to be used in the manner specified in the State laws of the State of Florida, mentioned on the face of said bonds, and were received by said corporation for such use and purpose. Your memorialists further show unto your Excellency, that the said, the Jacksonville, Pensacola & Mobile Railroad Company placed the said four thousand (4,000) bonds in the hands of certain bankers, doing business in the City of London, England, under the name and style of S. W. Hopkins & Company, and gave written authority to said firm to sell them; that said S. W. Hopkins & Co. contracted to sell, and did, in fact, sell and deliver twenty-eight hundred (2800) of said bonds to John Collinson, a banker in the City of London, aforesaid, at the price of one hundred and thirty-eight pounds sterling, one shilling, ten pence (£138 1s. 10d.) per bond, and that said Collinson paid for said bonds, at such rate, to said S. W. Hopkins & Co. from time to time, as said bonds were delivered by said S. W. Hopkins & Co. to him; that immediately upon receipt by said Collinson of such bonds, he re-sold the same, through bankers of good standing and credit in Amsterdam, in Holland, to subjects of the King of the Netherlands, by whom they were purchased in good faith, as an investment; that said S. W. Hopkins & Co., as agents of the said the Jacksonville, Pensacola & Mobile Railroad Company, in the year eighteen hundred and seventy-one (1871), contracted with the said John Collinson to sell and deliver to him the remainder of said four thousand (4,000) bonds, being twelve hundred (1200) in number, but that said Hopkins & Co. refused to comply with such contract, and in consequence of such refusal, the said John Collinson brought certain suits at law in the courts of England and in the State of New York against the said the Jacksonville, Pensacola & Mobile Railroad Company, and against the said S. W. Hopkins & Co. to compel a performance of such contract; that the said defendants in said suits admitted the claim of said Collinson and consented to decrees which were entered in said suits in said courts, whereby it was agreed that the said bonds should be delivered to said Collinson, and they were so delivered; that the said Collinson should have the right to purchase all of said bonds, except two hundred and twenty-four (224), which were provided to be and which were canceled.

Your memorialists further show unto your Excellency that said Collinson did receive, under such decrees, nine hundred and seventy-four (974) of said bonds, and that of this number, he took and paid for to said the Jacksonville, Pensacola & Mobile Railroad Company, four hundred and six (406), which he immediately sold to subjects of the King of the Netherlands in like manner as he dealt with the first bonds which he received from the said S. W. Hopkins & Co.

Your memorialists further show unto your Excellency that when the said bonds were offered for sale in Holland by the bankers who were the agents of said Collinson to make such sale, it was publicly asserted by such bankers that they were legal and *bona fide* obligations of the State of Florida, and that there was a lien created by the laws of said State on a line of completed railway commencing at Jacksonville, running thence to Quincy, with a branch from Tallahassee to St. Marks, and a branch to Monticello, all in the State of Florida; which lien, it was so asserted and represented, was created to secure to the State of Florida the payment of such sums of money as the State might pay on account of the principal and interest of such bonds; all of which representations were supported by the recitals in said bonds, and were believed by the persons who purchased such bonds to be true.

Your memorialists further show unto your Excellency that said bonds were dealt with as public securities by the bankers and people of Holland, and by persons whose business it was to buy and sell bonds and stocks in the Stock Exchange of Amsterdam; and were quoted in the financial lists as "Florida eight per cents;" that for a long time they sold at high prices, ranging at from 73 to 80 per cent. in gold; and they so continued until default in payment of interest on said bonds took place on the first of July, 1873.

Your memorialists further show unto your Excellency that they made their respective purchases of said bonds under the assurances so given by said bankers, who sold them as agents of said Collinson, and on the faith also of the credit which was accorded to said bonds in Amsterdam, as before set forth; that they made such purchases in good faith, and paid for them at the current market value, without any notice of any illegality or wrong in respect to the issuance of said bonds, and without any suspicion that they were not in law and fact what on their face they purported to be.

Your memorialists further show unto your Excellency that the bonds held by them severally are numbered as is stated below, as follows, viz.:

Jan. Fred. Schutte bonds numbered

7 51 89 127 179 267 291 354
386 395 424 447 457 471 480 495
539 562 580 587 674 675 677 727
742 758 790 792 813 820 974 1016
1021 1088 1160 1190 1191 1225 1278 1281
1290 1297 1373 1393 1394 1448 1454 1572
1582 1663 1677 1748 1769 1772 1799 1957
1980 1990 1996 2002 2018 2024 2036 2166
2155 2172 2206 2207 2228 2238 2241 2272
2283 2291 2302 2303 2344 2386 2389 2502
2507 2537 2561 2760 2763 2773 2806 2821
2886 2915 2936 2938 2940 3032 3037 3098
3141 3142 3143 3168 3169 3182

Total, 103.

Jan. Prins bonds, numbered

446 720 778 834 953
1217 1377 1437 1478 1521
1755 1775 1982 2367 2434
2555 2735 2739 2891 3041

Total, 20.

Adrianus Prins, M. P., bonds, numbered

236 769 1113 1151 1669 2054
2823 3161 3186 3187 4188

Total, 11.

Heinrich Ulrici (Underwriter) bonds, numbered

751 1012 1412 1785 2531 2729
2801 2932 2948 3081 3121

Total, 11.

Elias Fuld bonds, numbered

54
311 312 313 514 972 1502
1561 1575 1660 1666 1752 1930
2924 3049 3092 3147 3149 3150
840 1040 1189 1301 1312 1462
1682 1964 2105 2588 2677 2779
3122 3176

Total, 33.

J. Borzo bonds, numbered

136 173 481 875 1076 1224
2012 2061 2082 2145 2146 2147
2169 2247 2712 2723 2761 2798
2891 3019 3166 3167 3769

Total, 23.

H. Van Booren bonds, numbered

382
784 1034 1457 1814 2351
2352 2493 2669 2698 2952
3039 3046 3076 3087 3155
3181

Total, 17.

Edward Isaac Asser, LL.D., bonds, numbered

982 129 81443 1618 2307 2461

Total, 6.

Gideon Maria Boissevain, Dr. Nicholaas Jacob den Tex, members of and representing the committee of eight per cent. Florida bondholders in Amsterdam bonds, numbered

3002 3009 3013 3014 3016 3017
3020 3021 3022 3023 3026 3028
3029 3034 3041 3042 3043 3045
3049 3051 3055 3058 3060 3066
3068 3069 3072 3077 3078 3080
3083 3088 3092 3094 3097 3098

3106 3110 3113 3117 3121 3123
3124 3127 3128 3129 3130 3140
3144 3145 3146 3147 3148 3149
3150 3151 3152 3153 3154 3155
3156 3157 3158 3159 3160 3161
3162 3163 3164 3165 3166 3167
3168 3173 3177 3180 3184 3185
3771 3772 3773 3776 3084

Total, 84.

It was further represented to your memorialists, by the bankers aforesaid, that the proceeds arising from the sale of said bonds were to be solely applied to the construction, equipment and repair of the existing line of completed railway, and to the further construction of a projected line which was to extend from Quincy to the line of the State of Alabama, in the direction of Mobile; and in fact afterwards twenty miles of such construction was completed, whereby the said railway was extended from Quincy to the Apalachicola river; and your memorialists say that they are advised by counsel learned in the law that such latter extension of said line of railway constitutes a part and parcel of the line which was hypothecated in the manner before stated, and is subject to the same lien which is provided to exist by the said several acts of the Legislature of the State of Florida hereinbefore referred to.

Your memorialists further show unto your Excellency that they are advised by counsel learned in the law that they, and all others who are like holders of said bonds, are entitled to the benefit of the security created by the laws passed by the Legislature of the State of Florida, entitled "An Act to Perfect the Public Works of the State," approved June 24, 1869, and by another law of the State of Florida, passed and approved January 28, 1870, entitled "An Act to alter and amend an Act entitled 'An Act to Perfect the Public Works of the State,'" approved June 24, 1869, which laws provide that "in " case of failure of the company to pay either principal or " interest of its bonds, or any part thereof, for twelve months " after the same shall become due, it shall be lawful for the " Governor to enter upon and take possession of said property " and franchises and sell the same at public auction, after having first given ninety days' notice by public advertisement in

" at least one newspaper published in each of the following " places: The City of New York, in the State of New York; " the City of Savannah, in the State of Georgia, and the City " of Tallahassee, in the State of Florida;" that your Excellency is empowered and required, by virtue of such laws, and by the decisions of the Supreme Court of the State of Florida, " to enter upon and take possession of said property and " franchise and sell the same at public auction " for payment of the principal and interest due and unpaid on the bonds so held and owned by your memorialists, whenever demand is made for such proceedings by persons who are the legal and *bona fide* holders of such obligations.

Therefore, your memorialists, acting by their attorney-in-fact, Charles D. Willard, of the City of Washington, District of Columbia, by them duly authorized thereto in writing, respectfully pray that your Excellency will "enter upon and take " possession of" said line of railway, together with all of the property thereto belonging, extending from Jacksonville to Chattahooche, with a branch from Tallahassee to St. Marks, and a branch at Monticello, and sell the same at public auction, after having given the notice required by law; and that your memorialists and such other persons, *bona fide* holders of said bonds, who may ask to be considered and to have relief such as your memorialists pray, may be permitted to bid at the sale of said railroad, its franchise and all property thereto pertaining, and to make payments in the bonds held by them, so far as the same may be found sufficient to cover the price at which such railroad, franchise and property may be adjudicated to purchasers at such sale.

Your memorialists hereby admit the existence of a lien on that part of the said railroad, franchise and property thereto belonging, which lies between Lake City and Quincy, Tallahassee and St. Marks, and the branch to Monticello, which lien is to the extent of the amount of the purchase money which is due to the Trustees of the Internal Improvement Fund of the State of Florida by the persons who purchased the said last mentioned portion of said railroad at the sale made thereof by the said Trustees on the 20th day of March, A. D. 1869; and your memorialists ask that the said railroad, franchise and all property thereto pertaining may be sold by your Excellency, subject to such lien; and your memorialists file herewith sworn statements made in Amsterdam, Holland, by the said J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booren, Edward Isaac Asser, and also the sworn statement of Gideon Maria Boissevain and Dr. Nicolaas Jacob den Tex, members of and representing the said committee of eight per cent. Florida bondholders, sworn to before Charles Mueller, Esq., Consul of the United States, at such city; which sworn statements are marked, respectively, "B^2," "C^2," "D^2," "E^2," "F^2," "G^2," "H^2," "I^2," "K^2," in which are set forth the facts as to the manner in which said bonds were dealt in and bought and sold in said city, and also showing the ownership by your memorialists of certain of said bonds, and the numbers thereof; and your memorialists also file herewith letters of attorney to Charles D. Willard, of the City of Washington, in the District of Columbia, their solicitor and counsel, with full power and authority in him vested to do what he may deem expedient and best for the protection of your memorialists' rights and interests, which said letters of attorney are duly executed before the said Charles Mueller, United States Consul, at Amsterdam, Holland, which are hereto annexed, marked, respectively, "B," "C," "D," "E," "F," "G," "H" and "I." All of which your memorialists respectfully pray your Excellency to consider and give effect to.

J. Fred. Schutte.
Jan. Prins,
Merchant.
Adrianus Prins, M. P.
Heinrich Ulrici,
Underwriter.
Elias Fuld.
J. Borzo.
Edward Isaac Asser, LL.D.
Gideon Maria Boissevain.
Dr. Nicolaas Jacob den Tex.

By Charles D. Willard,
Attorney-in-Fact.

Tallahassee, Fla., March 31, 1877.

statements made in Amsterdam, Holland, by the said J. Fred. Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booren, Edward Isaac Asser, and also the sworn statement of Gideon Maria Boissevain and Dr. Nicolaas Jacob den Tex, members of and representing the said committee of eight per cent. Florida bondholders, sworn to before Charles Mueller, Esq., Consul of the United States, at such city; which sworn statements are marked, respectively, “B^2,” “C^2,” “D^2,” “E^2,” “F^2,” “G^2,” “H^2,” “I^2,” “K^2,” in which are set forth the facts as to the manner in which said bonds were dealt in and bought and sold in said city, and also showing the ownership by your memorialists of certain of said bonds, and the numbers thereof; and your memorialists also file herewith letters of attorney to Charles D. Willard, of the City of Washington, in the District of Columbia, their solicitor and counsel, with full power and authority in him vested to do what he may deem expedient and best for the protection of your memorialists' rights and interests, which said letters of attorney are duly executed before the said Charles Mueller, United States Consul, at Amsterdam, Holland, which are hereto annexed, marked, respectively, “B,” “C,” “D,” “E,” “F,” “G,” “H” and “I.” All of which your memorialists respectfully pray your Excellency to consider and give effect to.

J. Fred. Schutte.
Jan. Prins,
Merchant.
Adrianus Prins, M. P.
Heinrich Ulrici,
Underwriter.
Elias Fuld.
J. Borzo.
Edward Isaac Asser, LL.D.
Gideon Maria Boissevain.
Dr. Nicolaas Jacob den Tex.

By Charles D. Willard,
Attorney-in-Fact.

Tallahassee, Fla., March 31, 1877.

Mr Maury

OFFICE SUPREME COURT U.S.
FILED
[illegible] 1880
JAMES H. McKENNEY, Clerk.

IN SUPREME COURT OF THE UNITED STATES.

OCTBER TERM, 1880.

THE FLORIDA CENTRAL RAILROAD COMPANY, *Appellant,*
vs.
J. FRED. SCHUTTE ET ALS., *Appellees,*
No. 667.

THE JACKSONVILLE, PENSACOLA & MOBILE RAILROAD COMPANY, *Appellant,*
vs.
J. FRED. SCHUTTE ET ALS., *Appellees.*
No. 668.

THE WESTERN NORTH CAROLINA RAILROAD COMPANY, *Appellant,*
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &C.; THE JACKSONVILLE, PENSACOLA & MOBILE RAILROAD COMPANY ET ALS., *Appellees.*
No. 669.

Brief of P. Phillips and W. A. Maury for the Florida Central R. R. Co.

R. O. POLKINHORN, PRINTER.

In Supreme Court of the United States.

OCTOBER TERM, 1880.

The Florida Central Railroad Company,
Appellant,
vs.
J. Fred. Schutter et als.,
Appellees.
No. 667.

The Jacksonville, Pensacola & Mobile
Railroad Company, *Appellant,*
vs.
J. Fred. Schutte et als.,
Appellees.
No. 668.

The Western North, Carolina Railroad
Company, *Appellant,*

vs.

George F. Drew, Governor, Trustee,
&c.; The Jacksonville, Pensacola &
Mobile Railroad Company et als.,
Appellees.
No. 669.

Brief of P. Phillips and W. A. Maury for the Florida Central R. R. Co.

Outline of the Whole Litigation.

The cases involved in these appeals are so connected as to constitute one litigation.

The proximate cause of the litigation was the Governor of Florida's seizure and advertisement for sale of the Florida

Central and the Jacksonville, Pensacola and Mobile railroads for the purpose of satisfying certain bonds alleged to have been issued by the companies owning the said roads, and as to which the said companies were alleged to be in default. These bonds were payable to and held by the State of Florida, and, it was claimed, were secured by a first lien on the said roads. The bonds and the lien were held by the State as security against her liability on certain bonds issued by her for the benefit of the J. P. and M. company, which bonds have been negotiated by the last-named company, and, it is alleged, are held by parties in Holland, who are known in these suits as the Dutch bondholders.

The State being in default as to her bonds, and the same having been adjudged null and void by her Supreme Court; the Dutch Bondholders claimed to be entitled to the company bonds held by the State and the lien securing them, and to have said lien on the said bonds enforced by the Governor in the summary manner provided for the benefit of the State by the statute authorizing the issuing of both classes of bonds, and it was at the instance of certain parties claiming to represent these bondholders that the Governor seized the said roads and advertised them for sale.

To arrest these proceedings begun by the Governor two bills were filed in the United States Circuit Court for the Northern District of Florida, by the Western Division of the Western North Carolina Railroad Company.

One of these bills was filed on 9th February, 1877, against the Governor, the Florida Central Railroad Company, the Jacksonville, Pa. & Mobile Railroad Company, the Dutch bondholders and others. The object of this bill was to assert the complainant's right to a large amount of stock of the Florida Central Company, and to have the claims and pretentions of the Dutch bondholders to the bonds of the Florida Central Company and the lien securing them decreed to be null and void, and to have as well the said bondholders as the Governor perpetually enjoined from all further proceeding in the premises.

The other bill was filed on 8th March, 1877, against the Governor, the trustees of the Internal Improvement Fund, the J. P. & M. Co., the Dutch bondholders and others. The object of this bill was to set up a first lien on, or a right of property in, so much of the J. P. & M. Road as was the property of the Tallahassee Railroad Company at the time of its consolidation with the J. P. & M. Company as prior and paramount to any other lien on, or interest in, said property, excepting a certain vendor's lien, and to have the claims and pretensions of the Dutch bondholders to the said company bonds and lien securing them adjudged to be null and void.

Provisional injunctions staying the Governor's action were issued in both cases.

Other relief was prayed in both bills, but it is not necessary to refer to it.

The two suits of the Western Division Company having abated, as to the complainant, in consequence of the repeal of its charter, the same were revived in the name of the Western North Carolina Railroad Company (R. pp. 223, 548), in which all the property and causes of action of the extinguished company had become vested.

In this state of things—namely, on the 23d of May, 1877, the Dutch bondholders, J. Fred. Schutte and others, filed their bill in the said court against the Western Division Company, the Florida Central Company, the J. P. & M. Company, the Governor, the Trustees of the Internal Improvement Fund and others. The object of this bill, which is in form an original, but in substance a cross-bill, is to assert, *inter alia*, a lien on both of the said roads, and the right to have the same enforced summarily by the Governor, as provided in the statute, for the payment of the State bonds held by complainant, and to have the claims and pretensions of the Western Division Company, as to both roads, decreed to be in subordination to those of the complainant. (R., pp. 238–253.)

The relief asked in this bill was granted, substantially, and the Florida Central and the J. P. & M. Companies have both appealed, separately, from the decree.

The two bills of the Western North Carolina Company were dismissed, and that company appealed in both cases.

It is the object of this brief to present the case involved in the appeal of the Florida Central Company from the decree in the case of the Dutch bondholders against the Florida Central Company and others.

Case of the Florida Central Railroad Company.

The bill, as we have seen, was filed by the appellees, Schütte and others, to enforce an alleged lien on the property, rights, franchises, &c., of the appellant, the Florida Central Railroad Company, in favor of the appellees as the holders of certain pretended bonds of the State of Florida.

Statement of the Case.

The Florida Central Railroad Company was incorporated the 29th of July, 1868, (Rec., pp. 36–7,) and owns and operates the railway running fron Jacksonville to Lake City, where it connects with another road called the Jacksonville, Pensacola and Mobile Railroad, which extends from Lake City to Chattahooche, and is part of the projected road to Pensacola and Mobile.

The road of the Florida Central Company was built by the Florida, Atlantic and Gulf Central Company, which was sold in March, 1868, by the trustees of the Internal

Improvement Fund to William E. Jackson and others, who became a body politic under the name, The Florida Central Railroad Company. The validity of that sale is not controverted.

At the time the Jacksonville, Pensacola and Mobile Company was incorporated, 24th June, 1869, the road from Lake City to Quincy, with its two branches, one from Tallahassee to St. Marks and the other, a short line, from a point in Jefferson County to Monticello, were owned and operated by a corporation styled the Tallahassee Railroad Company.

By its act of incorporation, the J., P. and M. Company was authorized to construct a road from Quincy, the western terminus of the Tallahassee road, to the Alabama State line, in the direction of Mobile, no part of which road was built when the J., P. and M. Company was created.

By the 14th section of the act of 24th June, 1869, incorporating the J., P. and M. Company, entitled "An act to perfect the public works of the State," the companies owning the roads from Quincy to Jacksonville, from Tallahassee to St. Marks, and the branch to Monticello, "or either" of them, might, "by a *vote* of the owners of a majority of the stock in interest, and with the consent of a majority of the stock in interest of the Jacksonville, Pensacola and Mobile Railroad Company, "consolidate with the J., P. and M. Company, so as to become one company, on such terms as might be agreed on."

On the 25th of May, 1870, the Tallahassee Railroad Company was consolidated with the J., P. and M. Company, (Littlefield's dep., int. 64, Rec., pp. 739, 740.)

By the 2d section of an act entitled "An act to alter and amend an act entitled 'An act to perfect the public works of the State,' approved June 24, 18~~7~~9," approved 28th 1869 January, 1870, it is provided that "in order to aid the J.,

P. and M. Company to complete, equip, and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvements of the State," the governor shall deliver to the said company "coupon bonds of the State to an amount equal to $16,000 per mile for the whole line of road and length of railroad owned by or belonging to said Jacksonville, Pensacola and Mobile Railroad Company, in exchange for first-mortgage bonds of said railroad company, of the denomination of $1,000, when the President thereof shall certify upon his oath that the road or parts of road for which he asks for an exchange of bonds is completed, and is in good running order."

The 3d section of this act provides that the State shall have a statutory lien on the company's property, to be as operative as a first mortgage duly registered, "to secure the principal and interest *of the said company bonds*," that in case of the company's default as to "either principal or interest *of its bonds*, or any part thereof, *for twelve months after the same* shall have become due," the Governor may seize and sell the road, &c., for cash on 90 days' notice; the act then makes further provision in case of a sale, which, however, need not be referred to at present.

Section 4 provides "that the Governor shall, for the purpose of further aiding said Jacksonville, Pensacola and Mobile Railroad Company in the speedy construction of its road, deliver to the president of said company coupon bonds of this State, of the same character as those above described in this act, to the amount of sixteen thousand dollars per mile, upon receiving from the president of said company first mortgage bonds of like amount on any part or portion of the road between Quincy and Jacksonville; *provided, however*, that the State bonds under this section shall not be exchanged for first mortgage bonds for a greater length than one hundred miles of any part of railroad between Quincy and Jacksonville: *Provided*, The said railroad company or companies shall not issue first mortgage bonds to a greater amount than sixteen thousand dollars per mile."

This section, taken in connection with the part of the 14th section of the act of 24th June, 1869, granting to each of the companies with which the J., P. and M. is authorized to consolidate, "the same privileges as are herein granted to the Jacksonville, Pensacola and Mobile Railroad Company," is relied on as authority for charging the property and franchises of the Florida Central Company with the lien set up by the complainants.

In this state of things, the J., P. and M. Company, in June, 1870, (Littlefield's depo. int. 42), delivered to the Governor of Florida the company's bonds to the amount of $3,000,000, payable to the State of Florida, and received in exchange therefor from the Governor 3,000 coupon bonds of the State for $1,000 each, payable to bearer, and numbered respectively from 1 to 3,000 inclusive. About 2,800 of these bonds, it is alleged, were sold in Amsterdam to the complainants, and are now held by them. As the decree adjudges that these bonds are no lien on the property and franchises of the Florida Central Company, it is unnecessary to make any special reference to them in this case. It may be added, however, that these bonds were recklessly sold at a little more than half their nominal value to speculators by dishonest agents of the company, who, after building only about twenty miles of road with a part of the proceeds, applied to their own uses so much of the residue as was not consumed by exorbitant commissions and other charges, which were paid with a prodigality that is of itself proof that those to whom the bonds were delivered by the Governor, intended, when they received them, to misappropriate them.

The J., P. & M. Co. say, in their answer, that of the proceeds of these bonds, they did not receive over $150,000;

the rest "being embezzled and fraudulently appropriated." (Rec., p. 123.)

Having exhausted the credit of the J., P. & M. Co. with the State, the next step taken by these parties was to make a victim of the Florida Central Company after the same manner.

The initial point of this fraud is an agreement between Edward Houstoun and Milton S. Littlefield, dated 13th May, 1870, (Schedule C., Rec., pp. 22, 23,) which purports to be "a full, complete and final settlement of all matters between either George W. Swepson or M. S. Littlefield and Edward Houstoun."

At the date of this agreement the said Swepson was president of the Florida Central Company. He had been president of the Western Division Company, and while president of that company had embezzled the proceeds of $6,000,000 of bonds of the State of North Carolina, which had been placed in his hands for the benefit of the company, and Edward Houstoun was the agent through whom Swepson perpetrated the embezzlement. It was, in great part, to close up all matters relating to that criminal agency that the agreement was entered into. Littlefield was, at the time of the agreement, president of the J., P. & M. Co. He was, also, then president of the Western Division Company, having succeeded Swepson in October, 1869, and, as the agreement indicates, he stood in Swepson's shoes as to all matters involved in Houstoun's agency.

By the agreement Houstoun sells to Littlefield four accepted drafts of Swepson on Littlefield for the aggregate amount of $109,140, and 1,300 shares of stock in the Florida Central Company, and it is recited that Littlefield has paid Houstoun $10,000 in cash and given him his draft on Hopkins & Co. (who, it may be observed, were the financial agents of the J., P. & M. Company for the sale of the bonds) for $163,070.20, at 60 days. As security Houstoun was to hold the four drafts and certain railroad bonds, and Littlefield covenanted to place in the hands of T. H. Porter, 3,110 shares of Florida Central stock.

On the 30th of the same month of May, another agreement was entered into between the same parties. It recites that the draft for $163,070.20 was given for value received "in the various transactions between the parties relative to the Jacksonville, Pensacola & Mobile Railroad Company and the Florida Central Railroad Company, growing out of the late Pensacola & Georgia Railroad Company and said Florida Central Railroad Company and the Tallahassee Railroad Company;" it further recites that "it is to the great interest of parties of the first and second parts that money should be raised to promote the interests of said Florida Central Railroad Company and provide for the business of said company, *and to pay said draft when due;*" and that the said parties of the first and second parts are owners and proprietors of more than a majority of the capital stock of said Florida Central Railroad."

It is then stipulated that $1,000,000 of first mortgage bonds of the Florida Central Company "of like denomination and effect and condition as the first mortgage bonds of the J., P. & M. R. R. Co." shall be issued and placed in the hands of Edward Houstoun as "*additional security*" *for the payment of said draft.* (Schedule D, Rec., pp. 23, 24.)

This last agreement was in turn modified by an agreement between the same parties, dated 7th June, 1870. It provides that in lieu of $1,000,000 of bonds of the Florida Central Company, the same amount of bonds of the State of Florida shall be lodged with Houstoun as additional security for said draft. It further provides that in case Houstoun should sell these bonds for a default touching said draft, the net proceeds, after paying the draft, shall be applied as follows: to John P. Sanderson, $57,560; M. D.

Papy, $16,000; T. M. Brevard, on a certain contingency, $50,000; J. P. Sanderson, president of the Florida Central Company, $340,000, and the balance to Littlefield. It is also provided that on the maturity of the draft Houstoun is to have the privilege of returning the State bonds and getting back the bonds of the company, and in case of this option being used, that Houstoun might demand new company bonds, payable to bearer on surrendering the old ones, and hold the same as security. There is a further provision that in case the draft is paid at or before maturity, the bonds are to be delivered to Hopkins & Co., who are directed to apply the proceeds to the satisfaction of claims above stated, any residuum to be paid to Littlefield. (Schedule E, Rec., pp. 24, 25, 26.)

These agreements remained in force until 11th January, 1871, when they were entirely superseded by another agreement of that date, in the form of a receipt from one T. B Coddington, which was approved by Littlefield and, of course, by Houstoun, to whom it was given. This instrument recites that Coddington had received from Houstoun in trust for the latter's account, 1,000 first mortgage bonds of the Florida Central Company, for $1,000 each, with which he, Coddington, undertakes to arrange with Littlefield and others interested, and collect from him or them the amount which it is admitted is now due to Houstoun, viz: Littlefield's draft on Hopkins & Co. for $163,026.70, with interest, and the additional sum of $5,000 due Houstoun for certain legal expenses incurred by him, &c. Coddington also undertakes to collect and pay the several sums named in the agreement of 7th June, 1870. It concludes with the *proviso* that the money will be paid from the proceeds of bonds negotiated by S. W. Hopkins & Co., "the remainder of said proceeds to be disposed of as directed by the parties interested." (Schedule F, Rec., pp. 26, 27.)

It having been determined by Littlefield and Houstoun, by the agreement of 30th May, 1870, that the interests of the Florida Central Company *and the payment of the said draft* required the issue of $1,000,000 of the company's bonds, we now proceed to state the way in which these parties made the company subsidiary to their fraudulent purposes, of which a full account is given in Littlefield's deposition. (Rec., p. 7,268.)

When the bonds were issued, Littlefield was president of the J., P. and M. Company, a position he had held since 1869. (Ans. 2.) He was also at that time a director and stockholder in the Florida Central Company. (Ans. 27.) By his direction the bonds were printed in New York, and signed there in March or April, 1870, by H. H. Thompson, as treasurer of the company, Thompson having been made to believe that he had been appointed to that position, (see his deposition, R., 658,) which was untrue, that office being then and for some time after filled by one Flagg.

Littlefield then took the bonds to Washington City, where they were signed by George W. Swepson, as president of the company. This done, Littlefield proceeded to Tallahassee with the bonds, and delivered them to Edward Houstoun in accordance with the above-recited agreements between himself, Houston, and Swepson. (Ans. 29.)

As yet there had been no attempt to get the company's sanction to what had been done. Having consulted two or three stockholders and found them hostile to the projected bond issue, (ans. 34,) Littlefield resolved on compassing by fraud what he knew he could not accomplish by direct measures. Accordingly, on 2d June, 1870, he and Houstoun came together in a lawyer's office, and, without any previous notice to the stockholders, as the by-laws of the company required, attempted to organize a meeting of stockholders. "To make up a meeting," Houstoun transferred "temporarily" ten shares apiece of his own stock to A. Huling, G. R. Foster, and M. D. Papy. (Ans. 38.) To constitute a valid meeting of stockholders, other than the regular annual meeting, the by-laws of the company required a public notice of ten days "through the newspapers." There was no pretense of a compliance with this requirement.

This so-called meeting of stockholders resolved itself into a meeting of directors.

Littlefield, who had the record of the proceedings of the Florida Central Company before him, says that the "resolutions" passed at both meetings directed that the Swepson-Thompson bonds "*shall be placed in the hands of Edward Houstoun* for the purposes agreed on by an agreement between himself and M. S. Littlefield," meaning the agreement aforesaid. (Ans. 41.)

It was not so easy, however, to give the bonds the authenticity of the seal of the company. The custodian of the seal was Flagg, the Secretary and Treasurer of the Company. He refused to affix the seal to the bonds on the grounds, (1) that the company had no authority to issue the bonds; (2) that if it had authority, the stockholders had not directed the issuing of bonds; and (3) if they had so directed he would resign before he would obey, unless Houstoun would first purchase his stock in the company. (Ans. 47.) Nothing daunted by this obstacle, Houstoun abstracted the seal from the company's office and took it to Littlefield's room, where it was afixed to the bonds. (Ans. 46.)

As it is not pretended that the bonds of the company have any validity except under the 4th section of the act of 28th January, 1870, it is surprising to find that the emission of these bonds was neither preceded nor followed by any action of the J., P. & M. Company having reference to them. As the law, if it authorized the issue of bonds at all, did so to effect the completion of the J., P. & M. Road, it was to be expected that such issue of bonds would be made only after a request in that behalf from the J. P. & M. Co., or some understanding between the two companies —the Florida Central having the undisputed right—as the learned justice said in the court below—to prescribe the terms on which it would pledge itself for the benefit of the J., P. & M. Co. But there was no action of the kind. Indeed, Littlefield frankly says, that the J., P. & M. Co. never received any bonds from the Florida Central and never quested any. (Ans. 42, 43.)

Although it is recited in Schedule F, the receipt given by Coddington to Houstoun, that Houstoun, for whose benefit, in part, these bonds were issued, had possession of them and delivered them to Coddington, it appears by the latter's deposition, that such was not the case. Coddington received the bonds from R. H. Gamble, the comptroller of the State, who had them in his office. (Rec., p. 1141.)

It is to be remembered that the agreement or receipt, known as Schedule F, necessarily supplanted the previous agreements, Schedules C, D, E.

The action taken under Schedule F was as follows: Coddington and Houstoun obtained the bonds from Gamble, the comptroller, without any difficulty, owing, no doubt, to the fact that he, Gamble, was one of the parties provided for in Schedule F, and took them to Governor Reed, who thereupon delivered to them 1,000 bonds of the State of Florida, for $1,000 each, and numbered from 3,001 to 4,000, inclusive, which Coddington says he understood were issued under the said acts of 1869 and 1870.

When the State bonds were delivered to Coddington, the Governor requested him not to take them out of the State until he had made arrangement with Littlefield for the payment of certain money due the State. (Rec., p. 1142.)

On the next day, 12th January, 1871, Coddington received a letter from Littlefield instructing him to deliver the bonds to the parties in London, who had purchased the whole 4,000 of bonds issued for the benefit of the J., P. and M. Company, "and collect the pay therefor," paying therewith $163,000 to Houstoun, $16,000 to Papy, $5,000 to Westcott, $15,000 *to Gamble*, the comptroller, and $57,000 to Sanderson, receiving from them "all stock, bonds, coupons, notes, drafts, acceptances, or whatever the said [*sic*] is to pay for," &c., &c., placing the balance to credit of Governor Reed, to pay indebtedness to the State. (Rec., p. 1142.)

In a postscript, Littlefield says this letter is so far modified as to conform to the letter or receipt given by me [him] to Edward Houstoun, and approved by me [him]." To this letter another postscript was added by Governor Reed in these words: "You will please place to my credit in the National Trust Company of New York City, the amount called for in the above arrangement, either by wire or letter, and oblige Harrison Reed, Governor of Florida."

It is to be noted that at the time Comptroller Gamble permitted the company's bonds to pass out of his hands, they had been ordered to be cancelled by a resolution of the directory of the company, passed on the 21st November, 1870, (Rec., p. 38), which was, no doubt, as well known to him and Governor Reed as it was to the other conspirators against the company.

Feeling now at liberty to depart the State with the bonds, so far, at least, as his promise to the Governor was concerned, Coddington, at Littlefield's instance, left Tallahassee *in a private conveyance, instead of by railway*, accompanied by Littlefield's secretary, and went to Thomasville, Georgia, where he took the cars. Coddington says that this course was recommended by Littlefield "*for the safety of the bonds*," but we are not told why it was deemed safer, or whether it was prompted by the fact that there was then in force an injunction granted at the instance of Gamble and Westcott, prohibiting the very use which these parties had just made of the company's bonds. Gamble and Westcott had been bought off, but perhaps others had become parties to the suit.

Why it was that Coddington joined this conspiracy he does not tell us. He then claimed to be a creditor of the J., P. and M. Co. in the sum of $40,000, and the sequel shows that he managed to get possession of 192 of the bonds he carried off from Florida, which he still holds as security for the said debt. In his deposition he says that he had *no benefit from the transaction*, but incurred loss in consequence of the part he bore in it. (Rec., p. 1146.) His part in this disreputable business was, therefore, not so disinterested as he would have us think.

On arriving in New York, Coddington *took the first steamer for England.*

Not being able to get the money from the parties in England who had contracted to buy the bonds, he was directed by Littlefield, Houstoun, and Governor Reed to place the bonds in the hands of S. W. Hopkins & Co., of London, the financial agents of the J., P. and M. Company, on their undertaking to apply the proceeds of them in the way he had agreed to do by Schedule F. (Rec., pp. 1143, 4, 5, Coddington's deposition.) This took place in the month of April, 1871.

At the time these bonds were received by Coddington to be put on the market, the prospect for an advantageous sale of them could not have been more unpromising, as we shall soon see; and nothing short of a predetermined purpose to embezzle the fruits of them can account for the recklessness and improvidence of offering them for sale in such a state of things.

When Coddington took these bonds to London, there were already on the market the 3,000 State bonds which, as we have said, the governor had delivered to the J., P. & M. Co., in June, 1870 These latter bonds had scarcely been received by the company when they were assailed with an outbust of indignant protest against their validity, on the grounds of unconstitutionality and a corrupt conspiracy between the governor and Littlefield, the president of the company. One of the channels through which these grave imputations found expression was the New York *World*. Capitalists were warned in its columns not to touch these bonds, and solemnly told that the people of Florida would never pay them. (Rec., pp. 681, 2, 3.)

The publications in the *World* produced a profound sensation, and were copied by the papers throughout this country and Europe. They appeared in June, 1870, the month in which the bonds were issued. As a consequence, the bonds were discredited everywhere. Littlefield went about hawking them in London, Brussels, Berlin, Frankfort, Vienna, Paris, and Holland, but in vain, for, as he deposes, "*the damaging reports in relation to the said Florida State bonds had preceded me at every place I went.*" (L.'s dep., p. 740, Ans. 67.)

These "damaging reports" appeared in the Dutch newspapers, and, Littlefield says, were "*matters of general notoriety* in the bond market of Europe" where he visited." (L.'s dep., p. 741, Ans. 70.)

The result was that Littlefield, who was hungry for the fruits of the bonds, and, at the same time, unable to dispose of them, threw himself unreservedly into the hands of Hopkins & Co. and John Collinson, a London stock operator, making the "necessities" of the company a pretext for his course.

Collinson, who had contracted to take 4,000 bonds, actually bought and paid for 2,800 at £138 1*s*. 10*d*. per bond of $1,000. Of this the company received £100, less a commission of 5 per cent. on the *face* of the bonds to Hopkins & Co. who, furthermore, received £138 1*s*. 10*d*. to indemnify them "for such extraordinary expenses of such negotiations as we [they] might find it necessary to incur by reason of the attacks that were being continually made upon the character of said bonds." (Collin's dep., p. 1195, Ans. 7.)

Collinson bought to sell again; and as it would have been fatal to his adventure for any of the coupons to be dishonored before he had "floated" the bonds, it was one of the terms of his contract with Hopkins & Co. that about $350,000 of the proceeds of the bonds "should be set aside and appropriated to pay a certain number of the interest coupons to mature thereafter;" (Hopkins' Ans., X-12, p. 1208, and Ex. G., p. 1235,) and this was done.

In less than a month after Collinson contracted to buy the bonds, the J., P. & M. Co., having become aware of Littlefield's intended fraudulent use of the bonds, on the 10th December, 1870, revoked his authority to negotiate said bonds and directed their return to the company, and that notice of this action should be given to Hopkins & Co. and the president of the company and all others having possession of said bonds. (Rec., pp. 72–3.)

Collinson was not alone in this transaction. He was evidently in league with operators in Amsterdam, who, he admits, furnished their proportion of the purchase money. (See his dep., p. 1131, ans. 5; also, Littlefield's dep., p. 741, ans. 69.)

It is clear from the depositions of Chase, Littlefield and others, that this Dutch syndicate, as they call it, did exist.

On the 18th December, 1870, Governor Reed, in reply by letter to a telegram from Boissevain, of Amsterdam, one of this syndicate, asking certain information touching the bonds, said: "*Bonds recently recalled by the company; no provision will, therefore, be made for interest.*" (R. p. 135.)

On 28th December, 1870, the agreement between Collinson and Hopkins & Co. underwent a modification in consequence of Collinson's raising a question as to the constitutionality of the bond issue, and H. & Co. agreed to procure the opinion of the Supreme Court of Florida on the said question. (R., p. 1234.)

In February, 1871, the judges of the Supreme Court of Florida, at the instance of Governor Reed, gave their opinions as to the constitutionality of the legislation under which the bonds were issued, declaring the same valid. But we shall see presently that afterwards, when a *case* involving this question was presented to this court for decision, the legislation in question was adjudged to be unconstitutional and void.

On the 8th February, 1871, Mr. E. M. L'Engle, as counsel for the Florida Central Company, addressed an elaborate letter to Messrs. Holje Boissevain, bankers, Amsterdam, setting forth the invalidity of the said bonds, on the grounds of fraud and unconstitutionality, (R., pp. 372–375;) and in June, 1871, Mr. T. W. Brevard addressed a letter to the "Chairman States and Corporations Arrears Committee," London, in the interest of certain holders of bonds of the Pensacola and Georgia and the Tallahassee Railroads, asserting that said bondholders claimed a lien prior to any that the purchasers of the State bonds issued for the J., P. and M. Company could claim, and also warning capitalists against these latter bonds. (R., pp. 391–395.) It will not be denied that these letters reached their respective destinations. (See S. W. Hopkins' deposition, p. 1205, X-ans. 5.)

Of the 1,000 bonds delivered to Coddington, only 208 were sold. In August, 1872, Hopkins tells us, they were delivered to Collinson by Hopkins & Co., "under an arrangement made with him to pay one or more of the interest coupons of a certain number of said bonds, or of the 2,800 bonds previously delivered to him by our firm." (H.'s dep., p. 1210, X-ans. 21.)

These bonds were "placed" by Collinson and his syndicate in Amsterdam, some time subsequent to August, 1872.

As an evidence of the unscrupulousness of this Dutch syndicate, it is to be noted that some months before this lot of bonds reached Collinson's hands, namely, in February, 1872, Governor Reed was impeached by the Legislature of Florida for malfeasance in office, one of the charges being that he had *fraudulently conspired* to issue these 1,000 bonds. It is incredible that these shrewd Dutch brokers, who are shown to have had every facility for getting information, should have been in ignorance of the impeachment of Governor Reed at the time they placed the 208 bonds in question.

It is provided by the act 28th January, 1870, that the Governor shall not exchange State bonds for company bonds until the president of the company "shall certify, *upon his oath*, that the road or parts of road for which he asks for an exchange of bonds is completed, and is in good running order," yet Governor Reed, *in defiance of this provision*, issued the 4,000 State bonds without any certificate under oath from the president of the J., P. and M. company, after tendering the latter a *false* certificate, to which he refused to make oath. (Littlefield dep., pp. 738–9, ans. 53, 57, and Ex. L. No. 9, p. 750.)

Of the 1,000 State bonds delivered to Coddington in exchange for Florida Central bonds, 224 were returned to the State for cancellation, there having been an *overissue* of

State bonds in consequence of a *misrepresentation* as to the number of miles of the J., P. and M. road in good running order at the time application for the State bonds was made.

The return of these bonds left 776 bonds of the lot received by Coddington, and Hopkins tells us that these 776 bonds, if sold at the prices agreed on, would not have brought enough to pay the amounts named in Schedule F, which, as we have seen, Coddington was directed to pay out of the proceeds of the bonds. (Hopkins dep., p. 1209, Ans. X20.)

The interest on 208 of the pretended State bonds which were exchanged for pretended Florida Central bonds being largely behind, the Governor of Florida, at the instance of certain parties pretending to represent the holders of these bonds, who are Dutch subjects, attempted to seize the Florida Central road in December, 1876, and advertised the same for sale in pretended furtherance of the powers conferred on him by the acts of June and January, 1870. (Rec., p. 36.)

But no sale was made, all action in that behalf, on the Governor's part, having been prevented by an injunction granted on 21st May, 1877, by the court below, on the motion of the Western Division of the Western North Carolina Railroad Company. (Rec., pp. 534–5.)

In this state of things the Dutch bondholders, virtually waiving their pretended right to summary proceedings under the statutes, filed their bill on the 23d May, 1877, as well against the Florida Central Company as the J. P. and M. Company, (which had been theretofore seized and advertised for sale by the Governor at the instance of the same persons as had procured like action to be taken against the Florida Central Company), the Western Division Company, the trustees of the Internal Improvement Fund and others. (Rec., p. 180, 193.)

The Pleadings.

THE BILL.

The bill, in so far as it affects the Florida Central Company, avers that the J., P. and M. Company, received from the Governor of the State 4,000 State bonds, for which 3,000 were given in exchange for a like number of J., P. and M. bonds, and 1,000 for a like amount of Florida Central bonds.

That at the time the 1,000 Florida Central bonds were executed, Milton S. Littlefield owned a large majority of the stock in that company, and had contracted to buy more, which, added to his own, constituted all the shares of said company except 400, the whole number of shares of the company being 5,500.

That Littlefield's object in purchasing the additional stock was, as the parties with whom he contracted knew, to enable him to consolidate the J., P. and M. Co. with the Florida Central, and that the issuing of the bonds was the joint act of all the stockholders, and with the understanding that the additional stock should be paid for with the proceeds of the bonds.

That the stockholders who retained their stock had full notice, but remained inactive until long after the State bonds were sold.

That immediately after the issuing of the State bonds the line of road from Jacksonville to Lake City was operated as part of the J., P. and M. road, and in 1871 was, along with the rest of the road, operated by the J., P. and M. Co., conveyed to trustees to pay debts of the latter company, and that the trustees took possession and operated the same, without any interference of the Florida Central stockholders.

That the J., P. and M. Co., through their agents, represented in England, Holland, Germany, and France that the bonds were valid and secured on the whole line of railroad from Jacksonville west; that complainants bought on the faith of these representations, and that said bonds were sold in London at £138 sterling per bond, and, so long as the interest was paid, brought a good price, selling at one time as high as 81 per cent. in U. S. gold.

That complainants hold bonds numbered from 1 to 3,200, inclusive; that the interest since January, 1873, being unpaid, they applied to the governor to seize the road; that the interest up to January, 1873, was paid by a trust company in New York, which was appointed the fiscal agent of the State, of which appointment the governor gave notice to the holders of said bonds; that it was represented to complainants that the money for paying the interest was provided by the State, which greatly strengthened belief in the validity of the bonds.

The bill then refers to the pretensions of certain holders of bonds of the Pensacola and Georgia and Tallahassee Railroads, which do not, however, in any way concern the Florida Central Company.

The bill avers that certain persons, naming them, had, by means of a fraudulent judicial proceeding, installed themselves as directors of the Florida Central Company, and were about to issue bonds of said company, and asking that they may be enjoined, &c.

That in seizing said line of railway, the governor had committed an error in recognizing part thereof as the property of the Florida Central Company, whereas he should have seized the whole line as the property of the J., P. and M. Company.

That the governor has aggrieved complainants by advertising the line from Lake City to Quincy, with the Monticello branch, and from Tallahassee to St. Marks, as subject to a prior lien in favor of the holders of the Pa. and Ga. and the Tallahassee bonds.

Refers to a proposed plan of adjustment with the holders of the Pa. and Ga. and Tallahassee bonds, looking to a sale and reorganization of the Florida Central and J., P. and M. roads.

Names the only persons who are authorized to represent the Florida Central Company should it appear that said company has not become extinct.

Avers that the Supreme Court of Florida has twice decided that the line of road from Jacksonville to Lake City is charged with a lien in favor of complainants, and all other holders of said bonds, and both railroad companies were parties to said litigation and are concluded by it.

The bill refers to the dilapidated condition of the J., P. and M. road, and asks that measures be taken to put it in order.

It avers that the Western Division, having promoted the issue and negotiation of said bonds and participated in the proceeds of them, is estopped to allege their invalidity.

That Edward M. L'Engle has illegally possessed himself of certain shares of the Florida Central Company which were bought with the proceeds of the bonds held by complainants, as was well known to said L'Engle, and that since said bonds were sold said L'Engle has bought the interests of other persons in the stock of said road, and has brought vexatious suits touching property formerly belonging to said company, and contemplates further litigation with the view of compelling complainants to pay him a large sum of money, and to hinder them from obtaining the relief now sought; and that L'Engle is using the name of one Washington, a non-resident, to enable him to sue in the U. S. court, and to get a decree adjudging the said

Washington to be the owner of stock which he derived from said L'Engle and one Miller.

Refers to a contract between Littlefield and Swepson to purchase the unpaid bonds of the Pa. and Ga. and Tallahassee Railroads, and to a purchase of bonds under the same; that said bonds are claimed by several, all of whom knew they had been paid for with the proceeds of the bonds held by complainants.

That Littlefield has made an invalid assignment of shares in the Florida Central Company which, in truth, belong to the estate of Edward Houstoun, and that said assignee ought not to be allowed to derive any advantage from said assignment.

Prayer.

The bill prays: (1) That complainants may be decreed to be *bona fide* holders of the bonds of the Florida Central Co.; (2) That the whole line of road be first subjected to payment of complainants' bonds; (3) That it be decreed, as the result of the actings and doings of the two companies, that a trust exists in favor of complainants, entitling them to subject the whole line of road to the payment of their bonds, and that the whole line of road west of Jacksonville is one road; (4) That the Governor be decreed to enforce complainants' rights under the statute; (5) That Trustees of Internal Improvement Fund be decreed to have no lien on any part of said road; (6) That the Western Division Company be decreed to stand like any other stockholder, in subordination to rights of complainants; (7) A decree is then asked as to the status of the officers now representing said Florida Central Co.; (8) And as to the rights of L'Engle & Washington, as stockholders; (9) And that certain bonds issued in the name of the Florida Central Co. be declared null and void; (10) Injunctions to prevent litigation adverse to the interest of complainants are asked, and also the appointment of a receiver, concluding with a prayer for general relief.

The Answers.

The bill was answered by the Western Division Company, (Rec., pp. 263–291,) but the bill was subsequently dismissed as to this company. (Rec., p. 516.)

James M. Baker and others, the directors of the Florida Central Company, also answered, (Rec., pp. 330–332,) but the bill was subsequently dismissed as to these parties. (Rec., p. 516.)

E. M. L'Engle answered (Rec., pp. 345–356,) but being a stockholder he is represented by the company, in so far as the corporate interests are concerned, and no question arrises on this appeal touching the matters imputed to said L'Engle in the bill. It is not necessary, therefore, to refer to this answer with more particularity here, but it is commended to the court as embodying a clear and satisfactory presentation of our defence, and is adopted by the Florida Central Company as part of its answer, in so far as not inconsistent therewith.

The Florida Central Company answered. (Rec., pp. 398–409.) After answering as to several matters relating to the J., P. & M. Co., it denies that 1,000 of its bonds were ever delivered to Governor Reed in exchange for State bonds for the benefit of the J., P. & M. Co., or for any other purpose, and denies that it ever authorized the execution of the 1,000 papers described in the bill and called bonds.

Denies that its charter authorized it to issue such bonds for the benefit of the J., P. & M. Co. or any other purpose, and that no such company as the J., P. & M. Co. existed at the time the respondent was incorporated.

Respondent says its capital stock of 5,550 shares represents a par value of $550,000; that its road extends from Jacksonville to Lake City—about 60 miles; that its road was completed before the incorporation of the J., P. & M. Co., and hence was under no necessity to create a debt of $1,000,000, paying 8 per cent. interest per annum, and about double the amount of its capital stock, which was not only greater than it could pay, but for the benefit of another corporation, over which respondent had no control. Denies that any meeting of stockholders ever authorized the issue of the bonds, or that any one or more of said so-called bonds was ever in respondent's custody or ever exhibited at any meeting of stockholders or directors, or known to, or spread in the records of, respondent, or ever signed by any officer of the company by its authority or with its knowledge.

Respondent says it is informed that George W. Swepson signed such papers fraudulently, for his own purposes, but not at the business office of respondent or in the State of Florida.

Respondent says that the signature to the bonds of H. H. Thompson, Treasurer, was false and fraudulent, and that it was made because Swepson and Littlefield dared not expose their plan by submitting said papers to F. H. Flagg, the Treasurer of the Company, for his signature.

Respondent says its corporate seal was affixed to said so-called bonds without its authority; that the so-called bonds were delivered to Edward Houstoun as part of private transactions between him, Swepson and Littlefield having in no way in view the benefit of respondent or the J., P. and M. Company;

That said pretended bonds were secretly carried to a place near respondent's office, from which respondent's seal was abstracted and taken to said place of concealment and affixed to the so-called bonds; that the bonds were never fully executed, there being unfilled blanks for the name of the place of issue, and for the Governor's certificate that the bonds were issued under the act of 28th January, 1870;

That respondent never consolidated with J., P. and M. Co., and that there was no law to warrant such consolidation;

That respondent never lost its separate corporate existence, and that J., P. and M. Co. never had any right to make or circulate any obligation as a charge on the franchise and property of respondent;

That respondent's president never delivered to the Governor any certificate under oath, or otherwise, asking for an exchange of bonds, for the use of the J., P. and M. Co.

Respondent says, on information and belief, that said pretended bonds were adopted by a stockholder's meeting, which was a mere fraud, and that the object was to use the bonds for the private purposes of the parties practicing the fraud;

That when the fraudulent character of the Swepson-Thompson bonds became known, to wit, on or about the 21st November, 1870, respondent, by a resolution, ordered said bonds to be destroyed, of which due notice was given said Houstoun and the Governor and Comptroller of Florida; and that after this Coddington pretended to have received said bonds from Houstoun in trust to pay private debts named in a receipt signed by Coddington.

Respondent says on information, that afterwards the State of Florida corruptly delivered to Coddington, in exchange for said bonds, 1,000 bonds of the State purporting to have been issued for the benefit of the J., P. and M. Co. under act 28th January, 1870, numbered from 3,001 to 4,000 inclusive, well knowing the false and fraudulent character of said company bonds, and well knowing that the said State bonds were to be used to pay private debts.

Respondent says on information, that Coddington and the State knew that said transaction touching the bonds was in violation of an injunction then in force and, as yet, undissolved, and that in order to avoid another injunction, said Coddington left the State with the bonds secretly, all which was unknown to respondent.

Respondent says on information that Coddington took the bonds to London; that none of them were sold there; 224 were cancelled; that, of the 776 remaining, 208 were pledged to raise money to pay the interest on the rest, although unsold, and 568 were placed in a bank in London, where they still remain subject to the order of the State of Florida.

Respondent was chartered 29th July, 1868; that its charter has never been amended or altered; that its charter gives it no power to issue bonds as a donation to the J., P. and M. Company, or any other purpose; that the act of 28th January, 1870, was never intended to apply to respondent, and that respondent has never accepted or adopted it.

That Legislature had no power to pass said act, and that the void State bonds were no consideration for imposing a debt of $1,000,000 on respondent.

That the fourth seciton of said statute limited the power of the State to exchange its bonds on any finished portion of the J., P. & M. road for a greater distance than 100 miles east of Quincy, which limit of 100 miles is exhausted long before reaching Lake City, which is more than 155 miles east of Quincy, so that if the law were valid it would not affect respondent.

Respondent says there is no relation of debtor and creditor or privity of contract between it and complainant; that the said State bonds were purchased on the credit of the State and not on that of respondent, and that they have no valid claim against respondent.

Respondent denies that any of said bonds numbered above 3,000 were sold for the benefit of the J., P. & M. road, or that the latter ever had possession of them, but that the same were intended to be used in paying private debts, and that in taking said bonds to London said Coddington acted as the agent of the State and not of this respondent, both the State and said Coddington knowing that the whole proceeding was fraudulent, and respondent denies that the said so-called bonds ever brought as much as 81 per cent., and avers, on information, that they sold for less than 60 per cent., and some of them as low as 40 per cent., owing to their fraudulent character; that respondent is not advised how long the interest was paid on the bonds, but charges whenever it was paid it was done by Coddington, Collinson, Boissevain, Mildeus and others, who were speculating in said bonds, so as to force their sale in the market, well knowing their fraudulent character.

Respondent knows not what representations were made by the J., P. & M. Company, and avers that it was the duty of complainants to inquire whether respondent had become extinct by merger in the J., P. & M. Company.

Respondent denies that complainants hold any bonds of the State of Florida issued on the credit of respondent, or that are in any way a charge on the property of this respondent.

Respondent then details the facts of "the memorandum plan" by which respondent's road was to be seized and sold and purchased by the parties to that plan and a new company organized.

Respondent answers so much of the bill as charges fraud in the election of the directors of the respondent.

Respondent denies that the Governor has yet seized its road, but admits that he has attempted to do so, and is ready and willing to do so.

Respondent denies that there has been any decision settling that respondent is under any liability to complainants.

Respondent adopts the answers of L. Engle and the Western Division Company in so far as not inconsistent herewith.

The bill was also answered by James M. Guerrand and others, holders of unpaid bonds of the Pensacola and Georgia and Tallahassee Railroads (Rec., pp. 467, 469,) and by the trustees of the internal improvement fund. (Rec., pp. 469, 489.)

The J., P. & M. Company filed a plea (Rec., p. 335,) and an answer in support of it (Rec., p. 338).

As these pleadings have no significance in the controversy between the Dutch bondholders and the Florida Central Company, no further reference to them is necessary.

Order Dismissing the Bill as to Certain Parties.

On the 19th of May, 1877, an order was passed dismissing the bill as to various parties, who were in no wise proper parties in so far as this branch of the litigation is concerned. (Rec., p. 516.)

Amended Bill.

On the 10th of January, 1879, the complainants filed an amended bill, but as this bill merely attacks the *status* of certain parties claiming to have been elected directors of the Florida Central Company, no special reference to the same is deemed proper. (Rec., pp. 1110, 1114.)

Cross-Bill of Florida Central Company.

On the 30th of July, 1877, the Florida Central Company filed its cross-bill in this suit asking affirmative relief as to the matters set up in its answer, namely, that the bonds purporting to be bonds of the company may be held void and ordered to be surrendered for cancellation; that the holders of the State bonds may be decreed to have no claim against the company, and praying injunctions against the Governor and the holders of said State bonds. (Rec., pp. 420, 433.) A more particular reference to this bill is not necessary in the present state of the case.

Replications and Depositions.

Replications were filed by complainants to the various answers (Rec., pp. 511, 513), and the depositions of many witnesses were taken, to which reference has already been made and will hereafter be made.

Decree.

The court decreed, *inter alia*, that the complainants had a first lien on the road, &c., of the Florida Central Company to the amount of all of the said bonds of the said State of Florida exchanged for the bonds of the said Florida Central Railroad Company, numbered 3001 and upwards, held and owned by them, said complainant, and all interest now matured and to mature thereon. The amount of bonds ascertained to be held by complainants is $197,000, and the amount of interest ascertained as due on said bonds at the date of said decree is $118,515.20, to satisfy which amounts it is ordered that the said road be sold, &c. (Rec., pp. 579, 580.)

Assignment of Errors.

It is respectfully submitted that the decree is erroneous, on the following grounds:

1. Because it adjudges that the statute intended to give the holders of the State bonds a lien.

2. Because it adjudges that the bonds of the Florida Central Company are valid bonds.

3. Because it adjudges that the complainants have any recourse against the Florida Company.

4. Because it adjudges that the complainants have a right to recover the amounts named in the State bonds.

5. Because the court did not dismiss the bill as not presenting a case which falls under any category of equity jurisdiction.

ARGUMENT.

Invalidity of the State Bonds.

The Supreme Court of Florida having decided, several times, that the legislation by virtue of which the State bonds were issued, is null and void, (see 15 Fla. Rep., 456, *Holland* vs. *State of Fla. et al.;* ib., p. 691, *State of Fla. et al.* vs. *The Florida Central R. R. Co. et als.;* 16 Fla. Rep., 708, *Trustees I. I. Fund* vs. *J., P. & M. R. R. Co. et als.,*) it would seem that the question of the validity of these bonds is no longer an open one, and, consequently, that it must be assumed that they are nullities; for this court follows the State courts on all such questions. Besides, the decisions referred to are not assailed by the Dutch bondholders, but are relied on in their bill as settling their right to have the statutory lien of the State enforced for the payment of their bonds.

The Company's Bonds Ultra Vires.

Whatever may be the character of a corporate obligation, it is always admissible to inquire whether the corporation had the power to issue it; for no amount of good faith will make up for the want of authority to contract.

10 Wall., 677 *Marsh* vs. *Fulton Co.*

It is not pretended that the bonds of the Florida Central Company have any validity unless authorized by the 4th section of the act of January, 1870, which is in these words:

> SEC. 4. That the Governor shall, for the purpose of further aiding said Jacksonville, Pensacola and Mobile Railroad Company in the speedy construction of its road, deliver to the president of said company coupon bonds of this State of the same character as those above described in this act, to the amount of sixteen thousand dollars per mile, upon receiving for and from the president of said company first mortgage bonds of like amount on any part or portion of the road between Quincy and Jacksonville: *Provided, however*. The State bonds under this section shall not be exchanged for first mortgage bonds for a greater length than one hundred miles of any part of railroad between Quincy and Jacksonville: *Provided*, The said railroad company or companies shall not issue first mortgage bonds to a greater amount than sixteen thousand dollars per mile.

The Florida Central Company is not named in this section, but it is contended that the section applies to it by necessary implication The foundation for that implication is said to be furnished by the words "first mortgage bonds of like amount on any part or portion of the road between Quincy and Jacksonville," and the argument in support of the bonds being that inasmuch as the Florida Central Company owns that part of the line of road between these two points which runs from Lake City to Jacksonville, a grant of power to that company to issue "first mortgage bonds" must be raised by implication, to effectuate the intent of the statute.

But the power given by this 4th section is qualified by the *proviso*, that "State bonds under this section shall not be exchanged for first mortgage bonds *for a greater length* *than one hundred miles of any part of railroad between Quincy and Jacksonville.*"

It was, undoubtedly, the purpose of the statute (§ 2) to give the J., P. & M. Co. the right to demand a given number of State bonds for every mile of road *it should construct and put in good running order*, for the entire length of its line. It was, undoubtedly, *not* the purpose of the statute that the J., P. & M. Co. should have the right to demand, in any event, State bonds for every mile of the line of *completed* road from Quincy to Jacksonville, but that no more than one hundred miles of said line of completed road should be available for that purpose.

Now, the truth is, that *the whole* of said line of road from Quincy to Jacksonville—a distance of over two hundred miles—has been used as a basis for the issuing of State bonds, *in the very teeth of the statutory inhibition.* The statute is explicit that no more than one hundred miles of the line from Quincy to Jacksonville, shall be used for that purpose. To allow bonds to be issued on the credit of other roads for the benefit of the J., P. & M. Co. was, as the sequel showed, a dangerous departure from the policy of the statute which was to compel the company *to earn* the State bonds by completing and putting in good running order a mile of road before an instalment of State bonds could be demanded. In this way there was a very considerable check against a misappropriation of the proceeds of the State bonds, whereas there was no check at all as to the State bonds which might be issued on the one hundred miles of road between Quincy and Jacksonville, except such ineffectual ones as might be secured by the companies operating the roads between those points, as the condition of lending their credit. It is submitted that a power so liable to abuse should be taken strictly.

Now, if at the time the 1,000 State bonds were exchanged for the same number of the Florida Central bonds other State bonds, at the rate of $16,000 a mile had been issued on 100 miles of the road between Jacksonville and Quincy, it would seem very clear that the 1,000 bonds were issued without any authority of law.

It is beyond doubt that the said 1,000 State bonds were received for negotiation in January, 1871. At that time the J., P. & M. Company had become consolidated with the Tallahassee Company, which owned the completed road from Quincy to Lake City, with the branch roads to St. Marks and Monticello, and had received from the State $16,000 per mile of *the whole* of said completed road; and the distance from Quincy to Lake City being 155 miles the J., P. & M. Company had received bonds much in excess of what the statute authorized. It follows, then, that the State bonds delivered to Coddington in January, 1871, could not have had any possible validity, since State bonds *had at that time been issued on more than 100 miles of the road between Quincy and Jacksonville.*

It may possibly be said in answer to this that when the State bonds were delivered to the J., P. & M. Co. the road between Quincy and Lake City had become the property of the J., P. & M. Co. by the consolidation with the Tallahassee Company, and consequently that the J., P. & M. Co. was entitled to demand State bonds on every mile of road owned by it; but this view has no support in the statute.

At the time the act of 28th of January, 1870, was passed, the Tallahassee Company, which owned the line from Quincy to Lake City, was entirely distinct from the J., P. & M. Co., and the act in its first section grants to the latter company the right to build a road "from the terminus of the late Pensacola and Georgia Railroad, *now the Tallahassee Railroad at Quincy, Gadsden County*, to, &c." Before its consolidation with the Tallahassee Company, the J., P. & M. Co. did not own a mile of completed railroad, and the right given by the second section of the act of 28th

January, 1870, to demand State bonds on every mile of its road, obviously applies to the then projected road, for the condition on which the State bonds may be demanded is when the President of the company "shall certify upon his oath that the road, or parts of road, for which he asks for an exchange of bonds is COMPLETED and is in good running order." When we turn to the fourth section of the same act, which authorizes an issue of State bonds on 100 miles of the completed road east of Quincy, we find that no certificate is required as to the established fact of a railroad in actual operation, which, if the second section was not of itself enough to show it, makes it beyond doubt that it was the purpose of the second section to authorize the issuing of State bonds on the road from Quincy westward, as it should be built mile by mile or after its completion. And the fourteenth section of the act of 24th of June, 1868, is almost conclusive on this point, for it, after authorizing the J., P. & M. Co. to consolidate with the "several companies owning the roads, or parts of roads, from Quincy to Jacksonville, &c.," provides that as to "the road or roads or parts of roads thus acquired," the J., P. & M. Co. may issue bonds or other evidences of debt, *but not to be exchanged for State bonds*, a provision which would have been almost useless if the second section of the act had been intended to apply to the completed road of any company that might be consolidated with the J., P. & M. Co.

The Supreme Court of Florida in attempting to show that the 4th Section of the act of 28th January, 1870, must necessarily apply to the Florida Central Company alone, *because there was no other company to which it could apply*, overlooked the fact that at the time the statute was passed the Tallahassee Company owned and was operating the line between Quincy and Lake City, and, as we have seen, is referred to in the statute as a separate company. (See 15 Fla., R. 704–5.)

The Bondholders have no lien.

Undoubtedly, the State might have secured her own bonds by liens on the railroads. But has she done so? We maintain, with all possible deference to the learned justice who rendered the decree, that she has not.

The words of the statute (act 1870, S. 3) giving the lien, are as follows: "To secure the principal and interest of the said company bonds, *the State of Florida shall, by this act, have a statutory* lien * * * * ." It cannot be denied that the primary and only expressed object of the lien was "to secure the principal and interest of the *said company bonds.*" The railroad company was to deliver to the State its bonds *payable to the State* (act 1869, S. 10), as the condition of receiving State bonds, and it is these company bonds payable to the State that the statute says are to be secured by the lien. *Not a word is said about the State bonds in connection with this lien,* and it is very clear that if the lien was intended for the security of the State bonds also, such intention *must be the result of implication.* But, we respectfully submit that no such implication can be made without doing violence to the clearly expressed and manifest intention of the statute.

It does not, in the first place, seem probable, aside from the statute, that the State of Florida conceived that a lien on the railroads was necessary to give credit to her own bonds, nor is there anything in the statutes to warrant such a supposition. On the contrary, there is a great deal there to justify the conclusion that the State regarded her faith pledged by the bonds as all sufficient to give them standing and currency, and as fully equivalent to a mortgage on all the taxable property in Florida, let alone that part of it owned by the railroad companies.

The statute, as we have seen, expressly provides for a lien to secure the company bonds payable to the State.

These company bonds were to be exchanged for bonds of the State, and the statute having provided *expressly* for a lien to secure the company bonds, it would be very remarkable if the legislature *had left the alleged additional lien for the security of the State bonds to be gathered by implication.* We may be sure that if the promoters of this legislation had entertained such an intention, they would have expressed it—and their omission to do so is very significant.

It was competent for the State to take indemnity from the companies by way of mortgage or otherwise, but the mere fact that she did so, does not seem to be any ground for an inference that she also intended that indemnity for the security of her own bonds. The transaction between the State and the company was to be one thing and that between the State and the holders of her bonds was to be another thing, and there is no reason why anything should be added by implication to one transaction merely because it happens to belong to the other. No doubt the Dutch bond-holders think it very desirable, *in the present state of things,* to have a hold on the railroads, and that appears to be the best argument they possess for advancing the pretension of a lien; but it is far from being a satisfactory one.

The 13th section of the act of 1869, provides that the J., P. & M. Co. "may, at any time before the maturity of its bonds, discharge *its debt to the State*, or any part thereof, by payment in National currency or in bonds of the State." Here, the statute speaks of the company's debt *to the State.* It recognizes no duty to the holders of State bonds, but it does recognize the company's right to a complete discharge by payment to the State. It certainly will not be argued that this section, providing for a *discharge* of the company's debt, intended that the *incident of that debt, the lien, should remain in full force after the debt was extinguished.* It cannot be argued that the payment of the company bonds would have been, virtually, payment of the State bonds, because (1) the holders of the latter could not be compelled to accept payment before their bonds had matured; and (2) the statute does not require the State to apply the money received from the companies to the satisfaction of her bonds.

By the 3d section of the act of January, 1870, it is provided that in case of the company's default as to the principal or interest of its bonds, or any part thereof, "*for twelve months after the same shall become due,*" the Governor is authorized to seize the road and sell it *after a notice of ninety days.*

Now, when we look at the State bonds (see copy of one, Rec., p. 1232,) we do not find that they contain any provision that the State shall have the large measure of indulgence which she concedes to the company. The State, by her bonds, contracts to pay principal and interest *at maturity*, but the lien which, it is alleged, secures the payment of these bonds is not enforceable until at least *fifteen months after the bonds themselves are due and demandable!*

But, again, this same section further provides that, in case of sale, the State may *buy the road and pay for it with company bonds*, thus extinguishing the lien without receiving a dollar in money for the benefit of the bondholders.

The statute also provides that in case the road be sold for money, it shall be held in trust for the holders of the State bonds, and, if not called for, shall be invested, but no right to compel the holders of State bonds to receive payment before the maturity of these bonds, or take the risk of the money set apart or invested for their benefit, is reserved. It is more than probable that the Legislature in making these latter provisions had in view the case of a foreclosure for the non-payment of *interest* and the unwillingness of some or all of the bondholders to surrender their bonds before maturity.

It is not to be implied that the State intended to be implicated in the administration of a trust for the benefit of private parties, further than the protection of her own treasury might require.

Added to all this, the validity of any sale depends on the ratification of the Legislature (Act 1870, Sec. 3), regardless of the creditor's wishes.

We feel at liberty to maintain, therefore, that the statutes afford the most conclusive evidence that it could not have been the intention to create a lien for the security of the State bonds.

To prevent a possible difficulty in applying the aforegoing argument to the Florida Central Company, from the fact that the J., P. & M. Co. only is mentioned in the provisions commented on, we would add that the contention of the appellees is, that the 4th section of the act of 1870 re-enacts as to the Florida Central Co. all the provisions touching the issuing of State bonds to the J., P. & M. Co.

The inference of a lien for the benefit of the bondholders, deduced by the Supreme Court of Florida, in some *dicta* which fell from it in the two cases in 15 Fla., Rep., above cited, from the fact that the State is to hold any investments of the proceeds of a sale in trust for the bondholders, to be good for anything, must assume the State's right to pay the bondholders at any time before maturity and hold such investments at their risk, and compel them to take the investments, *whether good or bad, for all these consequences must follow*, if we once implicate the bondholders in this collateral statutory contract between the State and the company. In our view of the provision in question, it was a mere legislative declaration of the manner in which the proceeds of sale should be held, and was not intended to affect the holders of the State bonds further than to give them the right to demand money which they could not be compelled to take.

The argument of the State Court as to the intention of the act of 1870, based on a constitutional amendment adopted in 1875, does not seem to require particular notice. (See 15 Fla., 534–5, *Holland* vs. *State*.

But it is said that the Supreme Court of Florida has decided that the statute gives the bondholders a lien, and that this is conclusive.

The cases relied on for this proposition are—

Holland vs. *State*, 15 Fla., p. 456; and
State vs. *Florida Central Co., &c., Ib.*, p. 690; and
Trustees Int. Im. Fund Co. vs. *J., P. & M. R. R. Co., &c.*, 16 Fla., 708.

In answer to this, we maintain—

1. That all that is said in these cases in support of the proposition is purely *obiter*. In all three of the cases the State was endeavoring to enforce its rights as creditor of the companies *and not as trustee for the bondholders;* and in none of the cases was there evidence or any averment in the pleadings that any of the State bonds had been negotiated.

The case of the *State* vs. *The Florida Central Company* was dismissed, on the ground of *a total failure of evidence* to show that any of the State bonds exchanged for the company's bonds had been sold.

In the case of the *Trustees Int. Im. Fund* vs. *J., P. & M. R. R. Co.*, there was a decree in favor of the State adjudging the company to be a debtor of the State. This decree was reversed on the ground that, as the State bonds were *void*, the State could be entitled to no such decree; and when asked to order that the decree should be so modified by the court below *as to apply to the State as trustee for the holders of the void bonds, the appellate court refused to do so, on the ground that there was no proof to show that* *any of the State bonds had been sold, and so nothing to show that the State was trustee for anybody.* (pp. 723–4.)

Holland's case was upon demurrer, and was a contest between the State claiming *as creditor solely*, and Holland claiming to be the purchaser of a part of the J., P. & M. road under execution. There was nothing before the court to show that the State claimed to hold the position of trustee. In each of the cases what the court said about the statutory lien of the holders of the void bonds was upon a purely hypothetical case, and nothing is better settled than that a decision upon a point not presented by the record is not controlling.

2. But, however this may be, the decisions of the Supreme Court of Florida interpreting this statute are not binding on this court.

No doubt the general rule is that this court will follow the decisions of the State courts interpreting State constitutions and laws; but that rule is subject to exceptions which embrace these cases.

It is to be noted that the decisions relied on were made upon the very matter now in litigation in this court, but not between the same parties, and that the effect of the suits at bar was to transfer the whole subject of litigation from the State courts to the Federal courts, before any practical effect had been given to the decisions of the State court. If, then, this court is concluded by the decisions of the State court in that abortive litigation the result will be that, as to some features of the contract in question, this court will be unable to exercise its judgment at all, while as to others it will be entirely free to do so. The absurd consequences likely to follow upon such an application of the general rule are manifest.

Again, it must be remembered that these statutes of 1869 and 1870 are, in so far as involved here, no more than a contract between the State and a railway company thrown into the form of a law. In dealing with such a contract this court will treat it as any other contract, and interpret it for itself. (3 How., 476; *Lane* v. *Vick.*) If the contract here was *in any other form* than that of a statute, there could be no question as to the power of the court to interpret it as they saw fit. But this court will regard the substance, and not enforce a rule of decision which was intended to apply to general statutes and rules of property in a case involving only the interpretation of a contract.

Bonds Issued Without the Company's Authority.

The Florida Central Company cannot be affected by the bonds issued in its name if they have been issued without its authority.

As we have seen, these bonds were printed in New York by Littlefield's direction, by his direction they were signed by one Thompson as treasurer, when, in fact, he held no such office, nor, indeed, any office under the company. They were then brought to Washington, where George W. Swepson signed them as president of the company, and then Littlefield took them to Tallahassee. The secretary and treasurer of the company having refused to put the seal of the company to the bonds, the seal was abstracted from the company's office and the bonds were sealed in Littlefield's room.

As we have seen, *supra*, the bonds issued in the company's name were the result of an agreement between Houstoun and Littlefield that $1,000,000 of bonds should be issued by the company, and pledged with Houstoun as additional security for Littlefield's draft for $163,026.70. The bonds were to purport to be issued under the acts of 1869 and 1870, but without the remotest purpose of using them for the benefit of the J., P. and M. Co., for whose aid alone they were authorized, if authorized at all. (See copy of one of the bonds. Rec., p. 21.)

It is claimed that these bonds were ratified and adopted at a meeting of stockholders held on 2d June, 1870. But as we have seen, *supra*, this meeting was fraudulent and pretenced—a mere conspiracy, entered into after it was ascertained that other stock-holders were against issuing bonds. It lacked the prime essential of a valid meeting,—there being *no notice of any kind to the stockholders who were not present*—although the by-laws required a notice of ten days "*through the newspapers*." It had the sure mark of fraud in that it was held at an unusal place (a lawyers office), and not at the office of the company. (Ang. & Ames on Corp., 496).

At such a meeting no corporate act could be done (Brice's *Ultra Vires*, 2d Ed., pp. 438, 9, by Green). Indeed, no corporate act was contemplated, for the object of the parties was to authorize an issue of the company's bonds to be used as security for a debt of Littlefield's—an object which could not have been attained if the meeting had been never so well constituted.

As if to stamp with illegality the resolution authorizing the bonds, it directs that the bonds or their proceeds are to be applied *according to the terms* of the "*arrangement*" between Houstoun and Littlefield.

But this resolution, void and illegal as it was, was not allowed to wear the appearance of being operative. On the 21st November, 1870, it was *rescinded* by a resolution of the stockholders, *and the bonds were ordered to be destroyed.* (Rec., p. 38.)

In the face of this latter resolution and of an injunction restraining the use of these bonds for any purpose, the bonds were delivered by Gamble, the Comptroller, to Coddington and Houstoun, who, as we have seen, immediately exchanged them for State bonds in pretended furtherance of the acts of 1869 and 1870.

Afterwards, to wit, on 13th April, 1871, a resolution of the stockholders was passed, authorizing Houstoun to place said company's bonds in the hands of Hopkins & Co., in furtherance of the said agreement between Houstoun and Littlefield. (Rec., p. 1333.) But this resolution was tainted with the same fraud and illegality as infected the resolution of 2d June, 1870, besides being *inoperative* on the further ground that the bonds had *then* become the property of the State in consequence of having been exchanged for State bonds in the preceding January.

Again, these so-called resolutions of the stockholders show upon their face that they were the acts of a *part* of the stockholders only, in that they except from the application of the bonds or their proceeds "*the proportion thereof applicable or apportionable to the stock owned by other parties*," a provision which is inexplicable upon the theory that the resolutions were corporate acts, and not merely the acts of Littlefield, "who," as is recited, "is the owner of nearly all the stock in the company."

The Question of Estoppel.

It is to be borne in mind that the State bonds numbered from 3001 to 4000, exchanged for so-called Florida Central bonds, were not for the benefit of the latter company, and were not put on the market by that company. If, then any representations were made, it was by the agents of the J., P. and M. Company, which negotiated the bonds and received the proceeds of them.

But as the J., P. and M. Company got the bonds of the Florida Central Company by fraud, and not by the assent of that company, the latter company cannot be estopped, when it was *in ignorance of what had been done.*

We bear in mind that the instrument purporting to be a settlement between the Florida Central Company, Littlefield, and others (Rec., pp. 317, 318) is referred to as a representation of the Florida Central as to the validity of the State, but it cannot be so considered, for (1) it was plainly *ultra vires*; (2) it was for the avowed purpose of paying the North Carolina Commissioners, *out of the proceeds of the bonds, Swepson's debt for moneys appropriated by him as president of the Western Division Co.;* (3) there is no proof that the Florida Central Company was cognizant of this agreement, and there is every presumption it was not; as Swepson swears that he had no authority for using the name of the Florida Central Co. (Rec. p. 632, and 13.) (4) there is no evidence or intimation in the records that the paper was ever used, exhibited, or referred to in the negotiation of the bonds; on the contrary, there is every reason to presume *it was not*, as it would certainly have rendered the bonds unsaleable wherever exhibited.

That acquiescence in what had been done cannot be attributed to the Florida Central Co. is very clear, for at the time the fraudulent resolution adopting the Swepson-Thompson bonds was adopted, the property and effects of the Company had been taken possession of by Gen. Littlefield, the President of the J., P. and M. Co., who, acting upon the vulgar idea that *absolute power* is the incident of ownership of a majority of shares, treated the Florida Central road as part and parcel of the J., P. & M. road (see the deposition of complainant's witness, Cheney, R., p. 837), although, as must be conceded, there had been no consolidation of the two roads. It is manifest that to charge the minority stockholders with notice of what went on during this usurpation of Littlefield would be gross injustice. It was, indeed, impossible for them to get access to facts and proceedings which it was to the interest of Littlefield to withhold from them.

Nor is acquiescence to be presumed from the notoriety of the bond issue, inasmuch as the bonds which were before the public were State bonds, 3,000 of which had been on the market for some time, when the lot of 1,000 State bonds were exchanged for Florida Central bonds.

Added to all this 'tis to be borne in mind that at the time the Company bonds were exchanged for State bonds a resolution directing the cancellation of the Company bonds, and revoking the so-called authority to issue them, was in force.

Furthermore, there is no room here for implying acquiescence, from the receipt of the proceeds of the bonds, as not a dollar of them went into the treasury of the Florida Central Co.

But the fact is that no representations were made as to the lien, farther than what appears on the face of the statutes. Just as in the case of the State bonds, no representations were made as to their validity, further than what is contained in the statutes and the provision of the Constitution of Florida under which the bonds were issued.

But whatever representations were made, *they were not acted on.* The parties who took these bonds—the Dutch syndicate, including John Collinson,—looked into the matter for themselves, took the opinions of eminent counsel in London and New York, and, upon a full view of the subject, determined to buy. It is absurd to say that these wary people trusted to the representations of the agents of the J., P. and M. Company as to the constitutionality of the statutes or the extent of the statutory lien. They formed their own opinions, and, upon the strength of those opinions, put the bonds on the market. It is not pretended that the agents of the J., P. and M. Co. came in contact with or made any representations to anybody outside the Dutch syndicate. Having relied on themselves and not on others, it is not open to these bondholders to say they were deceived.

Barnard vs. *Kellogg*, 10 Wall., 384;
Slaughter's Adm'r vs. *Gerson*, 13 Wall., 379.

But if any binding representations as to the statutory lien, beyond what the statutes themselves contain, were made, they were not made with the assent of the Florida Central Company and cannot affect it.

Subrogation.

If the bondholders have any right to enforce the States' lien on the railroads it must be in virtue of some equity outside the contract.

It is undoubtedly true that equity sometimes gives the creditor the right to enforce a lien given by the debtor to his surety. Viewing the State, then, as between herself and the companies, *as their surety only*, which would seem to be her true relation, we will now consider whether this equitable principle can be applied to the case in hand.

The principle referred to is that known as the right of subrogation or substitution. The creditor takes the place of the surety as against the debtor. It is the surety's rights against the debtor that the creditor seeks to avail himself of. It is perfectly clear, then, that the creditor can occupy no better position as against the debtor than the surety. Any defense against the surety is equally open against the creditor, whose rights cannot rise higher than their source.

These principles are so familiar that we do not deem it necessary to do more than refer to the Leading cases in Equity (vol. 1, pp. 175–8, ed. 1876,) in support of this position.

The object of the statutory lien was to indemnify the State against her liability on her bonds. But those bonds being void, her right to enforce the lien has never existed, and she has, consequently, no right to which the bondholders can be subrogated.

The State, through Governor Reed, being fully aware of, and a party to, the scheme to misappropriate the State bonds to be exchanged for the bonds of the Florida Central Company, could acquire no right to enforce the company's bonds or the lien to secure them. But for the Governor's having lent himself to Littlefield & Houstoun in the execution of their fraudulent scheme, it could not have been carried out, for a demand of evidence of due corporate authority for issuing the company bonds would have frustrated the attempt.

It was obviously the duty of the State to see to it that the bonds of the companies were authorized, for it is impossible to believe that the statute intended that the companies should be bound by any bonds the Governor might choose to accept, whether sanctioned by the companies or not.

Even if the State bonds were valid and enforceable, it would be still open to the Florida Central Company to urge this defence, inasmuch as that company did not receive any part of the proceeds of the State bonds, or have a hand in negotiating them.

Allowance to Bondholders.

The so-called State bonds were sold by the J., P. & M. Co., at little more than half their nominal value; but the learned court decreed that the holders of these bonds were entitled *to their nominal value*, with interest. Can this be sustained?

What purported to be a sale of bonds had no such effect, because the bonds were void. If it had been contrariwise and bonds had been sold, undoubtedly the holders of them

Act of the Legislature of Florida

"To Perfect the Public Works of the State,"

APPROVED JUNE 24th, 1869,

AND

AN ACT AMENDING THE SAME,

APPROVED JANUARY 28, 1870.

Under Constitution of 1868.

JACKSONVILLE, FLA.
HORACE DREW, PRINTER.
1880.

ACT OF THE LEGISLATURE OF FLORIDA "TO PERFECT THE PUBLIC WORKS OF THE STATE," APPROVED JUNE 24th, 1869,

AND

AN ACT AMENDING THE SAME, APPROVED JANUARY 28th. 1870.

Under Constitution of 1868.

CHAPTER 1,716—[No. 4.]

An Act to Perfect the Public Works of the State.

The People of the State of Florida, Represented in Senate and Assembly, do enact as follows:

SECTION 1. In order to secure the speedy completion, equipping, and the maintenance of a connection by railroad between Jacksonville, on the Atlantic coast, and Pensacola, on the Gulf coast, and Mobile in Alabama, running through the State of Florida, the following named persons, viz: George W. Swepson, Milton S. Littlefield, J. P. Sanderson, J. L. ReQua, William H. Hunt, their associates, successors and assigns, are hereby constituted a body politic and corporate, under the name of the Jacksonville, Pensacola and Mobile Railroad Company, and, as such, shall have and use a common seal, may sue and be sued, plead and be impleaded, may purchase and hold real and personal property, which may be necessary or useful for the purposes of the road, and sell and convey the same in fee, or for a less estate, or by way of mortgage or otherwise, and may make and enforce for the government of the corporation such by-laws and regulations, not contrary to the Constitution and laws, as they may deem best. The said Company is hereby vested with the like powers, franchises and privileges as were and are conferred by the act to incorporate the Florida, Atlantic and Gulf Central Railroad Company, and the act to amend An Act entitled An Act to incorporate the Florida. Atlantic and Gulf Central Railroad Company.

bearer, and shall be authenticated by the written or engraved signature of the Treasurer.

Sec. 10. In exchange for the bonds of the State above described, the President of the Company shall deliver to the Governor of the State coupon bonds of the Company, bearing a like rate of interest, payable to the State of Florida, signed by the President, sealed with the corporate seal; coupons payable to State of Florida, authenticated by the written or engraved signature of the President. The bonds shall be of such denominations, not less than one thousand dollars, as the said Company may choose, and principal and interest shall be payable at the same time and place as the aforesaid State bonds.

Sec. 11. To secure the principal and interest of the said Company bonds, the State of Florida shall by this act have a statutory lien, which shall be valid to all intents and purposes as a mortgage duly registered on the part of the road, on the estimated length of which the State bonds were delivered, and on all the property of the Company, real and personal, appertaining to that part of the line which it may now have, or may hereafter acquire, together with all the rights, franchises and powers thereto belonging, and in case of failure of the Company to pay either principal or interest of its bonds, or any part thereof, for sixty days after the same or any instalment thereof shall become due, it shall be lawful for the Governor to enter upon and take possession of said property and franchises, and sell the same at public auction for cash, on such notice as he may prescribe so as to protect the State.

Sec. 12. For the protection and additional security of the State in the issue of the bonds authorized in the preceding section, the Jacksonville, Pensacola and Mobile Railroad Company shall deposit with the State Treasurer good and sufficient security, to be approved by the Treasurer, for the payment of all interest that may become due on the State bonds issued to them, until the completion of the said railroad, and shall also give to the State, before the issue of said bonds, as additional security for the faithful application of said State bonds, a lien upon the entire railroad from Quincy to Jacksonville, and from Tallahassee to St. Marks, which lien shall be cancelled as the road is completed in sections of twenty miles, to-wit: that when twenty miles of the road west of Quincy shall be completed and in running order, twenty miles of the road east of Quincy shall be released from said lien, and so on in like proportion the said lien shall be released until the completion of the road to the Alabama State line, when said lien shall be fully cancelled and discharged.

Sec. 13. The said Jacksonville, Pensacola, and Mobile Railroad Company may at any time before maturity of its bonds discharge its debt to the State, or any part thereof, by payment in national currency, or in bonds of the State; *Provided*, That this shall not be construed to include indebtedness incurred in aid of the rebellion.

SEC. 14. It shall be lawful for the several companies owning the roads or parts of roads from Quincy to Jacksonville, from Tallahassee to St. Marks, and the branch to Monticello, or either of said companies, by a vote of the owners of a majority of the stock in interest, and with the consent of the owners of a majority of the stock in interest, of the Jacksonville, Pensacola, and Mobile Railroad Company, to consolidate with the latter company so as to become one corporation under its name, on such terms as may be agreed on, and said companies are authorized to settle the terms of consolidation by arbitration or otherwise. And with like consent of the owners of a majority of the stock of each company, without such consolidation, they are authorized to make such arrangements with reference to a common management and schedules as may be agreed on, and after consolidation the said Jacksonville, Pensacola, and Mobile Railroad Company shall have the privilege to raise money by way of mortgage or assignment, in trust, of the railroad and property, franchise and effects acquired by such consolidation, so as to secure the lenders. The said Jacksonville, Pensacola, and Mobile Railroad Company, as to the road or roads, or parts of roads thus acquired, may likewise issue coupon bonds, or other evidences of debt, with coupons or otherwise, bearing such rate of interest, and payable at such time and place, on such terms, as the directors may determine, and to each hereby granted the same privileges as are herein granted to the Jacksonville, Pensacola, and Mobile Railroad Company.

SEC. 15. The consolidation of any of the companies with the Jacksonville, Pensacola, and Mobile Railroad Company, under the provisions of this act, shall not operate to relieve the road or roads or parts of roads united by such consolidation with the Jacksonville, Pensacola, and Mobile Railroad, from their existing liability to pay any debts or obligations of the company owning the same before consolidation, but the Jacksonville, Pensacola, and Mobile RailroadCompany shall not be responsible for any such debts or obligations.

SEC. 16. The Jacksonville, Pensacola, and Mobile Railroad Company, the Florida Railroad Company, and all companies organized under An Act entitled An Act to Provide for and Encourage a Liberal System of Internal Improvements in the State, shall be bound to transport freight for the State at half the usual rates, except in time of war, when the charge for freights shall not exceed 25 per cent. over actual cost. In consideration of this liability and of the undertaking by the company to build the road herein contemplated, no railroad competing with this road for passengers or freight, which has its terminus west of Quincy, shall be hereafter built or authorized within this State without the consent of the owners of a majority of the stock in interest of this and all other roilroad companies, any part of whose road is now completed or authorized to be completed, nor without such consent shall any railroad be authorized to cross or connect tracks, or continue such connection with said Jacksonville, Pensacola, and Mobile Railroad; *Provided*, That it shall be the duty of the said Jacksonville, Pensacola and Mobile Railroad to connect tracks with any roads which may be made from Apalachicola or St. Andrews Bay to the main line of the road of said Company; *Provided, further*, This shall not be so construed as to prevent the running of a branch from some point on said road to strike Choctawatchie bay between the mouth of Choctawhatchie river and Boggy Bayou.

SEC. 17. The Jacksonville, Pensacola, and Mobile Railroad Company, the Florida Railroad Company, and the Pensacola and Louisville Railroad Company shall have power to own and run steamships and other craft to and from any of the ports of Florida, and may enter or depart with or without pilots, and likewise in any of the navigable waters within the jurisdiction of the State.

SEC. 18. That said Jacksonville, Pensacola, and Mobile Railroad Company shall in the construction of said railroad have the right to build and construct all bridges necessary to cross any and all rivers, but in crossing navigable rivers suitable draws shall be constructed to admit the passage of all steamboats and other water-craft usually navigating such rivers, which draws shall always be kept in good order and ready to be opened whenever necessary.

SEC. 19. That the gauge of said railroad shall be uniformly five feet, and the iron rail to be used shall weigh not less than fifty-four pounds per lineal yard, and the said railroad shall in all respects be a first-class road.

SEC. 20. That the said railroad shall be completed from Quincy to the Apalachicola river by the first day of January next, and the whole line within this State shall be completed within three years from the passage of this act.

SEC. 21. That said Jacksonville, Pensacola, and Mobile Railroad Company and all railroad companies organized under the act of June 16th, 1855, relating to internal improvements, shall provide first and second-class cars for the accommodation of passengers, for each of which fare shall be charged at proportionate rates, and passengers, without distinction, paying fare for first-class cars, shall be entitled to seats in such cars, and passengers paying fare for second-class cars shall be entitled to seats in second-class cars, and any conductor, superintendent, or agent of any railroad train or any company mentioned in this act, who shall refuse a seat in a first-class car to any person holding a first-class ticket, shall be subject to arrest on the warrant of any judge of any county through which said train may pass, and be liable for a fine of not less than $100, or more than $500.

Sec. 22. That the Jacksonville, Pensacola, and Mobile Railroad Company and all other corporations existing under the laws and by the authority of this State, shall by public advertisement in a newspaper printed at the seat of the government, declare the place within the State at which their principal office of business shall be considered as located, and such place shall thereafter be taken to be the residence of such corporation, and all contracts made by authority of such corporation shall be considered as made in the place at which such principal office is located.

Sec. 23. The Governor shall appoint a competent engineer to have general supervision of the various roads provided for under this act, and whose duty it shall be to protect the interests of the State, and see that the work is carried on and conducted in all respects in compliance with law, and shall, from time to time, report to the Governor. The salary of such engineer shall be paid by the companies interested, and shall in no case be chargeable to the State.

Sec. 24. That the corporation of the Jacksonville, Pensacola, and Mobile Railroad Company shall be and continue for the term of thirty-five years from the date of the passage and approval of this act. This act shall be deemed and held a public act.

Sec. 25. That for the further purpose of completing that part of the line of railroad from Amelia Island on the Atlantic to the waters of Tampa Bay, in South Florida, provided for in the act of January 6, 1855, "To provide and encourage a liberal symtem of Internal Improvements in this State," which remains to be constructed, it is hereby provided that it shall be lawful for any corporate company which may have or acquire the right to construct the same, to execute and deliver to the Governor of the State of Florida, for the time being, a Deed of Trust, conveying to said Governor and his successors in office, all the rights, franchises and privileges possessed by such company, or thereafter to be acquired, and all the tracks, lines, and road-beds upon such road owned by such Company, or thereafter to be acquired, in trust and as security for the ultimate payment to the holder or holders thereof, of the principal and interest of the bonds of such Comyany, amounting to the sum of fourteen thousand dollars per mile upon such Company's road; said bonds to be of the denomination of One Thousand Dollars each, the principal sum payable in thirty years, and bear interest at the rate of seven per cent. per annum, payable semi-annually, and have coupons or interest warrants attached, in accordance thereto; said bonds to be executed by such Company under the seal thereof; and the Governor of the State of Florida for the time being is hereby directed to join with the said company in the deed of trust; and he and his successors in office are hereby charged with the execution of the trust contained therein. Said deed of trust shall be recorded in the proper offices for the record of deeds in the several counties through which said Company's railroad is to pass.

Sec. 26. As soon as any of such companies shall have built and completed ten consecutive miles of their said railroad, the iron to be of a weight not less than 54 pounds to the yard, such Company shall present to the Governor of the State of Florida, for the time being, the bonds of the said Company, such as are prescribed in the preceding section of this act, amounting in the aggregate to fourteen thousand dollars per mile upon the road so prepared, and from time to time thereafter, as often as said company shall have completed any additional five miles, said Company may present to said Governor the bonds of such Company, amounting to fourteen thousand dollars per mile, until the whole of such road is completed; and the said Governar, for the time being, shall make an endorsement on the back of each of said bonds, and shall sign the same as Governor of the State of Florida, which endorsement shall be as follows: "I certify that the within is one of a series of bonds issued by the Company, (naming the Company;) and amounting in the aggregate to the sum of fourteen thousand dollars per mile upon said railroad, secured by deed upon Company's railroad, and all the rights, franchises, and real and personal property of the said Company, executed to the Governor of the State of Florida as Trustee, on the day of A. D.

"The payment of the principal and interest of the within bond, according to the terms thereof, is hereby guaranteed by the State of Florida, in pursuance of, and obedience to, an act of the Legislature of said State, approved the day of A. D. 1869," and the Governor shall deliver the bonds so certified and guaranteed to the President of said Company, or other officer authorized by the Board of Directors of such Company to receive the same, and the payment of the principal and interest of said bonds to the holders thereof, according to the terms thereof, is hereby guaranteed by the State of Florida."

Sec. 27. That in case any Company engaged in building the said unconstructed part of the line between Amelia Island and the waters of Tampa, shall prefer to take bonds of the State instead of endorsed bonds as provided for in the two preceeding sections, the Governor of the State is hereby authorized to substitute State bonds similar in character to those issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company in virtue of the provisions of this Act, and in such case the Governor shall demand and receive the company bonds for the same amount in exchange for such State bonds, in the same manner as prescribed in the case of the Jacksonville, Pensacola and Mobile Railroad Company; *Provided, however*, That such bonds shall only issue in proportion as sections of the road are completed according to the stipulations of the last preceding section.

SEC. 28. If default shall at any time be made by said company in the payment of principal or interest of the bonds of said company when due, for sixty days after the same may fall due, the said Governor shall take possession of said road, and all the property, real and personal, connected therewith, and all the franchises of said company, and may operate the road for the protection of the State, and for the benefit of the trust, or may sell the same, with all the franchises and property of the company, in accordance with the condition of the deed of trust, and according to law, for the benefit of the said trust.

SEC. 29. That in all cases of seizure and sale of the railroad, property, and franchises of any company by the Trustees of the Internal Improvement Fund, under the provisions of the Act to Provide for and Encourage a Liberal System of Internal Improvement, the purchaser or purchasers shall be entitled to do whatever acts may be necessary to enable him or them to exercise and enjoy the franchises granted by the charter of incorporation, under the provisions of the said original charter and the amendments thereto. And in order to prevent doubt, it is hereby declared that all the provisions of the internal improvement act above referred to, and which act constituted a contract between the State and the companies, shall continue to apply to the said corporations so newly organized, in the same manner as the same were applicable to the corporations which existed under the same charter prior to the sale: *Provided*, That this section only applies to roads built under said Internal Improvement act, and shall not authorize the issue of bonds exceeding fourteen thousand dollars per mile, as provided in section twenty-six, nor any other pecuniary aid by endorsement or otherwise, and that nothing in this section herein contained shall in any wise affect any special act relating to the sales of the Atlantic and Gulf Railroad, or the Pensacola and Georgia and Tallahassee Railroad, or the rights acquired under said sales.

SEC. 30. That the Jacksonville, Pensacola and Mobile Railroad Company, and the Florida Railroad Company, shall, at reasonable times and for a reasonable compensation, draw over their respective roads the passengers, merchandise, and cars of each other, and shall give and receive through way-bills for freight, through tickets for passengers, and through checks for baggage, to and from all points on their respective roads, and shall make no unequal discrimination for or against each other in their joint through passenger and freight rates, or in the division of the same; it being the true intent and meaning of this act to require the said railroad corporations to give as good facilities and as favorable rates, terms and conditions to each other as they enjoy themselves. If the corporations cannot agree upon the stated periods at which their cars shall be so drawn, and the compensation to be paid, the Judge of the Circuit Court of the District in which either of the companies reside, upon the petition of either party and notice to the other, shall appoint three disinterested Commissioners who are experienced in such matters, who, after due notice to and hearing the parties interested, shall determine such rates, terms, and conditions, and fix such periods, having reference to the convenience and interest of the corporations, and the public to be accommodated thereby; and the award of the Commissioners, or a major part of them, shall be binding upon the respective corporations interested therein until the same shall have been revised or altered by Commissioners to be so appointed; but no revision or alteration shall be made within one year after the award, without the consent of the companies.

Sec. 31. All the rights, franchises, privileges, and conditions granted and prescribed in this act are hereby granted and applied to any company that is now or hereafter may be organized for the purpose of building a railroad from the waters of Tampa Bay and Charlotte Harbor, on the Gulf, by the way of Ocala, and ending at Gainesville, on the Florida Railroad, and from Marianna, in the county of Jackson, to the Watars of St. Andrews Bay in West Florida, and also to the waters of Apalachicola bay, in West Florida, and to a point on the Choctawhatchie bay, between the mouth of Choctawhatchie river and Boggy Bayou, and from Palatka and Mellonville, on the St. Johns River, to the nearest practicable point on the line of railway from Tampa Bay or Charlotte Harbor to Gainesville, as far as the same can be constitutionally granted. The said railroad company from Palatka is hereby authorized to connect and be entitled to all the benefits of Section 30.

Sec. 32. That the local rates for freight and passengers on the Jacksonville, Pensacola and Mobile Railroad, and the Florida Railroad, shall not exceed at any time the usual rates for similar distances upon the railroads of the adjacent States.

Sec. 33. That all acts or parts of acts inconsistent herewith are hereby repealed.

Approved June 24th, 1869.

CHAPTER 1,731.—[No. 1.]

An Act to Alter and Amend An Act entitled "An Act to Perfect the Public Works of the State," approved June 24, 1869.

The people of the State of Florida, represented in Senate and Assembly, do enact as follows:

SECTION 1. That Section 4 of An Act entitled "An Act to Perfect the Public Works of the State," approved June 24, 1869, * * * * be altered and amended so as to read as follows:

The Jacksonville, Pensacola and Mobile Railroad Company shall have the exclusive right for twenty years to build a railroad, with one or more tracks, from the terminus of the late Pensacola and Georgia Railroad, now the Tallahassee Railroad, at Quincy, Gadsden County, to the dividing line between the States of Florida and Alabama, in the direction of the city of Mobile, Alabama, running through the counties of Gadsden, Jackson, Holmes, Washington, Walton, Santa Rosa, and Escambia, crossing the Pensacola and Louisville Railroad, with the privilege of continuing the same to Mobile, and of connecting with any railroad running to Mobile. *Provided, however*, That in the construction of said railroad the line west of the Chattahoochee river shall not, in any instance, be run, or the road built, nearer than fifteen miles of the north line of the State of Florida.

SEC. 2. That Section 9 of said Act, entitled "An Act to Perfect the Public Works of the State," * * * * be altered and amended so as to read as follows:

In order to aid the said Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road, and to aid in perfecting one of the Public Works embraced in the internal improvements of the State, the Governor of the State is hereby directed to deliver to the President of the said Company coupon bonds of the State to an amount equal to sixteen thousand dollars per mile for the whole line of road and length of railroad owned by or belonging to said Jacksonville, Pensacola and Mobile Railroad Company, in exchange for first mortgage bonds of said Railroad Company, of the denomination of one thousand dollars, when the President thereof shall certify upon his oath that the road or parts of road for which he asks for an exchange of bonds is completed, and is in good running order. The said bonds shall be of the denomination of one thousand dollars, signed by the Governor, countersigned by the Treasurer, sealed with the great seal of the State; shall bear eight per cent. interest, payable semi-annually, and shall be payable to bearer. They shall be dated on the first day of January, A. D. 1870, and shall be due thirty years thereafter, and principal and interest shall be payable at such place in the city of New York as the Governor shall designate. The coupons for interest shall be payable to bearer, and shall be authenticated by the written or engraved signature of the Treasurer; *Provided, however*, That whenever the Jacksonville, Pensacola and Mobile Railroad Company shall or may determine to pay the interest in gold for or upon their bonds or the bonds designated in the tenth section of An Act entitled "An Act to Perfect the Public Works of the State," approved June 24, 1869, upon giving notice to the Governor of such intention then the State bonds aforesaid and the coupons for interest on said bonds shall be payable in gold, notice of which shall be given by the Governor in some paper published in the City of New York, and at the capital of this State, to be designated by the Governor.

Sec. 3. That section 11 of said act, entitled "An Act to Perfect the Public Works of the State," approved June 24, 1869, * * * * be altered and amended so as to read as follows:

To secure the principal and interest of the said Company bonds, the State of Florida shall, by this act, have a statutory lien, which shall be valid to all intents and purposes as a first mortgage duly registered, on the part of the road for which the State bonds were delivered, and on all the property of the Company, real and personal, appertaining to that part of the line which it may now have or may hereafter acquire, together with all the rights, franchises and powers thereto belonging, and in case of a failure of the Company to pay either principal or interest of its bonds or any part thereof for twelve months after the same shall become due, it shall be lawful for the Governor to enter upon and take possession of said property and franchises, and sell the same at public auction, after having first given ninety days' notice by public advertisement in at least one newspaper published in each of the following places: the city of New York, in the State of New York, the city of Savannah, in the State of Georgia, and the city of Tallahassee, in the State of Florida, for lawful money of the United States, and for nothing else, except that the State, for its own protection, may become the purchaser at said sale, and may pay on said purchase any evidences of indebtedness the State may hold against said roads, which purchase money, or said evidences of indebtedness, shall be paid on the day of sale into the Treasury of this State, or within ten days thereafter; and all moneys arising from said sale and paid into the Treasury of this State, as heretofore prescribed, shall be promptly and exclusively applied to the payment and satisfaction of the bonds issued by the State of Florida under this act, and in case the holders of said bonds do not present them for redemption within ninety days after said sale, the Treasurer shall invest the same, or any part thereof which may be remaining in his hands, in the securities of the United States, to be held by the State of Florida, as trustee for the bondholders, until said bondholders shall demand the same, upon which demand the Treasurer shall immediately turn over or pay said securities to the bondholders. The purchaser or purchasers of said road shall be by said sale possessed of all the rights, privileges and franchises of said defaulting Company, together with the franchise of use and being a body politic, and the Governor shall, upon the payment of the said purchase money into the Treasury of this State as above provided, immediately cause the purchaser or purchasers of said road at said sale, to be placed in the actual possession, use and enjoyment thereof, and cause all the books, papers, and real and personal property of said company, of every description, together with its franchise of use and being a body politic and corporate, to be turned over to said purchaser or purchasers, and the purchaser or purchasers of said road shall be by said sale possessed of all the rights, privileges and franchises of said defaulting Company, together with the franchise of use and being a body politic and corporate, and may use any new corporate name they see fit, and make and use a new seal upon signifying their action in writing to the Governor, and thereafter may exercise all the rights of a body corporate and privileges thereof, and of said defaulting Company, under said new name, for the term of thirty-five years, to date from the time of purchase as aforesaid. That any such sale shall be ratified by the Legislature before the same shall become effective.

SEC. 4. That the Governor shall, for the purpose of further aiding said Jacksonville, Pensacola and Mobile Railroad Company in the speedy construction of its road, deliver to the President of said company coupon bonds of this State, of the same character as those above described in this Act, to the amount of sixteen thousand dollars per mile, upon receiving for and from the President of said company first mortgage bonds of like amount on any part or portion of the road between Quincy and Jacksonville; *Provided, however*, The State bonds under this section shall not be exchanged for first mortgage bonds for a greater length than one hundred miles of any part of railroad between Quincy and Jacksonville. *Provided*, The said railroad company or companies shall not issue first mortgage bonds to a greater amount than sixteen thousand dollars per mile.

SEC. 5. That Section 12 of said act, entitled "An Act to Perfect the Public Works of the State," * * * * be, and the said section 12 aforesaid, is hereby repealed.

SEC. 6. That section 20 of said Act, entitled "An Act to Perfect the Public Works of the State," * * * * be so altered and amended as to read as follows:

That the said railroad shall be completed from Quincy to the Apalachicola river by the first day of July, A. D. 1870, and the whole line within this State shall be completed within five years from the passage of this Act. Otherwise all chartered rights vested in this Act shall be forfeited to the State.

SEC. 7. That all acts and doings of the Corporators, Stockholders and Board of Directors of the Jacksonville, Pensacola and Mobile Railroad Company, under and by virtue of An Act entitled "An Act to Perfect the Public Works of the State," approved June 24, 1869, in relation to the organization and management of said Jacksonville, Pensacola and Mobile Railroad Company, are hereby approved and confirmed and declared to be of full force and effect.

SEC. 8. That the Act published as Chapter 1,716—[No. 4] in pamphlet form, under the direction of the Attorney-General, by authority of law, as the acts and resolutions adopted by the Legislature of Florida at its extra session, beginning June 8, 1869, under the Constitution of A. D. 1868, wherein from page 29 to page 38 inclusive is found and published An Act entitled "An Act to Perfect the Public Works of the State," approved June 24, 1869, and printed at Tallahassee, Florida, by Edw. M. Cheney, State Printer, is hereby declared to be an act and law of the State of Florida of which this Act is an alteration and amendment.

SEC. 9. That this Act shall be deemed and held to be a public act, and all laws and parts of laws conflicting with this Act be, and they are hereby, repealed.

Approved January 28, 1870.

OFFICE SUPREME COURT
FILED
OCT 5 1880
JAMES H. McKENNEY, Clerk

SUPREME COURT OF THE UNITED STATES

THE JACKSONVILLE, PENSACOLA & MOBILE R. R. CO.

APPELLANT,

Atc.

J. FRED. SCHUTTEE ET AL.

RESPONDENTS.

BRIEF OF APPELLANT,

—BY—

JAMES BAKER,

Its Solicitor.

Supreme Court of the United States

THE FLORIDA CENTRAL RAILROAD COMPANY, Appellant,
Atc.
J. FRED. SCHUTTEE ET AL., Appellees.
No. 667.

THE JACKSONVILLE, PENSACOLA & MOBILE RAILROAD COMPANY, Appellant,
Atc.
J. FRED. SCHUTTEE ET AL., Appellees.
No. 668.

THE WESTERN NORTH CAROLINA RAILROAD COMPANY, Appellant,
Atc.
GEORGE F. DREW, GOVERNOR, ETC., THE JACKSONVILLE, PENSACOLA & MOBILE RAILROAD COMPANY ET AL., Appellees.
No. 669.

On the 22d day of May, 1879, the court below made an order consolidating the above named cases, and thereafter they became and were treated as one suit. [Record, folio 1,172, p. 544.]

THE BRIEF OF THE

JACKSONVILLE, PENSACOLA & MOBILE RAILROAD COMPANY,

IN SUPPORT OF ITS APPEAL FROM THE JUDGMENT AND DECREE AGAINST IT, IN FAVOR OF THE RESPONDENTS,

J. FRED. SCHUTTEE et al.

STATEMENT OF FACTS.

I.

A suit was instituted in the Circuit Court of the United States for the Northern District of Florida, on the 9th day of February, 1877, by the Western Division of the Western North Carolina Railroad Company, against George F. Drew, Governor, &c., &c., the Florida Central Railroad Company, the Jacksonville Pensacola and Mobile Railroad Company et al., to compel the cancellation of certain bonds, of the Florida Central Railroad Company, amounting to one million dollars, in the treasury of the State of Florida.

II.

On the 8th day of March, 1877, the Western Division of the Western North Carolina Railroad Company filed another bill in said court against George F. Drew, Governor, &c., &c., the Jacksonville Pensacola and Mobile Railroad Company et al. The object and purpose of this bill, is to establish a first lien to secure certain moneys claimed to be wrongfully appropriated by one George W. Swepson, in the purchase of the property of this appellant, prior to its organization, and prior to its becoming the owner of the same.

III.

1. On the 23d day of May, 1877, J. Fred Schuttee et al. filed their bill, against the Western Division of the Western North Carolina Railroad Company, the Florida Central Railroad Company and the Jacksonville Pensacola and Mobile Railroad Company et al. (record, folio 536; page 238), which is the real foundation of this suit, in which they state substantially, that in the year, 1870, the Jacksonville Pensacola and Mobile Railroad Company had become the owner of certain railroads, in the State of Florida, which extends from Lake City to Quincy, with a branch to Monticello, and from Tallahassee to St. Marks. Complainant's bill, folios 537 and 539; page 240.

2. That in the year 1870, this appellant obtained from the Governor of Florida four thousand (4,000) bonds, of one thousand dollars ($1,000) each, which were issued in accordance with the law incorporating said company, each obligating the State of Florida to pay one thousand dollars ($1,000) with eight per cent. interest. That this appellant delivered to the Governor of said State, in exchange for said bonds, three thousand (3,000) bonds, executed by it, and one thousand (1,000) bonds executed by the Florida Central Railroad Company, each of which were for the sum of one thousand dollars ($1,000), bearing eight per cent. interest, and were payable to the State of Florida. Record, folio 539; page 240.

3. That Milton S. Littlefield owned a large majority of the stock of the Florida Central Railroad Company, and that said Littlefield and others, who were managing the railroad of this appellant, after the issuing of the said Florida bonds, took possession of and operated the Florida Central Railroad, and treated it as a part of the line of railroad owned by this appellant. Record, folio 540; page 241.

4. That this appellant sold the bonds it obtained from the State of Florida, to a banker in the City of London, England, at about one hundred and thirty-eight pounds sterling per bond; that the purchaser afterwards resold said bonds in Amsterdam, Holland. Record, folio 541; page 241.

5. That the complainants are owners of a large number of said bonds, which are numbered from 1 to 3,200; that interest from the first day of January, 1873, is due and unpaid on said bonds. Record, folio 542; page 242.

6. That the bill, without directly charging the fact, assumes that the Florida Central Railroad Company became consolidated with the railroad of this appellant prior to the issuing of the bonds of the first named company.

7. That this appellant, through its agent in London, represented to the public, in England, Holland, Germany and France, that the said bonds were veritable and lawful obligations of the State of Florida, that the interest thereon would be punctually paid by said State, that the State by law held a lien on its whole line of railroad, from Jacksonville west, as security for said bonds, and that said road was owned by this appellant. Record, folio 541; page 242.

8. That the Supreme Court of the State of Florida, by its judgment, determined that the acts incorporporating this appellant, the issuance of said bonds by the Governor to it

the sale thereof, by this appellant, to the respondents and others, created a trust in favor of the bona fide holders of said bonds. In the prayer the respondents ask the court to decree that they are bona fide holders of the bonds of the State of Florida, and, as such, have a lien upon the railroad of this appellant, and that the Governor of Florida shall execute the power of sale invested in him by said act.

IV.

This appellant, on the 2d day of August, 1877, filed its plea in bar, supported by an answer, to the bill of the respondents, J. Fred. Schutte et al., and by its plea set up that the statutes under which said State bonds were issued were declared by the highest judicial court of the State of Florida to be unconstitutional and void; hence, no lawful contract or agreement was or could be made between this appellant and the State of Florida, and is a bar to so much of the respondent's bill as seeks to enforce a lien upon its property. Record, folio 691; page 337.

V.

In the answer of this appellant, it admitted that it received from the State of Florida three thousand bonds, in exchange for its bonds, but denied that it ever had in its possession one thousand bonds of the Florida Central Railroad Company, or had any right, title or interest in them. Record, folio 695; page 339.

2. That it ever was consolidated with the Florida Central Railroad Company, or that it ever owned a continuous line of railroad from Jacksonville to Quincy, or that it ever con-

veyed the railroad of the Florida Central Company, by deed of trust or otherwise, Record, folio 696; page 340.

3. It admitted that it sent three thousand bonds to England, and that they were sold, but denied they were sold for eighty-one cents. Record, folio 696; page 340.

VI.

There are many other allegations in the bill of J. Fred. Schuttee et al., and in the answer of this appellant, therein referred to, principally in reference to the numerous other parties to this suit, and not material to the points involved in this cause.

VII.

The respondents, J. Fred. Schuttee et al., on the 1st day of October, 1877, filed a general replication to the answer of this appellant denying the allegations therein. Record, folio 1039; page 512.

VIII.

On the 6th day of April, 1878, an order was entered in this cause adjudging the plea in bar of this appellant to be true, and dismissing respondent's bill as against this appellant. Record, folio 1067; page 513.

2. On the 11th day of June, 1878, without revoking the judgment, dismissing respondent's bill, and while said judgment was still in force, court ordered that "the plea in bar, filed on the part of the defendant the Jacksonville, Pensacola and Mobile Railroad Company, in this cause, having been set down for argument and called for hearing. It is ordered that the same be continued and reserved to the final

hearing of this cause, and that the defendants then have the same benefit as separately heard, argued and determined." Record, folio 1074; page 515.

IX.

The averments in the bill, that there was a consolidation between the Jacksonville Pensacola and Mobile Railroad Company and the Florida Central Railroad Company, or any contract or agreement in relation thereto, are denied by the answer.

X.

The averments in the bill admitted by the answer are: that this appellant exchanged with the Governor of the State of Florida, three thousand bonds of one thousand ($1,000) dollars each, and received therefor a like number of State bonds, which were sent to London, England, and sold.

2. It is not averred in the bill that the bonds of this appellant are the property of the respondent, or that they are in circulation, or ever were intended for circulation; on the contrary, it is avered in the answer, that the bonds are in the treasury of the State, and are made payable to the State of Florida.

XI.

On the 20th day of May, 1879, on motion of complainants, their bill was dismissed as to all the defendants therein, except the Florida Central Railroad Company, the Jacksonville Pensacola and Mobile Railroad Company and George F. Drew, Governor of the State of Florida, Walter Gwynn, treasurer of said State, Hugh A. Corley, commissioner of lands and emigration, and George T. Rainey, Attorney-General, which officers are trustees of the internal improvement funds and herein sued as such. Record, folio 1079; page 516.

XII.

On the 31st day of May, 1879, this cause came on for hearing, and the court rendered a judgment and decree in favor of the trustees of the Internal Improvement Fund for the sum of four hundred and sixty-three thousand one hundred and seventy-five dollars and thirty-seven cents, as a first lien on the railroad and property of this appellant, and also rendered a judgment and decree in favor of the respondents, J. Fred. Schuttee et al., for two millions seven hundred and fifty-one thousand dollars, principal, and one million six hundred and fifty-five thousand dollars and sixty cents, interest, as a second lien on all the railroad property and franchise of this appellant, and ordered the same to be sold.

XIII.

The questions involved in this appeal are exclusively between this appellant and J. Fred. Schuttee et al.; hence the bills and answers in the other cases are not further referred to herein.

XIV.

The legislature of the State of Florida, on the 24th day of June, 1869, passed an act, the general scope and purpose of which was to secure a line of railroad from Jacksonville, Florida, to Mobile, Alabama. Said act incorporated this appellannt, the Jacksonville, Pensacola and Mobile Railroad Company. This corporation shortly thereafter became the owner of the line of completed railroad from

Lake City to Quincy, with a branch from Tallahasse to St. Marks, and one from the main line to Monticello.

2. The number of miles of completed road thus acquired was one hundred and fifty-five. Then and now the Florida Central Railroad Company owned a railroad extending from Lake City to Jacksonville, a distance of sixty miles. Since its organization the Jacksonville, Pensacola and Mobile Railroad Company have extended its road westward from Quincy twenty-one miles towards Mobile.

XV.

The legislature of Florida on the 28th day of January, 1870, amended the ninth and eleventh section of said "act." The act of 1869, as amended by the act of 1870, is as follows:

Section 1. In order to secure the speedy completion equipping and the maintenance of a connection by railroad between Jacksonville, on the Atlantic coast, and Pensacola, on the Gulf coast, and Mobile, in Alabama, running through the State of Florida, the following named persons, viz.: Geo. W. Swepson, Milton S. Littlefield, J. P. Sanderson, J. L. Requa, William H. Hunt, their associates, successors and assigns, are hereby constituted a body politic and corporate, under the name of the Jacksonville, Pensacola and Mobile Railroad Company, and, as such, shall have and use a common seal, may sue and be sued, plead and be impleaded, may purchase and hold real and personal property, which may be necessary or useful for the purpose of the road, and sell and convey the same in fee, or for a less estate, or by way of mortgage or otherwise, and may make and enforce for the government of the corporation, such by-laws and regulations not contrary to the constitution and laws, as they may deem best. The said company is hereby vested with the like powers, franchises and privileges as were and are conferred by the act to incorporate the Florida, Atlantic and Gulf Central Railroad Company, and the act to amend an act entitled an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company. Act 1869.

Section 2. The said corporators, associates, successors and assigns shall have power to fix the capital stock of the company, the shares of which shall be one hundred ($100) dollars each, and shall designate the times and places of holding the meetings of the company. The first meeting shall be called within thirty days after this act goes in operation by notice signed by either of the following named corporators, viz.: George W. Swepson, Milton S. Littlefield, J. P. Sanderson. The said corporators, their associates, successors and assigns, shall prescribe the number of directors of this company and their term of service, and likewise the term of office, compensation and duties of the president and all other officers. A majority of the corporators shall be a quorum to do business. Act 1869.

Section 3. The directors, or a majority of them, shall have power to transact all business of the company, unless otherwise ordered by the stockholders, may declare dividends of profits, if any, and in general, make and enforce all such rules and regulations, consistent with the by-laws of the company, as they may deem fit. Act 1869.

Section 4. "The Jacksonville, Pensacola and Mobile Railroad Company shall have the exclusive right for twenty years to build a railroad with one or more tracks, from the terminus of the late Pensacola and Georgia Railroad, now the Tallahassee Railroad, at Quincy, Gadsden county, to the dividing line between the States of Florida and Alabama, in the direction of the city of Mobile, Alabama, running through the counties of Gadsden, Jackson, Holmes, Washington, Walton, Santa Rosa and Escambia, crossing the Pensacola and Louisville Railroad, with the privilege of continuing the same to Mobile, and of connecting with any railroad running to Mobile; *provided, however,* that in the construction of said railroad the line west of the Chattahoochee river shall not, in any instance be run, or the road built nearer than fifteen miles of the north line of the State of Florida." Act 1870.

Section 5. The said company shall have the right and privilege to construct said railroad for the transportation of passengers, produce, goods, wares and merchandise, and all other articles, whatsoever, through any land in the State of Florida; and the right of way is hereby granted for the same, two hundred feet in width, with the right to take stone, timber, earth and material from any land belonging to the State to be used in the construction, maintenance and repairs of said railroad. Act 1869.

Section 6. The said company is hereby authorized to contract for and receive conveyances of land, timber and other materials which may be required by the directors in the construction, operation, maintenance and repairs of said railroad; and when the owner and company cannot agree upon the price, or when the owner is an infant, non-resident, or *non compos mentis,* then it shall be lawful for the said company to apply to the sheriff of the county in which said lands or property are located, who shall summon a jury of seven disinterested freeholders, a majority of whom shall be authorized to assess the damages and return their reward or judgment to the first Circuit Court of the county in which the said land or other property may be located, which shall be entered by the clerk as the judgment of the court, and execution may issue thereon for the amount of said judgment and cost. Either party dissatisfied with the assessment may appeal to the next term of the Circuit Court on giving security for the prosecution of the appeal. Before proceeding to the discharge of the duties herein required, the jurors summoned as aforesaid shall take an oath or affirmation to be administered by the sheriff, that they will well and truly inquire in, and to the best of their judgment, assess the damages accruing to the owner or owners of said land or materials by means of the proposed construction; provided, that said work and the progress of construction of said road shall in nowise be delayed on account of the proceedings had or to be had as aforesaid. Act 1869.

Section 7. The property so assessed and paid for by said railroad company in conformity with the provision of this act, and all donations from any source for the same, shall forever afterwards belong to and become the property of said railroad company, its successors in fee simple. Subscriptions to the capital stock of said railroad company may be made in lands, labor and material upon such terms as may be agreed upon by the directors and the owner or owners thereof. Act 1869.

Section 8. The directors of said company shall have the right to demand and receive such prices and sums for fare and the transportation of freight, produce and merchandise as may be authorized and fixed by the by-laws of said company. Act 1869.

Section 2. "In order to aid the Jacksonville, Pensacola and

Mobile Railroad to complete, equip and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvements of the State, the Governor of the State is hereby directed to deliver to the president of the said company coupon bonds of the State to an amount equal to sixteen thousand dollars per mile for the whole line of road and length of railroad owned by or belonging to said Jacksonville, Pensacola and Mobile Railroad Company, in exchange for first mortgage bonds of said railroad company of the denomination of one thousand dollars, when the president thereby shall certify upon his oath that the road or parts of road for which he asks for an exchange of bonds is completed, and is in good running order. The bonds shall be of the denomination of one thousand dollars, signed by the Governor, countersigned by the treasurer, sealed with the great seal of the State; shall bear eight per cent. interest, payable semi-annually and shall be payable to bearer. They shall be dated on the first day of January, A. D., 1870, and shall be due thirty years thereafter; principal and interest shall be payable at such place in the City of New York as the Governor shall designate. The coupons for interest shall be payable to bearer, and shall be authenticated by the written or engraved signature of the treasurer; provided, however, that whenever the Jacksonville, Pensacola and Mobile Railroad Company shall or may determine to pay the interest in gold for or upon their bonds or the bonds designated in the tenth section of an act entitled "An act to perfect the public works of the State," approved June 24, 1869, upon giving notice to the Governor of such intention, then the State bonds aforesaid and the coupons for interest on said bonds shall be payable in gold, notice of which shall be given by the Governor in some paper published in the City of New York, and at the capital of this State, to be designated by the Governor." Act 1870.

Section 10. In exchange for the bonds of the State above described, the president of the company shall deliver to the Governor of the State coupon bonds of the company, bearing a like rate of interest, payable to the State of Florida, signed by the president, sealed with the corporate seal; coupons payable to the State of Florida, authenticated by the written or engraved signature of the president. The bonds shall be of such denomination, not less than one thousand dollars ($1,000), as the said company may choose, and principal and interest shall be payable at the same time and place as the aforesaid State bonds. Act 1869.

Section 3. "To secure the principal and interest of the said company's bonds, the State of Florida shall by this act have a statutory lien, which shall be valid to all intents and purposes as a first mortgage duly registered on the part of the road for which the State bonds were delivered, and on all the property of the company, real and personal appertaining to that part of the line which it may now have, or may hereafter acquire, together with all the rights, franchises, and powers thereto belonging, and in case of failure of the company to pay either principal or interest of its bonds or any part thereof for twelve months after the same shall become due, it shall be lawful for the Governor to enter upon and take possession of said property and franchises, and sell the same at public auction, after having first given ninety days notice by public advertisement in at least one newspaper published in each of the following places: The City of New York, in the State of New York; the City of Savannah, in the State of Georgia; and the City of Tallahassee, in the State of Florida, for lawful money of the United States, and for nothing else except that the State for its own protection may become the purchaser at said sale, and may pay on said purchase any evidence of indebtedness the State may hold against said roads, which purchase money or said evidence of indebtedness shall be paid on the day of sale into the treasury of the State, or within ten days thereafter; and all money arising from said sale and paid into the treasury of this State as heretofore prescribed, shall be promptly and exclusively applied to the payment and satisfaction of the bonds. Act 1870.

Section 13. The said Jacksonville, Pensacola and Mobile Railroad Company may, at any time before maturity of its bonds, discharge its debts to the State or any part thereof, by payment in national currency, or in bonds of the State; provided, that this shall not be construed to include indebtedness incurred in aid of the rebellion. Act 1869.

Section 14. It shall be lawful for the several companies owning the roads or parts of road from Quincy to Jacksonville, from Tallahassee to St. Marks, and the branch to Monticello, or either of said companies, by a vote of the owners of a majority of the stock in interest, and with the consent of the owners of a majority of the stock in interest of the Jacksonville, Pensacala and Mobile Railroad Company, to consolidate with the latter company so as to become one corporation, under its name, on such terms as may be agreed on, and said companies are authorized to settle the terms of consolidation by arbitration or otherwise. And with like consent of the owners of a majority of the stock of each company, without such consolidation, they are authorized to make such arrangements with reference to a common management and schedules as may be agreed on, and after consolidation the said Jacksonville, Pensacola and Mobile Railroad Company shall have the privilege to raise money by way of mortgage or assignment in trust of the railroad and property, franchise and effects acquired by such consolidation, so as to secure the lenders. The said Jacksonville, Pensacola and Mobile Railroad Company, as to the road or roads, or parts of roads thus acquired, may likewise issue coupon bonds or other evidence of debt with coupons or otherwise, bearing such rate of interest and payable at such time and place, and on such terms as the directors may determine, and to each are hereby granted the same privileges as are herein granted to the Jacksonville, Pensacola and Mobile Railroad Company. Act 1869.

Section 15. The consolidation of any of the companies with the Jacksonville, Pensacola and Mobile Railroad Company, under the provisions of this act, shall not operate to relieve the road or roads or parts of roads united by such consolidations with the Jacksonville, Pensacola and Mobile Railroad, from their existing liability to pay any debts or obligations of the company owning the same before consolidation, but the Jacksonville, Pensacola and Mobile Railroad Company shall not be responsible for any such debts or obligations. Act 1869.

Section 16. The Jacksonville, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company, and all companies organized under an act entitled an act to provide for and encourage a liberal system of internal improvements in the State, shall be bound to transport freight for the State at half the usual rates, except in time of war, when the charge for freights shall not exceed twenty-five per cent. over actual cost. In consideration of this liability and of the undertaking by the company to build the road herein contemplated, no railroad competing with this road for passengers or freight, which has its terminus west of Quincy, shall be hereafter built or authorized within this State without the consent of the owners of the majority of the stock in interest of this and all other railroad companies, any part of whose road is now completed or authorized to be completed, nor without such consent shall any railroad be authorized to cross or connect tracks, or continue such connections with said Jacksonville, Pensacola and Mobile Railroad; provided that it shall be the duty of the said Jacksonville, Pensacola and Mobile Railroad to connect tracks with any roads, which may be made from Apalachicola or St. Andrew's Bay to the main line of the road of said company; provided further, this shall not be so construed as to prevent the running of a branch from some point on said road to strike Choctawhatchie Bay between the mouth of Choctawhatchie River and Boggy Bayou. Act 1869.

Section 17. The Jacksonville, Pensacola and Mobile Railroad Company, the Florida Central Railroad Company and the Pensacola and Louisville Railroad Company shall have power to own and run steamships and other craft to and from any of the ports of Florida, and may enter or depart, with or without pilots, and likewise in any of the navigable waters within the jurisdiction of the State. Act 1869.

Section 18. That said Jacksonville, Pensacola and Mobile Railroad Company shall, in the construction of said railroad, have the right to build and construct all bridges necessary to cross any and all rivers, but in crossing navigable rivers, suitable draws shall be constructed to admit the passage of all steamboats and other water craft usually navigating such rivers, which draws shall always be kept in good order and ready to be opened whenever necessary. Act 1869.

Section 19. That the gauge of said railroad shall be uniformly five feet, and the iron rail to be used shall weigh not less than fifty-four pounds per lineal yard, and the said railroad shall in all respect be a first-class road. Act 1869.

Section 20. "That the said railroad shall be completed from Quincy to the Apalachicola River by the first day of January next, and the whole line within the State shall be completed within three years from the passage of this act," be so altered and amended as to read as follows: "That the said railroad shall be completed from Quincy to the Apalachicola River by the first day of July, A. D. 1870, and the whole line within this State shall be completed within five years from the passage of this act, otherwise all chartered rights vested in this act shall be forfeited to the State." Act 1870.

Section 21. That said Jacksonville, Pensacola and Mobile Railroad Company and all railroad companies organized, under the act of June 16, 1855, relating to internal improvement, shall provide first and second-class cars for the accommodation of passengers, for each of which fare shall be charged at proportionate rates, and passengers, without distinction, paying fare for first-class cars, shall be entitled to seats in said cars, and passengers paying fare for second-class cars shall be entitled to seats in second-class cars, and any conductor, superintendent, or agent of any railroad train of any company mentioned in this act, who shall refuse a seat in a first-class car to any person holding a first-class ticket, shall be subject to arrest on the warrant of any judge of any county through which said train may pass, and be liable for a fine of not less than $100 or more than $500. Act 1869.

Section 22. That the Jacksonville, Pensacola and Mobile Railroad Company, and all other corporations existing under the laws and by authority of this State, shall, by public advertisement in a newspaper printed at the seat of government, declare the place within the State at which their principal office of business shall be considered as located, and such place shall thereafter be taken to be the residence of such corporation, and all contracts made by authority of such corporation shall be considered as made in the place at which such principal office is located. Act 1869.

Section 23. The Governor shall appoint a competent engineer to have general supervision of the various roads provided for under this act, and whose duty it shall be to protect the interest of the State, and see that the work is carried on and conducted in all respects in compliance with law, and shall, from time to time, report to the Governor. The salary of such engineers shall be paid by the companies interested, and shall in no case be chargeable to the State. Act 1869.

Section 24. That the corporation of the Jacksonville, Pensacola and Mobile Railroad Company shall be and continue for the term of thirty-five years from the date of the passage and approval of this act. This act shall be deemed and held a public act. Act 1869. Section 4, act 1870.

"Section 4: That the Governor shall, for the purpose of further aiding said Jacksonville, Pensacola and Mobile Railroad Company in the speedy construction of its road, deliver to the president of said company coupon bonds of this State of the same character as those above described in this act, to the amount of sixteen thousand dollars per mile, upon receiving for and from the president of said company, first mortgage bonds of like amount on any part or portion of the road between Quincy and Jacksonville; *provided, however*, the State bonds under this section shall not be exchanged for first mortgage bonds for a greater length than one hundred miles of any part of railroad between Quincy and Jacksonville; *provided*, the said railroad company or companies shall not issue first mortgage bonds to a greater amount than sixteen thousand dollars per mile." Act 1870.

ASSIGNMENT OF ERRORS.

As, and for, an assignment of errors, this appellant says:

First. The court erred in rendering said judgment and decree.

Second. There is no sufficient cause of action stated, nor is there any equity, in respondents' bill.

Third. If respondents are entitled to recover at all, it is at law, for money had and received, and not in this action.

Fourth. The bonds of appellant in question were void for lack of power on the part of this appellant to issue the same.

Fifth. That said bonds are void, because there was no consideration for the same.

Sixth. The respondents are not parties to the bonds of this appellant, have no interest therein and no right to maintain a suit thereon.

Seventh. The bonds of this appellant in question, have never been in the hands, or under the control of the respondents; were made payable to the State of Florida alone to indemnify it, and for no other purpose. They are not negotiable. Have never been in circulation, were never intended for circulation, and are now in the possession of the treasurer of the State of Florida.

Eighth. The respondents being the holders of the State bonds only, had no lien on the property of this appellant for the payment of the same or any part thereof.

Ninth. The judgment and decree of the court is not in response to the prayer of respondent's bill.

Tenth. There is no proof that the respondents are bona fide holders of the State bonds.

Eleventh. The bonds of the State being void, no suit can be maintained based thereon.

Twelfth. There is no averment in respondent's bill, that they paid anything for the State bonds held by them, nor is there any evidence tending to prove that they did pay anything for the same, therefore the court erred in rendering a decree for the amount thereof.

Thirteenth. The statute of 1870 did not create any trust in respect to the bonds or property of this appellant.

Fourteenth. The respondent's bill was dismissed as to this appellant prior to the trial by the court below, therefore no suit was pending at the time of the trial.

POINTS.

Firstly. No decree should have been rendered against this appellant in favor of the respondent herein, for the reason there is no cause of action stated in respondent's bill against this appellant.

The relief must be agreeable to the case made by the bill. English vs. Foxall, 2 Peters, 612.

A court of equity cannot act upon a case which is not fairly made by the bill and answer. Walden vs. Bodly, 14 Peters, 164; Hobson vs. McArthur, 16 Peters, 195.

The court cannot decree to any plaintiff, whatever he may prove, more than he claims in his bill. Nothing further is in issue between the parties. Sims vs. Guthrie, 9 Cranch, 25; Watts vs. Waddle, 6 Peters, 402.

A party must recover in chancery according to the case made by his bill or not at all. Bailey vs. Ryder, 10 N. Y., p. 370; Cowenhoven vs. City of Brooklyn, 38 Barb., 9; Warner vs. Wittaker, 6 Mich., 136.

Secondly. The State bonds being unconstitutional and void, there was no consideration for the bonds of the company delivered to the State. As the act conferred no authority to issue its bonds, the appellant had no power to issue the bonds of the company in question; hence, the State could maintain no action thereon. They are payable to the State alone, are not negotiable, have in no manner been transferred to the respondent; hence, they cannot maintain a suit thereon.

Thirdly. The purchase of the State bonds by the respondents did not, in any manner, constitute a legal or equitable assignment or transfer of this appellant's bonds.

Fourthly. The holders of the State bonds are no party to the original transaction between this appellant and the State. If this appellant is liable at all in this suit, it is on its own bonds, and not on the bonds of the State, which are void for any purpose.

Jones on R. R. Securities, sec. 24, 390, 394; Stewart vs. James River & Kno. C. Co., 24; Gratt. (Va.) 294; 92 U. S. 299; Otis et al. vs. Cullum, Receiver, 92 U. S. 449; Chamberlaine, vs. St. Paul etc. R. R. Co., 92 U. S. 306; Thomas vs. City of Richmond, 12 Wallace, 349.

Fifthly. If this appellant became indebted to John Collinson for the money it obtained from him by the sale of the void State bonds, as money had and received, that indebtedness still exists, and the present decree in favor of the respondents will be no bar to his recovery. That indebtedness to Collinson was not transferred to these respondents by their purchase of the bonds in Holland.

Sixthly. The State bonds, of themselves, create no liability, and therefore their transfer created none. If any holder of the bonds obtained money, by transferring the same, he is liable to the party from whom he obtained the money for the amount thereof and interest thereon.

Seventhly. The bonds of the appellant are payable to the State of Florida, are not negotiable, and if they were, they have not been transferred to the respondents. Hence in this suit they cannot maintain an action thereon.

Jones on R. R. Securities, sec. 323; Evertson vs. National Bank of Newport, 66 N. Y. 14; Meyers vs. York & Cumberland R. R. Co., 43 Me., 232; Jackson vs. York & Cumberland R. R. Co., 48 Me., 147; Crosby vs. New London R. R.

Co., 26 Conn., 121; Cranch vs. Credit Fiancier of England, L. R. 8, 2, B., 374.

"Bonds and debentures which are not negotiable instruments are merely choses in action, not assignable at law, and purchasers, though buying them in good faith for value without notice, take them subject to the equities attached." Jones on R. R. Securities, sec. 201; Athenæum Life Assurance Society vs. Pooley, 3 De G., 294; Story on Con., sec. 427, pp. 526–7–8.

Eighthly. If this appellant's bonds had been transferred, not being negotiable, they are subject to all defenses that could be set up if the State had sued—such as the want of consideration.

Ninthly The obtaining money by the sale or delivery of void bonds leaves the transaction just as if no bonds had been sold or delivered. That is, the law raised by implication, an agreement to repay the money with interest.

Tenthly. The bonds in question were issued without consideration, and are, therefore, *nudum pactum* and void. They were made payable to the State of Florida alone, are not negotiable, were never intended for circulation, have never been put in circulation; are now in the possession of the treasurer of the State of Florida, put there for the sole purpose of indemnifying the said State, and if the complainants have any interest in said bonds, they hold said interest subject to all legal and equitable defense that could be set up against the party first receiving them.

Daniels on Negotiable Securities, sec. 1, p. 1; Same, sec.

1538, 468; City of Atchison vs. Butcher, 3 Kan., 104; Mercer County vs, Hacket, 1 Wall., 83; Dorsey vs. Packwood, 12 Howard, p. 138.

Bonds illegally issued cannot be enforced actively, either in law or equity. Jones on R. R. Securities, sec. 218, and cases cited; Cork & Youghal Ry. Co., *in re*, L. & R., 4 Ch., 748; Durham Co. & Building Soc., *in re*, L. R., 12 Ed., 521; Grand Junction Ry. Co. vs. Bickford, 33 Grant Ch., Ontario, 302.

We hold that there can be no *bona fide* holding where the statute did not in law authorize the issue of the bonds. Township East Oakland vs. Skinner, 94 U. S., 258.

"If the bonds contained no negotiable words, it would not be deemed negotiable." Daniels on Negotiable Instruments, 432.

"Holders of State bonds, a stranger to the company, as they were not party to the contract." Jones R. R. Securities, sec. 24; Stewart vs. James River & Kno. C. Co., 24 Gratt. (Va.), 294. 92 U. S., 299; Story on Contract, sec. 427, pp. 526-7.

"The plaintiffs in error got exactly what they intended to buy, and did buy. It took no guarantee." Otis et al. vs. Cullum, Receiver, 92 U. S., 449; Chamberlain vs. St. Paul, &c, R. R. Co., et al., 92 U. S. 306.

Eleventhly. The bonds of the State having been declared unconstitutional and void, have no legal existence, therefore there are no such persons as bondholders of the said State bonds; but, even if the respondents herein are to be regarded as the holders of the bonds of the State of Florida, they have no interest, as such, in the bonds of this appellant, either as party or privy thereto, and cannot maintain a suit thereon.

"When the parts of a statute are so connected and dependant as to conditions, considerations or compensations for each other as to warrant the belief that they were intended as a whole, and if all cannot be carried into effect, the legislature would not have passed the residue; the whole are void. 2 Gray, 84; 5 Gray, 97; 13 Wisconsin, 398; 14 Michigan, 276; Township East Oakland vs. Skinner, 94 U. S., 258; Town South Ottawa vs. Perkins, 94 U. S., 269.

"When a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void." Cooley on Const. Limitation, sec. 188. Cooley on Const. Limitation, sec. 178.

Twelfthly. The respondents are conclusively presumed to know the constitution and laws of Florida, and to understand what powers were and what were not conferred upon this appellant, and to know that the constitution prohibited the issuing of such State bonds.

Silliman vs. F. O. & C. R. R. Co., 27 Gratt. Va., 119-130, 7 Wall., 69; Cooley Con. Limitation, 195; Swift vs. Williamsburg, 24 Barb., 427, 32 Cal., 241.

Bondholders charged with notice of the law. Jones on R. R. Securities, sec. 25 and 299; Conn. Mut. L. I. Co. vs. C. C. & C. R. R. Co., 41 Barb., 9; Miller vs. R. & W. R. R. Co., 36 Vt., 452; Cooley on Const. Limitations, sec. 178 and 187; Story vs. David, 5th Ind., 348; Asturm vs. Hammond, 3 McLean, 107.

"Every man is chargeable with notice of that which the law requires him to know." McClure vs. Township of Oxford, 94 U. S., 432.

Thirteenthly. If this appellant is liable to any body, on account of the sale of the bonds of the State of Florida, which were exchanged for its bonds, such liability can only be for the amount of money obtained for said bonds, and that only to the person who first purchased the same.

Jones on R. R. Securities, sec. 218.

Fourteenthly. This court is not bound in this case by the decision of the Supreme Court of Florida, for the following reasons: 1. The statute which it attempts to construe is plain, explicit and unambiguous. 2. The statute purports to create a contract, to which the State itself is a party. 3. A contract created by a statute must be interpreted by this court, as a contract and not as a statute, and the decision of the State court in respect thereto are not conclusive upon this court. 4. If a State court puts a construction on an ambiguous statute of the State, so as to overrule all established principles of general or commercial law, such decision is not obligatory on this court.

"On questions of mercantile or commercial law or usages, that are not peculiar to any place we do not feel bound to yield our own judgment." Mercer County vs. Hacket, 1 Wall, 96.

"When the State is a party to a contract created by a statute, the decision of the courts of that State in respect thereto are not conclusive upon this court." Jefferson Branch Bank vs. Skelly, 1 Black, 436.

"This rule does not apply to questions of general commercial law, but is confined to State laws strictly local." Swift vs. Tyson, 16 Peters, 18 and 19.

"The decision of the highest court of the State will not be respected by this court when the decisions are not satisfactory to the minds of the judges, and when the matter in question is bonds issued in negotiable form." Township Pine Grove vs. Olcott, 19 Wallace, 666.

"This court will follow, as of obligation, the decisions of the State court only on local questions peculiar to themselves or on questions respecting the constructions of their own constitution and laws." Olcott vs. The Supervisor, 16 Wallace, 678.

The decision does not present a clear case of statutory construction. Town Venice vs. Murdeck, 92 U. S., p. 501; Starring vs. Town Genoa, 23 N. Y., 449; Gould vs. The Town of Sterling, 23 N. Y., 457.

This court will not "follow any adjudication to such an extent as to make a sacrifice of truth, justice and law." Gelpcke vs. City of Dubuke, 1 Wallace, 206.

Fifteenthly. The statute of 1870 did not create a trust in respect to the bonds and property of this appellant.

Sixteenthly. The respondents' bill was dismissed as to this appellant, prior to the trial by the court below; therefore, no suit was pending at the time of the trial.

Clearwater vs. Meredeth, 1 Wall, p. 43.

ARGUMENT.

I.

The bill of the respondents in whose favor the decree in this case was rendered, must be considered the foundation of this action; no relief will be granted in pursuance thereof, not warranted by the facts therein stated and the prayer thereof.

II.

It is not averred in the respondent's bill that this appellant had power to issue the bonds in question under any circumstance, nor is it alleged that the legislature of the State of Florida, ever conferred such power.

III.

The acts of the legislature above quoted authorized the Governor of Florida to exchange the bonds of the State, for the bonds of this appellant, under the circumstances, in the manner, and for the amount, therein provided.

The bonds which the State was authorized to receive were to be made payable to the State of Florida. They were to be of the denomination of one thousand dollars, and to bear seven per cent. interest, payable semi-an-annually, to be dated on the first day of July, 1869, due thirty years thereafter, and were to be secured by a statutory mortgage "on the part of the road, for which the State bonds were delivered, and on all the property of the company, real and personal, appertaining to that part of the line which it may now have, or may hereafter acquire, together with all the rights, franchises and powers thereto belonging."

IV.

It is not averred in the bill that this appellant ever received any consideration for said bonds, except the State bonds, and the proof clearly shows that it did not receive any; they are, therefore, as between it and the State—the payee therein—void, for the want of consideration.

The State bonds given in consideration therefor having been declared by the highest judicial tribunal in the State unconstitutional and void, did not and could not constitute any consideration therefor.

They are payable to the State alone, without words of negotiability, were never intended for circulation, never have been in circulation, and are now in the treasury of the State, the original party thereto, and are subject to such legal and equitable defences as this appellant may have.

A party to whom non-negotiable paper was given has no power, by an endorsement or assignment thereof, to change its character so as to make it negotiable; and especially is this true if there is a stipulation that it shall not be negotiable. In this case the spirit and purpose of the act requires that the bonds, to be delivered to the State in exchange for its bonds, shall be payable to the State alone, and remain in the treasury of the State. They were placed in the State treasury, and still remain there. The payee has never transfeared, or attempted to transfer, the same by assignment or otherwise. Can the State, by issuing bonds payable to bearer, change the character of the bonds which it received, and which were not negotiable—so as to make them negotiable?

If, then, the respondents have no title to or interest in the bonds of this appellant, and have no control over them, how can they claim a lien for their payment? A lien does not create a debt. It is a mere incident to an existing debt. There being no indebtedness from this appellant to the respondents, there can be no lien in their favor whether a lien exists for the payment of the bonds or not. If there is a lien, it must be in favor of the party who has a right to enforce the collection of the bonds, and not in favor of the party who has no such right.

V.

The bonds of the State, having been declared unconstitutional and void, have no legal existence; therefore there are no such persons as holders of the said State bonds.

A statute may be unconstitutional in part and constitutional as to the rest, but this is never true, when it creates an obligation upon one party which is void by the constitution, in consideration of an obligation upon another party; in all such cases, if it is void as to one, it is void as to the other.

In this case the only consideration and inducement for the delivery of railroad bonds to the State, were the State bonds. They being void, the railroad bonds were void. It is nonsense to speak of the railroad bonds being a binding obligation, when it is conceded that the State bonds, for which they were given, are void.

Even if the respondents herein are to be regarded as the holders of the bonds of the State of Florida, they have no interest as such, in the bonds of this appellant, either as party or privy thereto, and cannot maintain a suit thereon. The bonds which were issued by the State, and payable to bearer, this appellant was no party to; was not the payee of any of them; never endorsed or guaranteed any of them; never received any money from the respondents on account thereof; and there never was any agreement or understanding that it should receive any from them, and is therefore a totals tranger to said bondholders, and especially is this true, as the bonds of this appellant are non-negotiable.

Its obligations, being non-negotiable, could have misled no one, and has reserved to it the right to set up this defense against anybody. There can be no innocent holder of State bonds as to it.

The duty of ascertaining the powers ot the legislature of Florida, under the constitution of that State, and the character of the obligations issued by the State, devolved upon every body who dealt in its bonds, and they are conclusively presumed to know the constitution and laws of that State.

This appellant made all necessary provisions, in its bonds, to protect itself, while the holders of the State bonds did not take the necessary precaution to protect themselves. If they relied on the bonds of this appellant, as additional security, they should have examined them; hence if there is any neglect, it was the result of their own acts and not of this appellant.

They are presumed to have known that the constitution of Florida prohibited the issuance of the bonds, and therefore, the transaction, of which the bonds constituted a chief part, was unconstitutional how then can they claim to hold this appellant liable in this action?

Under and by virtue of section three of the act of 1870, it is provided that "all moneys arising from said sale and paid into the treasury of this State, as hereinbefore prescribed, shall be promptly and exclusively applied to the payment and satisfaction of the bonds issued by the State of Florida *under this act;* and in case the holders of said bonds do not present them for redemption within ninety days, after said sale, the treasurer shall invest the same or any part thereof, which may be remaining in his hands in the securities of the United States to be held by the State of Florida as trustee for the bondholders."

This section has reference only to the sale of the property of this appellant, and pledges the State to hold in trust the proceeds of such sale, and does not create a trust or lien upon the property of this appellant.

It is preposterous to claim that the trust therein created has reference to the property of the corporation covered by the mortgage. It is most clearly confined to the proceeds of the sale of the property under the mortgage after default and only to a part of the proceeds; that is, that part which has not been called for by the creditors of the State within ninety days after said sale, and then only after the same has been invested in the securities of the United States. The trust is explicitly limited to such securities, after the investment has been made, and not before.

If this appellant is liable to anybody on account of the sale of the bonds of the State of Florida, which were exchanged for its bonds, such liability can *only* be for the amount of money obtained for said bonds, and *only* to the person who first purchased the same.

If the bonds of this appellant, and the circumstances connected with their issue, created any liabity on its part, such liability could not exceed the amount of money received, and exists only in favor of the party from whom it received the money. Such liability does not and could not arise out of the

State bonds, to which this appellant is no party, or out of anything else the State did or could have done; it could only come from its own bonds and the sale thereof; they never were sold, and certainly the respondents did not purchase and have no interest in any of them.

VI.

The Supreme Court of Florida, in the case of Holland vs. State of Florida et al., 15th Florida, page 455, and State of Florida et al. vs. the Florida Central Railroad Company et al., and trustees I. I. Fund vs. Jacksonville, Pensacola and Mobile Railroad Company et al., 16th Florida, page 708, assume to construe a statute. It will be seen, by reference to the act in question, that this is a mere pretence. The provisions of the act, which that court attempts to construe, is as definite, certain and unambiguous, as it could be written. The language is this: "And all moneys arising from said sale and paid into the treasury of this State, as hereinbefore prescribed, shall be promptly and exclusively applied to the payment and satisfaction of the bonds issued by the State of Florida, under this act. and in case the holders of said bonds do not present them for redemption, within ninety days, the treasurer shall invest the same, or any part thereof, which may be remaining in his hands, in the securities of the United States, to be held by the State of Florida, as trustee for the bondholders."

This is simply and plainly a pledge made by the State to its creditors, which does not, in any manner, effect this appellant.

The trust thus created is clearly confined to the money arising from the sale of the property, after the same has been paid into the State Treasury. It has first to become the money of the State, after it has collected the same from its debtors. It certainly cannot, by any kind of twisting or distortion of language, be asserted that the mortgage to the State was transferred to the holders of the State bonds, or that they acquired any interest in the mortgage or the property on which it rested.

The plain and explicit language of this provision of the statute is in harmony with all the other provision of the acts, while the perversion, made by the Florida court, nullifies several of its essential provisions.

In the section quoted from, it is provided, "That the State, for its own protection, may become the purchaser at said sale, and may pay on said purchase any evidence of indebtedness the State may hold against said road." Under this provision the State may pay the purchase money in the non-negotiable bonds of the company, now held by the treasurer, or in any other indebtedness of the company it might thereafter acquire.

The thirteenth section of the act of 1879, is as follows: "The said Jacksonville Pensacola and Mobile Railroad Company may, at any time before maturity of its bonds, discharge its debt to the State, or any part thereof, by payment in national currency, or in bonds of the State; *provided*, that this shall not be construed to include indebtedness incurred in the aid of the rebellion." Here is direct authority to pay the State in its own bonds, which are very cheap. It may be even in these unconstitutional bonds. Can it be said that after the company has paid its liabilities to the State, in State bonds, it and its property is still liable to the holders of these State bonds? The Florida Court admits that if the State bonds were legal and binding on the State, as they were intended to be, the holders of them would have no claim whatever against this appellant or its property. Having declared them to be unconstitutional and void, it attempts to make a contract between the holders of the State bonds and this appellant, and to transfer the lien or mortgage created in favor of the State, and for its securities, alone, to said bondholders.

Who, but a Florida Court, would repudiate the solemn pledge of the public faith of a State, of which it constited one of the departments of government, and at the same time enforce the obligation of a corporation, given in consideration therefor. It cannot be possible that this court is bound by a mere purvertion of a plain act of the legislature of a State, because the highest court of that State sees proper to call such purvertion a construction of such act. The expressed motive of the Florida Court, for this perversion, is its desire to hold this appellant to the obligations of common honesty.

In this respect, that court, as well as the court from which this appeal was taken, have mistaken the facts. This appellant never received a cent of money from the respondent herein, or ever had any transaction with them. It is not averred in the bill, nor is there any proof, that they ever paid anything to any person for the State bonds held by them. The truth is that they became possessed of the bonds at a mere nominal figure, after the State had repudiated them.

This appellant sold the State bonds, to which it is not a party, they being payable to bearer alone, in London, to one John Collinson, and never had anything to do with them afterwards.

These bonds, of themselves, certainly do not create a liability, on the part of the company, in favor of any person. It was not a party to them as payee or otherwise, it did not guarantee or indorse them. Its liabilities, if any exist, are on its own bonds payable to the State, and they are without consideration, and hence, void.

The only money this appellant ever received, for or on account of the State bonds, was from said Collinson. It may be liable to him for the amount thereof as money had and received. This it is ready and willing to pay to him, and would have done so long since, if the State, after repudiating its bonds, had not have seized its road and other property and deprived it of its use.

If respondents have any claim, on account of bonds held by them, it must be against the parties from whom they obtained them.

There are a large number of stockholders in, as well as unsecured creditors of, these corporations, whose rights are to be considered here, and the property of these corporations should be applied to their use, and not be sequestered in favor of respondents, who are strangers to the corporations, never gave them credit or trusted them, but who relied on the State alone.

If these respondents recover in this case it will be no bar to the recovery by Collinson, nor will it protect him from a recovery by those to whom he sold the bonds.

If the Florida court was as anxious to hold parties to the principles of moral honesty, as it professed to be, it should have required the State to redeem its solemn pledges of public faith. By so doing it would have secured the construction of the contemplated road, saved hundreds of its citizens from bankruptcy, and given to the holders of its bonds full protection. In fact, the ten years of litigation through which these roads have passed, the disaster to these bondholders, to the creditors of this appellant and to its stockholders, all resulted from the shameful act of the State in disregarding its solemn obligations.

JAMES BAKER,
Solicitor for Appellant.

OFFICE SUPREME COURT U.S.
FILED
OCT 9 1880
JAMES H. McKENNEY, Clerk.

IN

United States Supreme Court.

Florida Railroad Cases,

Nos. 667, 668 and 669.

BRIEF.

JAMES M. BAKER,
Solicitor, etc.

B665

Times Printing House, 725 Chestnut Street,
Legal Emporium of Philadelphia.

IN UNITED STATES SUPREME COURT.

The Florida Central Railroad Company *Appellant*,
vs.
J. Fred Schutle, *et. al.*
No. 667.

The Jacksonville, Pensacola and Mobile Railroad Company, *Appellant*,
vs.
J. Fred Schutle, *et. al.*
No. 668.

The Western, North Carolina Railroad Company, *Appellant*,
vs.
George F. Drew, Governor, The Jacksonville, Pensacola and Mobile Railroad Company, *et. al.*
No. 669.

STATEMENT OF THE CASE NO. 667.

The above stated cases were heard in the Circuit Court for the Northern District of Florida. The appellant, the Florida Central Railroad Company, was defendant in the cases wherein the Western North Carolina Railroad Company was complainant, and in the case where J. Fred Schutle, *et. al.* were complainants, and filed answers and cross bills in both cases.

The questions involved in the case of the Western North Carolina Railroad Company, were the claim of the complainant to hold and control certain stock in the Florida Central Company purchased by M. S. Littlefied; and also the right of the Governor of the State of Florida to seize and sell said railroad on behalf of, or as a trustee for, the holders of certain bonds of the State of Florida, alleged to have been exchanged for the bonds of said company, also the question of the rights of said bondholders raised by the cross bill filed in said cause, to recover against the Florida Central Company.

The questions involved in the case, wherein J. Fred Schutle, *et. al.*, were complainants, were the liability of the appellant company upon bonds alleged to have been issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company; whether any such bonds had actually been issued and delivered for that purpose, and exchanged for the bonds of the State of Florida, whether any of said State bonds, claimed to have been so exchanged, were ever put in circulation and sold by said company, and whether such bonds, if any, constituted a statutory lien upon the company's railroad.

At the final hearing the said causes were consolidated, by order of court, and heard together.

The decree rendered by the court was adverse to the Florida Central Company, wherein among other things it was decreed as follows: "That the complainants have a first lien upon the railroad running from Lake City to Jacksonville, in said State, and all property rights and franchises thereto appertaining, to the amount of all said bonds of the said State of Florida, exchanged for the bonds of the said Florida Central Railroad Company, numbered 3001, and upwards, held and owned by them the said complainants, and all interest now matured and to mature thereon. The amount of said last numbered bonds held and owned by complainants is one hundred and ninety-seven thousand dollars, and the amount of interest, now matured thereon, is one-hundred and eighteen thousand five hundred and fifty dollars and twenty cents."

Said decree further ordered that the Florida Central Railroad be sold by the special masters, therein appointed by the court, at public sale after ninety days notice of the time and place of such sale.

The appellant, the Florida Central Railroad Company, feeling agrieved by said decree, so far as it effects its interests, alleges the same to be erroneous.

Because said decree gives complainants a first lien upon the Florida Central Railroad for bonds that were executed and exchanged without authority of law.

Because the testimony does not show that said bonds were executed and delivered by the Florida Central Company for the purpose of aiding the Jacksonville, Pensacola and Mobile Company, or that any such contract was ever made.

Because the State bonds mentioned in said decree were decided to be unconstitutional and void by the Supreme Court of the State of Florida, and was no consideration for the company bonds.

Because the testimony shows that before any of said bonds, numbered above 3,000, went into the possession of the alleged holders, they had notice that they were illegally issued.

Because the evidence shows that none of said State bonds, numbered above 3,000, were sold by any person or agent authorized to sell the same, and the alleged holders have failed to account for their possession.

Because said decree gives a first lien on the railroad for the full amount of all said void bonds claimed to be in possession of the complainants, whereas the decree—if the complainants were entitled to any—should have been rendered against the Jacksonville, Pensacola and Mobile Railroad Company, for whatever equitable claim such holders might have for the purchase money they may have paid for the void State bonds, which would not constitute a *statutory lien* on the railroad.

Because the court did not give the Florida Central Company the relief to which it was entitled under the Cross Bill.

THE ARGUMENT.

Bonds Issued and Exchanged Without Authority.

The bonds executed by the Florida Central Railroad Company, and in possession of the State of Florida, and upon which the decree against said company, in this case, was based, were not issued by authority of law.

It is claimed that such statutory authority was given by the Act of the Legislature of Florida, entitled An Act to Perfect the Public Works of the State, approved June 24, 1869, and amended January 28, 1870. The act was passed for the benefit of the Jacksonville, Pensacola and Mobile Railroad Company, to aid in the building of said road from Quincy to Mobile.

The Ninth Section of the act, as amended by the Second Section of the Act of 1870, provides: "In order to aid the Jacksonville, Pensacola and Mobile Railroad Company to complete, equip and maintain its road, and to aid in the perfecting one of the public works embraced in the internal improvements of the State, the Governor of the State is hereby directed to deliver to the President of the said company coupon bonds of the State to an amount equal to sixteen thousand dollars per mile for the whole line of road and length of railroad owned by or belonging to said Jacksonville, Pensacola and Mobile Railroad Company, in exchange for first mortgage bonds of said railroad company, of the denomination of one thousand dollars, when the President thereof shall certify, upon his oath, that the road or parts of the road for which he asks for an exchange of bonds is completed and in good running order." (Laws of Florida, A. D. 1870, Chap. 1,731.)

The Tenth Section of the Act provides: "In exchange for the bonds of the State above described, the President of the Company shall deliver to the Governor of the State coupon bonds of the Company, bearing a like rate of interest, payable to the State of Florida, signed by the President, sealed with the corporate seal, coupons payable to State of Florida, authenticated by the written or engraved signature of the President. The bonds shall be of such denominations, not less than one thousand dollars, as the said Company may choose, and principal and interest shall be payable at the same time and place as the aforesaid State bonds." (*Laws of Florida A. D.* 1869, *chap.* 1,716.)

The Eleventh Section of the act, as amended by the Third Section of the Act of 1870, provides as follows: "To secure the principal and interest of the said company bonds, the state of Florida, shall, by this act, have a statutory lien, which shall be valid to all intents and purposes as a first mortgage duly registered, on the part of the road for which the State bonds were delivered, and on all the property of the company, real and personal, appertaining to that part of the line which it may now have or may hereafter acquire, together with all the rights, franchises and powers thereto belonging, and in case of failure of the company to pay either principal or interest of its bonds, or any part thereof, for twelve months after same shall become due, it shall be lawful for the Governor to enter upon and take possession of said property and franchises, and sell the same at public auction, after having first given ninety days' notice by public advertisement in at least one newspaper published in each of the following places: the city of New York in the state of New York, the city of Savannah in the state of Georgia, and the city of Tallahassee in the state of Florida, for lawful money of the United States, and for nothing else, except that the State, for its own protection, may become the purchaser at said sale, and may pay on said purchase any evidences of indebtedness the State may hold against said roads, which purchase money, or said evidence of indebtedness, shall be paid on the day of sale into the Treasury of this State, or within ten days thereafter; and all moneys arising from said sale and paid into the Treasury of this State, as heretofore proscribed, shall be promptly and exclusively applied to the payment and satisfaction of the bonds issued by the state of Florida under this act, and in case the holders of said bonds do not present them for redemption within ninety days after said sale, the Treasurer shall invest the same, or any part thereof which may be remaining in his hands, in the securities of the United States, to be held by the state of Florida, as trustee for the bondholders, until said bondholders shall demand the same, upon which demand the Treasurer shall immediately turn over and pay said securities to the bondholders." (*Laws of Florida*, *A. D.* 1870, *chap.* 1,731.)

So far the act applies exclusively to the Jacksonville, Pensacola and Company, and it is not claimed that the privileges and powers granted extend to any other company.

At the time said acts were passed and approved, no part of the railroad between Quincy and Jacksonville was owned by the Jacksonville, Pensacola and Mobile Company. The line of road between Quincy and Lake City, and the extensions to Monticello and St. Marks, belonged to the Tallahassee Railroad Company, and the line between Lake City and Jacksonville to the Florida Central.

It is claimed that the powers granted to the Jackson-Pensacola and Mobile Company, by the sections of the act above quoted, were made applicable, by the Fourth Section of the amended act, to the Tallahassee and the Florida Central Companies. Section 4. "That the Governor shall, for the purpose of further aiding said Jacksonville, Pensacola and Mobile Railroad Company in the speedy construction of its road, deliver to the President of said company, coupon bonds of this State of the same character as the above described in this act, to the amount of sixteen thousand dollars per mile; upon receiving for and from the President of said company first mortgage bonds of like amount on any part or portion of the road between Quincy and Jacksonville; *provided however*, The state bonds under this section shall not be exchanged for first mortgage bonds for a greater length than one hundred miles of any part of railroad between Quincy and Jacksonville. *Provided*, the said railroad company or companies shall not issue first mortgage bonds to a greater amount than sixteen thousand dollars per mile." (*Laws of Florida*, *A. D.* 1870, *chap.* 1, 731.)

It appears from the Record, (pp. 1,329-30,) that the Tallahassee Railroad Company was consolidated with the Jacksonville Pensacola and Mobile Company on the 25th day of May, 1870, under authority granted by the Fourteenth Section of the said act of 1869.

The proviso of the said Fourth Section limited the power thus granted. It provides that "The State bonds under this Section shall not be exchanged for a greater length than *one hundred miles of any part or portion* of the road between Quincy and Jacksonville." This seems to be a plain limitation of power, and yet, by the ingenuity of lawyers, it has been construed to be no limitation. That "by necessary implication," the Statute did not limit the issue to a part or portion of the line, (not to exceed one hundred miles), but conferred the power to issue for the whole line.

The Florida Central is not mentioned in said section as owning any part or portion of the line between Quincy and Jacksonville, nor is it named in any part of the Act, as having authority to exchange its bonds for State bonds, and there is nothing to show that this limitation in the proviso was intended, to be applied to or include the said Company.

Mr. Justice Bradley who rendered the decree in this case, in his able opinion, did not give his own construction to those sections, nor examine into the powers granted to the Florida Central Company under said act, but accepted the construction given by the Supreme Court of the State of Florida, in the case of the State of Florida *vs.* The Florida Central Railroad Company, *et al.*, in *XV. Fla. Reports*, pp. 704–5, and gave that construction his assent. Doubtless, on account of the great respect which the United States Courts have for the decisions of the State Courts in the construction of State Statutes, and from the fact that he was allowed so little time to examine this case, with its enormous record, therefore, we, with greater confidence, ask this court to review that opinion, which was a mere *obiter dictum*, and ought not to be considered a rule of decision in this court. No decree was rendered against the

Florida Central Railroad Company upon that opinion. The bill filed against it was dismissed without prejudice.

There was no decision in the case upon the constitutionality of the act, and no rule of property prescribed. The opinion was merely a voluntary construction of a statutory contrast, involving general principles of law applicable to the construction of statutes. The opinion was based upon facts before that court, which appear to be materially different from the facts presented in this record. That case having been dismissed without prejudice to the interests of the complainants, ought not to be used to prejudice the rights of the defendant.

In the case of *Gelpecke* vs. *The City of Dubuque*, 1 Wal., 206, this court held that "it is a settled rule of this court in such cases to follow the decisions of the State courts, but there have been heretofore and doubtless there will be hereafter many exceptional cases. We will never immolate truth, justice and law, because a State tribunal has erected the altar and decreed the sacrifice."

Mr. Justice Wescott, who delivered the opinion in the Supreme Court of Florida, in the case above stated, says: "It is plain and clear *from the letter* of this act, as amended, that unless the exchange provided for under this section is an exchange of bonds *on a line of road other than that owned by the Jacksonville, Pensacola and Mobile Company*, that it is mere surplusage, unless, unnecessary and of no effect.

The Ninth Section of the Act, as amended, directed the Governor to exchange bonds with the President of the Jacksonville, Pensacola and Mobile Company *for the whole line of road and length of railroad owned by or belonging to the Jacksonville, Pensacola and Mobile Railroad Company.* Now the exchange thus authorized with the Jacksonville, Pensacola and Mobile Company embraced, as is shown by the pleadings, the line of road extending from Quincy to Lake City; and the other part of the road between Quincy and Jacksonville, to wit, from Lake City to Jacksonville was all of this line of road that was left upon which an exchange could be had. This was all owned by the Florida Central

Railroad Company, and hence the section was of no effect, unless it applied to this company. This construction not only makes the section of no effect, but such construction is inconsistent with a proper view of the other part of the section itself. The first proviso, limiting the amount of bonds to be issued under *this section*, shows that it was to be an additional issue to that authorized by the Ninth Section; and the second proviso, using the words 'company or companies' in the connection in which they occur, construed with reference to the fact that the Jacksonville, Pensacola and Mobile Company had been given, under another section, full authority to exchange for its whole line of road, shows clearly that some company, other than it, was granted authority under this section. This being so, the only company to which said section could apply was the Florida Central Railroad Company. It is not necessary that the statute should use in express terms the name of the Florida Central Railroad Company in conferring this power to issue first Mortgage bonds. It is enough, if, by necessary implication, it has the power." *XV Fla. R.*, pp. 704–5.

The able judge who delivered this opinion, notwithstanding his usual care in preparing his opinions, seems to have been misled as to the actual facts and circumstances existing at the time the act which he was construing was passed, and his opinion in the case before him, "as shown by the pleadings" therein, may have been correct, but the pleadings and the testimony in *this* case, present a different state of facts.

It is shown by the testimony in this case, that, at the time this act and the amendments were passed, the railroad between Quincy and Lake City was not the property of the Jacksonville, Pensacola and Mobile Company, as assumed in said opinion, and could not have been so contemplated by the Legislature. The statute must be construed according to its spirit and intent, viewed in the light of the facts known to exist at the time, and not in the light of subsequent events.

The Tallahassee Railroad Company, then owning the road between Quincy and Lake City, was not consolidated with the Jacksonville, Pensacola and Mobile Company until May 25, 1870, (*Record*, p. 1,330), four months after the amended act was passed, which clearly shows that there *was* a line of railroad, at that time, existing in legislative contemplation, other than the one owned by the Jacksonville, Pensacola and Mobile Company and the Florida Central Company, to which the fourth section of the act could apply, and did apply, and to which reference was made in the second proviso in the use of the words "company or companies."

Whatever power may have been granted to the Jacksonville, Pensacola and Mobile Company, under the Ninth Section, or amendments thereto, to issue bonds "for the whole line of road and length of railroad owned by or belonging to the Jacksonville, Pensacola and Mobile Company," could not change the clear and express language of the Fourth Section, which authorized the "roads between Quincy and Jacksonville" to issue bonds to the extent of one hundred miles "for the purpose of *further* aiding the Jacksonville, Pensacola and Mobile Railroad Company." This was an aid given outside of and in addition to what was authorized in Section Ninth, and from a line of road not belonging to the Jacksonville, Pensacola and Mobile Company. The section specifically described the line of road from which such aid was to be given, and by the use of the word "further," shows conclusively that the Legislature understood that the road between Quincy and Jacksonville was not owned by the Jacksonville, Pensacola and Mobile Company. It appears, from an examination of the said opinion, that the whole reasoning of the learned Judge was based upon the mistake as to the ownership of that part of the railroad line between Quincy and Lake City, as doubtless "appeared from the pleadings" in the case before him. It is in this way he reaches the conclusion that "the only company to which the Fourth Section could apply, was the Florida Central," and "although no express authority was given to said Company to issue first mortgage bonds," that "by necessary implication it has that power." A most extraordinary power. The power to issue bonds upon its road for a greater amount than the value of its property, and in aid of a company in which it owned no stock, and in which it had no direct interest.

In the same opinion, (p. 707,) Judge Westcott says: "The section authorizing the Governor to enter upon, take possession of and sell the property to which the lien attaches, provides that the State, at such sale, 'for its own protection,' may become the purchaser at such sale, and may pay on said purchase any evidences of indebtedness the State may hold against said *roads*. If it was to have this lien only as to one road, the use of the term *roads*, instead of *road*, can not be explained. If it has as to two, it is all consistent, and if there is more than one, the other must be the Florida Central Railroad, as it and the Jacksonville, Pensacola and Mobile Railroad, are the only two to which the term can apply, as they are the only roads which are authorized, under the Act as altered and amended, to issue 'first mortgage bonds.'"

This reasoning is based upon the same fallacy above suggested—namely, that the Jacksonville, Pensacola and Mobile Company owned the road between Quincy and Lake City, when the act was passed, and that the act must be so construed.

It will be seen in the opinion above quoted, that the learned judge attaches great importance to the "use of the term *roads*, instead of *road*," when he says it "cannot be explained" unless there is a lien on more than one road, and that "if there is more than one, the other must be the Florida Central, as it and the Jacksonville, Pensacola and Mobile are the only two to which the term (roads) can apply." Here again the court ignores the existence of the Tallahassee Railroad Company, to which the "term *could apply*," and which at the time had an existence independent of the Jacksonville, Pensacola and Mobile Company.

It is true that the Fourth Section alludes to an additional issue to that authorized by the Ninth Section, but it expressly describes the line upon which the issue is to be made, and as expressly limits the power to *a part* of that entire line "not to exceed one hundred miles." The proviso designates the particular line of railroad upon which the limitation is to operate, or be applied, without reference to the company to which it belonged, and the restriction would apply, even if the whole line had belonged to the Jacksonville, Pensacola and Mobile Company. This is a limitation in favor of the State, as to the number of State bonds to be issued, and must be strictly construed in its favor. *Potter's Dwarris, page* 255.

It was not in the power of the Jacksonville, Pensacola and Mobile Company, to defeat that limitation by consolidation with the Tallahassee Company, by claiming, under the Ninth Section, bonds to be exchanged for all the road from Quincy to Lake City, and under the proviso to the Fourth Section, claim bonds for the balance of the line, thus by a trick, defeat the express intention of the Legislature, and secure bonds to be issued for the whole line from Quincy to Jacksonville, a distance of about two hundred miles, in the face of the proviso which forbids the exchange for more than one hundred miles of the line.

To sustain the reasoning in favor of this construction, would be to demonstrate that a "part or portion" may be equal to or greater than the whole. Notwithstanding the Tallahassee road was consolidated May 25, 1870, it still remained a *part of the line of railroad between Quincy and Jacksonville*, and was not thereby taken from under the terms of the proviso. Bonds were issued on that part of the line, and exchanged with the State to a greater length than one hundred miles, whereby it became unlawful to issue and exchange bonds on any other part of the line specified in the proviso.

The limitation in the proviso could not have been passed by the Legislature with any reference to the Florida Central Railroad. It appears from the Record, (p. 3,) that the Florida Central Railroad is only sixty miles long, a fact which was certainly known to the Legislature which passed the act. The court will not presume that a Legislative body would stultify itself by limiting a road sixty miles long to the issue of bonds for a part or portion of its line, not to exceed one hundred miles.

If the Florida Central is the road to which the Fourth Section, by "necessary implication," must apply, the first proviso would have been unnecessary and absurd. The second proviso would have been a sufficient limitation.

The only construction consistent with the letter and reason of the act, viewed in connection with known existing facts, is that the State agreed to give its bonds in aid of the Jacksonville, Pensacola and Mobile Railroad Company, in exchange for the bonds of the Jacksonville, Pensacola and Mobile Company at the rate of sixteen thousand dollars per mile on so much of that company's line (all being west of Quincy,) as might be completed and in good running order at the time the application for the exchange should be made, and as a further aid to said company, to exchange State bonds at the same rate, with the company or companies owning the completed line of road between Quincy and Jacksonville, fixing a limit to the issue and exchange of State bonds on said completed line, not to exceed one hundred miles. Such construction of the act is easy and reasonable, founded on the plain and simple words of the act, and not arrived at by forced construction or "implication."

No Contract and no Delivery of Bond.

Should the court find that the power to issue and exchange bonds was conferred by the act, it is denied that the bonds of this company were issued and delivered to the President of the Jacksonville, Pensacola and Mobile Company for the aid of said company under said act.

Mr. Justice Bradley, in his opinion delivered in this case, (page 572,) says: "Of course it would be for the Florida Central Railroad Company to prescribe the conditions or consideration on or for which it would issue such bonds."

There is no evidence to be found in the record in this case, which shows any contract between the Jacksonville, Pensacola and Mobile Company and the Florida Central Company, for the issue or exchange of its bonds. There is no evidence of any consideration agreed upon, paid, offered or promised to be paid by the Jacksonville, Pensacola and Mobile Company. (*Barnett's Testimony, page* 767; *Reed's Testimony, page* .)

Even the presumption of such contract is rebutted by the fact that the resolutions of the Florida Central Company, adopted June 2, 1870, authorizing the issue of said bonds of the company, did not allude to the Jacksonville, Pensacola and Mobile Company, but, on the contrary, it was then resolved "that said bonds shall be placed in the hands of Edward Houston, for the purposes agreed upon by an arrangement between him and Milton S. Littlefield." (*Record, page* 1,335.) Also the contract made between Houston and Littlefield, pages 24 and 25.

It is true that certain bonds signed by Sweepson and Thompson, prior to that time, were adopted, but the resolution adopting them provided for a use of its bonds inconsistent with the recital in said bonds, which raises the presumption that the company did not know that such recital was made in the Sweepson bonds, and every act of the company confirm such presumption. Foster, one of the directors of the Florida Central, who was present at the meeting, which adopted the Sweepson bonds, states, in answer to question ten, "none of the said bonds were present or exhibited at said meeting." *Record, page* 592.)

The arrangement entered into by Houston with Littlefield, (found on pages 25, 307 and 8, of record), was not as President of the Jacksonville, Pensacola and Mobile Company, but as a stockholder of the Florida Central Company, and was an agreement to pay some stock account between the parties, and some liabilities of the company. The balance to be paid to the President of the Florida Central. The delivery of the bonds was to Houston, and not to Littlefield, and no authority was given to Houston to deliver the bonds to the President of the Jacksonville, Pensacola and Mobile Company, or to exchange them with the State. The mere execution of the bonds fixed no liability upon the company.

The resolution of the meeting of the Florida Central Company, April 13, 1871, (p. 1,333), which authorized

Houston to place its bonds, issued under resolution of June 2, 1870, "in the hands of S. W. Hopkins & Co., for the purposes mentioned in said resolution," further shows that the company had no purpose in 1871, of exchanging its bonds with the State, or of aiding the Jacksonville, Pensacola and Mobile Company.

(Prior to said resolution, on the 11th of January, 1871, Houston had delivered these bonds to Coddington, to be held in trust for him and others, creditors of said company, the moneys to be derived from *sale* of bonds (not exchanged) by S. W. Hopkins & Co., of New York, to be paid according to said arrangement. "The remainder of the proceeds to be disposed of as directed by the parties interested," (page 26.)

These bonds were to be delivered to the house of S. W. Hopkins & Co., of New York, for sale—not to the London branch. The contract, between Houston and Littlefield, relating to the disposition of the bonds, was signed as above stated by Littlefield, as stockholder in the Florida Central Company. The contract between Houston and Coddington was approved by Littlefield, *as President* of the Jacksonville, Pensacola and Mobile Company, (page 27), an official admission on his part that he did not claim that said bonds were to be used in aid of his company, and also that the party in possesion had the right to use them for other purposes. Littlefield, in his testimony, denies that any verbal or written contract was entered into between the Florida Central and the Jacksonville, Pensacola and Mobile Companies, whereby the Florida Central Company agreed to issue one thousand, or any other number of its bonds, to the Jacksonville, Pensacola and Mobile Company, or either of them (page 735, question 43.)

Coddington was not the agent of the Florida Central Company, and there is no evidence that he was either the agent of the Jacksonville, Pensacola and Mobile Company or of S. W. Hopkins & Co.—he was merely the agent and trustee of Houston. Houston, being merely a special agent, could not constitute Coddington agent for the Florida Central Company, or enable him to bind that company by any of his acts. *Story on Contracts, Section* 284.

It appears, from the Record, that Coddington, after he had procured the company's bonds, in utter disregard of the authority he had received from Houston, as well as the terms of his own receipt, and without any authority from the company, by fraud and collusion managed to get State bonds from the Governor, in exchange for the Florida Central Company's bonds.

Governor Reed, in his testimony, admits that he made the exchange of State bonds with Coddington (page 582, answer to question 7), and that it was for the purpose of raising money to pay Edward Houston and others, and that "the balance of the proceeds was to be placed to the credit of the State of Florida," for the purpose of paying a claim held by the Trustees of the Internal Improvement Fund, for the purchase of the Tallahassee Railroad. (*Question* 9, *page* 582.)

In answer to question 13, Governor Reed says: "At the time of the exchange I had heard of objections being made on the part of some of the members of the Florida Central Railroad Company;" "I may have had official notice; I don't know; I can't recollect," (p. 583).

This testimony shows that there was some improper collusion with the Governor, with which the Florida Central had no connection. The exchange was made not only without its authority, but, so far as appears from the testimony, against its wishes, and was understood by both the Governor and Coddington to be for purposes not authorized by statute, but in direct violation thereof.

The company, after its bonds were executed, not only declined to make any contract for delivery, in aid of the Jacksonville, Pensacola and Mobile Company, but expressed dissatisfaction at the issue. At a meeting of the directors of the Florida Central, November 21, 1870, "Mr. Papy presented the following report:" "The committee, finding that the bonds signed by G. W. Sweepson, President, and H. H. Thompson, as Treasurer, are in such *form* that they cannot be used to carry out the *intention* of their issue when they were adopted, report the following resolution:

"'*Resolved*, That the resolution adopting the bonds to be issued by the company, signed by George W. Sweepson, President, and H. H. Thompson, at a meeting of the Board of Directors, held on the second day of June, 1870, be and the same are hereby rescinded, and that the said bonds be destroyed.'

"On motion, the report was received and adopted." (*Record*, *page* 38.)

The preamble and resolution of November 21, 1870, show that the Sweepson and Thompson bonds were adopted without knowledge of the form and recitals thereof. This can be accounted for by the fact that the bonds were prepared and signed without authority from the company, and in the city of New York, under very peculiar circumstances. *Thompson's Testimony*, *page* 658.)

The resolution of the company, adopted April 13, 1871, did not recognize the form or character of said bonds. It mentioned nothing about a proposed exchange with the State, but authorized Houston to place the company *bonds*, *issued under resolution of June* 2, 1870, in the hands of Hopkins & Co. for sale, but not exchange.

Littlefield, President of the company, in answer to question 43 (page 735), says: "No such bonds were ever issued by the Florida Central Railroad Company for the Jacksonville, Pensacola and Mobile Railroad Company. The latter company never received any bonds of any description from the Florida Central Railroad Company."

The record shows no contract, either express or implied, wherein the Florida Central agreed to deliver its bonds to aid the Jacksonville, Pensacola and Mobile Company; it shows no delivery of its bonds, by agent or otherwise, to the President or any other other officer of the Jacksonville, Pensacola and Mobile Company; shows no authority given by said company to any one to exchange bonds with the State, or to sell State bonds after the exchange was fraudulently made by others.

THE DOCTRINE OF ESTOPPEL DOES NOT APPLY.

Admitting that the bonds were authorized to be issued by the Florida Central Railroad Company, and it appearing that they were not exchanged for State bonds, nor delivered to the Jacksonville, Pensacola and Mobile Company by the Florida Central Company, or its authorized agent, the company would not be estopped from denying its liability under such exchange fraudulently made.

The doctrine of estoppels will not be binding on a corporation, unless its bonds are in the hands of *bona fide* holders for value without notice of defects and irregularities in their issue. Such defects are available against a holder who has paid nothing, or who had notice of them: 2 *Daniel on Negotiable Instruments*, *page* 460.

The bonds of the Florida Central Company are not negotiable. They are made payable to the State of Florida, and not to bearer, (*Record*, *page* 21).

These bonds never went into the hands of "innocent purchasers without notice," and the principles applied to negotiable paper do not apply to them. They went into the hands of the State through a collusion between the Governor and Coddington, upon an arrangement between them, not authorized by law, namely, for the payment of about three hundred thousand dollars to certain individuals named in the agreement, and the balance to be placed to "the credit of the State" to secure "the balance due the Internal Improvement Fund," and not to be applied to aid in the building of the Jacksonville, Pensacola and Mobile Railroad, in the manner provided by the statute. (*Reed's Testimony answers to questions* 7, 9 *and* 19, *pages* 582, 3 *and* 5.)

The tendency of estoppels is to prevent the investigation of truth, and should not be favored, or extended by construction, unless "certain to every intent." 11 *Wend.*, 118; *Jones* vs. *Sasser*, 1 *Dev. & Bat.*, 452.

PREVIOUS NOTICE TO PURCHASERS.

Railroad and State bonds are regarded in law as commercial paper, except that persons dealing with the agent, knowing that he acts only by a delegated power, must, at their peril, see that the paper on which they rely comes within the power under which the agent acts. And this applies to every person who takes the paper afterwards. The purchasers of bonds must exercise reasonable caution, and whoever takes them, must see that there was authority to issue them. This principle applies even to innocent holders. *Marsh* vs. *Fulton County*, *page* 683; 10 *Wallace*.

The purchasers of these State bonds had notice that they were not free from taint and suspicion.

The impeachment of Governor Reed, in which it was charged that "he did, without authority of law, fraudulently conspire to issue the State bonds to the amount of one million dollars. (*Record*, *page* 850.)

The reply of Governor Reed to the dispatch of Holje Boissevain, Amsterdam, December, 1870, namely, "Bonds recently recalled by the company. No provision will therefore be made for interest." (*Record*, *pages* 127 *and* 843.)

The letter of E. M. L'Engle, as counsel of the Florida Central, to said Boissevain, February 8, 1871, warning him and all interested, that the taint of fraud attached to said bonds. (*Record*, *pages* 582–3–4.)

T. W. Brevard's letter to the State's and Corporation's Committee in London, (*page* 395).

E. M. L'Engle, in his answer to the bill of Schutte, *et al.*, charges that the purchasers of the State bonds had notice that they were illegal before they purchased (page 395), which answer was adopted in the answer of the Florida Central Company, so far as consistent, (*page* 409).

The resolution of the Board of Directors of the Florida Central Company, November 21, 1870, rescinding the company's bonds, and ordering them to be destroyed, (*pages* 855 *and* 106).

All of these facts and circumstances were made known to the public in Holland long before any of the bonds of the State over No. 3,000 could possibly have reached that country, inasmuch as they were held in the Chancery Court in England as late as August 29, 1872 (*Record*, *page* 28).

Barnett testifies that in the summer of 1872 he "saw papers, published in Hollend, attacking the validity of the State bonds." (*Record*, *page* 768.)

Frank Collins, complainants' witness, in his answer to the third fifth and sixth cross interrogatories, admits that the telegram to Boissevain from Governor Reed, and the letters of L'Engle and Brevard, were all received in Holland, and copies shown to his firm in London. (*See Testimony*, *page* 1,193.)

If the purchasers did not have actual notice they had constructive notice, and "ought to have acquired" knowledge of the facts, and in not obtaining it they were guilty of "gross and culpable negligence." *Wilson* vs. *Wall*, 6 *Wallace*, 91.

The Cross Bill of the Florida Central Company, to which said bondholders were defendants, charges "that Harrison Reed, Governor, unlawfully and fraudulently issued one million dollars of the bonds of the State for one million dollars of the bonds of this company (the Florida Central Company), so illegally issued, and so revoked and ordered to be destroyed, and delivered said State bonds to the said T. B. Coddington, not as agent, or in any way representing or pretending to represent the Jacksonville, Pensacola and Mobile Company, but as agent and trustee of Houston" (*page* 131); and further charges that "the defendants had notice of the illegality of said bonds, and of the fraudulent means used to secure them," (*page* 131).

Service in said cross-suit was duly perfected on the defendants therein, and a decree *pro confesso*, entered on proof of service, April 7, 1879, (*page* 544.)

The defendants, the bondholders, stand on the record as confessing the charges of the illegal and fraudulent issue of the bonds, as well as due notice of the illegality and fraud charged.

See order making parties (*page* 541), order of service (*page* 542), order of publication and proof of same (*page* 543), served upon Governor Drew, Walter Gwynn, treasurer, and Jacksonville, Pensacola and Mobile Company, (*page* 262.)

In the case of *Masterdon* vs. *Howard*, 18 *Wallace*, 99, this court sustained a final decree entered upon an order taking a bill in equity as confessed, when the allegations of the bill were found sufficient to sustain the decree.

The charges made in said cross bill should be taken by the court as true; and if so, the decree rendered against the Florida Central Company ought not to be sustained.

This railroad company is not responsible for any false representations made in Holland, as to its liability, and its interests ought not to be prejudiced thereby.

If any false representations were made, they were not made by any officer or agent of this company, but by the Dutch syndicate, who purchased these bonds from Collinson, and who were speculating in them. The bondholders who, like Dr. Wertheim, were "so stupid as to invest their money" in the bonds, ought to hold Messrs. Boissevain and Milders responsible, who purchased the bonds at the low price of fifty cents on the dollar (*Testimony of Chase, Question* 41, *Record*, *page* 702), and, by concealment of their true character, and by misrepresentation, sold them at an immense profit.

No Bonds Numbered Over 3,000 Sold.

It is conceded that if the State bonds, for which the Florida Central Company's bonds are claimed to have been exchanged, have not been sold by the Jacksonville, Pensacola and Mobile Company, or its agents, to some innocent purchaser without notice, then the company is not liable for payment of the bonds. Does the testimony show that any of the said bonds have been sold?

Three millions of the State bonds were delivered by the State to the President of the Jacksonville, Pensacola and Mobile Company, in exchange for the bonds of said company, on or about the day of 1870, and one million were delivered to F. B. Coddington in exchange for the Florida Central Company's bonds, about the eleventh day of January, 1871. (*Pages* 1,189 *and* 1,200.)

Hopkins testifies that 2,800 of said bonds were sold and delivered to Collinson at various periods between November 19, 1870, and July 21, 1871. (*Page* 1,204.)

The Bonds numbered above 3,000 were in the Chancery Court in England until August, 1872. (*Record, page* 24.)

Coddington, complainant's witness, says in his deposition: "This chancery suit in England was brought by *Collinson* vs. *Collins and Hopkins*, to compel them to deliver under a contract previously made, these 1,000 bonds and two hundred more of like bonds of previous issue," (*Record, page* 1,132,) showing that the 1,000 bonds carried to London by him, were held in litigation in August, 1872, upon which he claimed a lien for $4,000 for his success in procuring and taking them to England.

Hopkins, in answer to the ninth interrogatory, says: "The 2,800 bonds so sold and delivered to Collinson were the only bonds sold by our firm. (*Question* 9, *page* 1,200, *and Collin's testimony, question* 9, *page* 1,189.)

Thus it appears that the agents of the Jacksonville, Pensacola and Mobile Company, in London, did not sell to Collinson, or any other person, any of the bonds, numbered above three thousand, exchanged for the Florida Central Company's bonds, and that suit was brought to compel them to do so. Collinson testifies that he did not receive any bonds from Calvin L. Chase. (*Answer to tenth interrogatory, page* 1,131.)

C. L. Chase was trustee for the Jacksonville, Pensacola and Mobile Company. He went to Europe in 1872, and became party to a consent decree, in the English Court of Chancery, dated August 2, 1872, relating to the said 1,200 State bonds then not disposed of by Hopkins & Co. (*page* 28), and, on the 29th day of August, entered into an agreement with Collinson for the sale of said State bonds to Collinson, according to the terms of said decree. (*Pages* 706 *and* 724, *and questions* 63 *and page* 64, 707.)

Chase states, in his testimony, that "the terms of said decree and agreement were never complied with," and that the State bonds numbered above 2,800 were never disposed of *otherwise*, within his knowlegde. (*Page* 706.)

S. M. Chapman, former clerk of S. W. Hopkins & Co., testifies that said firm sold two thousand eight hundred of the bonds of the State of Florida, and that they did not sell any more than 2,800. (*Page* 684.)

The testimony above quoted shows that neither S. W Hopkins & Co., nor C. L. Chase, the only agents of the Jacksonville, Pensacola and Mobile Company in Europe, sold any of the State bonds numbered above 2,800, and that no bonds numbered over 3,000 were sold or disposed of under the terms of the English *Decree in Ckancery, or otherwise.*

If they were sold, who sold them? What did they sell for? To whom were they sold, and what disposition was made of the purchase money? The record fails to give any satisfactory answer to these questions. Possession may be urged as *prima facie* evidence of ownership, but the proof shows that the bonds so held were never put upon the market, or sold by any person authorized to sell them, which raises the presumption that such bonds, if held as claimed, are improperly and fraudulently in the possession of the claimants, and throws upon them the burden of proving their right of ownership. There is no evidence of *bona fide* ownership in the record. Engler, the trustee of the bondholders, refuses, in his testimony, to vouch for the *bona fides* of the bondholders whom he represents, and does not claim that they hold any bonds above No. 2,800. (*Question* 12, *page* 770; *question* 47, *page* 773, *and question* 87, *page* 778.)

NO PROOF OF POSSESSION OR OWNERSHIP.

The record does not show that the proof of possession or ownership was made before the court, by the alleged holders of the State bonds.

It is true that there was a list of bonds, without date, filed, purporting to be a "list of Florida eight per cent. State coupon bonds *sold* in Holland, now held by Adolph Engler, as custodian for owners, May, 1879," (*page* 1,317). Then, after a long statement of numbers, the following memorandum occurs: "List of Florida eight per cent. bonds, issued to the Jacksonville, Pensacola and Mobile Company, held by Adolph Engler, as custodian for the owners, and numbered above 3,000," (*page* 1,325). Then follows another statement of numbers, making 197. The paper is endorsed "list of the Florida eight per cent. bonds presented in the United States Court, May, 1879, in Jacksonville, Florida, by Adolph Engler, of New York City, in the case of *J. Fred. Schutle et al.*, vs. *the Jacksonville, Pensacola and Mobile Railroad Company* and *Florida Central Railroad Company et al.*, filed P. Walter, clerk," (page 1,326). It does not appear from this paper that any one is responsible for it, or for its accuracy. It is not even verified by oath. There appears to be no attorney's name attached to it. The date of making out the "list" is not given, neither is any date of filing. It does not purport to have been filed by any order of court, or by any master or examiner appointed in the case. Its correctness is vouched for by no one.

If bonds of the State were produced in court, it is not shown by the record in the cause. If they were compared with the "list," who did it? Does the testimony show *anywhere* that the bonds specified were *all in court*, and that they corresponded with the numbers in the paper presented? The decree was based upon bonds which were not offered in evidence through an examiner appointed for taking testimony under the rules of chancery practice, nor is it *shown* that they were admitted in testimony by special order of the court, nor by consent of parties, and they could not, consistently with the rules of practice, be introduced in any other way.

This "list" does not come within rule thirteen. It is neither a "deposition, deed, grant or other exhibit," and is improperly in the record, no one being responsible for its existence. There was no opportunity in the court below to take objection to a paper not presented.

Under the pleadings in the case, the sale and delivery of the bonds, numbered above 3,000, have been impeached and contested, (*Record, answer of Florida Central, paragraph 13, page* 403), and the date of sale, as well as the authority to sell, became material, and the defendant was entitled to cross-examine and to take proof on such material points. When a document or exhibit is so impeached in the answer it cannot be admitted in evidence or proved at the heairing of the case. 1 *Daniel's, ch.* 5, *ed.* 884.

The evidence of ownership is not sufficient to sustain the decree in said cause against the Florida Central Railroad Company.

There was no attempt made to introduce or prove the bonds of the Florida Central Company's bonds.

DEPOSITIONS TAKEN IN HOLLAND.

The motion to suppress depositions taken in Holland was heard, and the depositions were suppressed, by order of Judge Bradly, on May 22, 1879, prior to the final hearing. The question of the suppression of depositions is a matter in the discretion of the court. *Underhill* vs. *Van Courtland*, 2 *John, ch.* 345.

No exceptions were taken, and no application made for time to retake the testimony, which was the privilege of the complainants, if they deemed the testimony material to their cause. They waived that right, and went into the final hearing. If they now think the testimony important to their case, this court will not relieve them from the consequence of their mistake, by reviewing said interlocutory order.

These depositions are improperly in the record, upon the special application of the appellees, under order of December 18, 1879, and a motion to strike out postponed to the final hearing of appeal.

If the Florida Central Railroad Company had issued and delivered said bonds in exchange for the State bonds, it would not be liable on the bonds so delivered. The State bonds having been declared by the Supreme Court, to be unconstitutional and void, the State gave no consideration for the railroad bonds in its possession. *Holland* vs. *The State of Fla., et al., XV Fla. R.*, 533.

The State bonds being unconstitutional, and issued and exchanged in violation of law, the railroad bonds given in exchange therefor are void. *Craig* vs. *State of Missouri*, 4 *Peters*, 425.

THE STATE NOT A TRUSTEE FOR BONDHOLDERS.

It is however claimed that the State does not simply occupy the position of creditor to the companies, but that it is a statutory trustee, and holds these railroad bonds in trust for the bondholders, and not as creditor of the railroad companies.

To sustain this position, they rely upon the provisions of the third section of the Act of January, 1870, above quoted.

The lien given the State in this act, against the companies exchanging bonds, is "for its own protection." The relation of creditor and debtor is clearly created. The act nowhere says that these *railroad* bonds are to be held by the State in trust.

The Governor is authorized to seize and sell any railroad making default in payment of interest for twelve months, and the State is authorized to become the purchaser at such sale, "for its own protection." If a railroad had been sold by the Governor under the act, and purchased by the State, would the road have become trust property in the hands of the State as trustee for the bondholders? Certainly not. It is not so claimed in the opinion of the Supreme Court of Florida.

The statute provides that if the State becomes purchaser, "it may pay on said purchase ANY evidence of indebtedness the State may hold against said roads." This would be inconsistent with the duties of a trustee, thus to absorb by its claims the trust property in its control. If the relation of trustee existed, a statute giving such power, would be authorizing the State to commit a fraud.

If the State should not become purchaser at such sale, the statute requires the State to collect the purchase-money, and to take up its own bonds exchanged under the statute. If the bondholders do not present their bonds for redemption within ninety days after said sale, it is made the duty of the State Treasurer to invest the funds "in securities of the United States, to be held by the State as trustee for the bondholders."

This is the first mention of any trust in the statute, and here the object and the subject matter of the trust are clearly defined, namely: the holding of the "securities of the United States, as trustees for the bondholders."

The provision of the statute that "all moneys" arising from the sale, shall be applied to the payment of the bonds issued by the State, was intended for the protection of the people of the State, to prevent the moneys arising from such sales from being absorbed in the general funds of the State, leaving the State bonds to be paid by taxation. If the bondholders declined to present their bonds for redemption, and to receive their money, as under the statute they had a right to do, it was provided that the State, for the reasons above given, should invest and hold the money until demanded. If the *bonds* of the railroad companies had been held in *trust* by the State, the bondholders could not refuse to take the money arising from the sale of property in the hands of their trustee. If the roads had been sold for more than the amount of the State bonds, according to the construction given to the term "all moneys," in the opinion of the Supreme Court of Florida, the bondholders would have been entitled to *all*, and not a part, of the purchase-money.

This construction of the act would be derogatory to the State. The State would be presumed to have issued its promise to pay, and then to have humiliated itself, by pledging security for the payment of its debt.

The construction given to this entire statute, seems to be contrary to the spirit and intent, as well as to the plainly expressed language of the act, whereas, upon every fair principle of construction, it "should be interpreted according to the natural and most obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending its operations."

McClusk vs. *Cromwell*, 11 *N. Y.* 601.

Waller vs. *Harris*, 20 *Wend.* 561 *and* 562.

It is not denied that these bondholders may have equities. They hold certain State bonds, which have been declared unconstitutional and void, for which they paid money. They do not allege any right to recover upon these bonds as an evidence of indebtedness, but merely as an evidence of their equitable claim against the parties from whom the worthless paper was purchased.

The State occupied the position of creditor of the railroad company, and did not hold the *bonds*, received in exchange for its bonds, as a trustee for the bondholders, but "for its own protection." It then follows that the right of the State to enforce its lien against the company by seizure, ceased and was destroyed by failure of its contract. The complainants lost their confidence in the Governor's power to seize and sell the railroads, and, no longer relying upon any statutory remedy, abandoned it, and came into a court of equity for relief. If they had a remedy under the statute, the Court of Chancery improperly assumed jurisdiction; for the complainants did not allege in their bill that the Governor of the State refused to act under the statute, but, on the contrary, it appears that he was attempting to seize and sell the roads, under the provisions of the act.

The only standing of the complainants in a court of chancery is upon the ground of mere equity (but not by virtue of any lien) for the recovery of the amount paid by them for the worthless State bonds, from the party or parties who sold them, and who received the purchase money. In equity they may have the right to recover that much, but nothing more. The Jacksonville, Pensacola and Mobile Railroad Company, whose bonds were exchanged, received the State bonds as innocently as did the Dutch bondholders. Whatever was received from the purchasers for these worthless bonds, may be required, in equity, to be repaid. To compel the payment of more would be inequitable, because the bondholder is not entitled to more than he paid; to give him more, would be to enable him to speculate upon the misfortunes of the company, and because it would be

implied, from such decree, that the company, in the sale of the State bonds, was a wrong-doer, and should suffer for its fault. It is not in evidence in this case that *any* of the *State bonds* were sold by the Florida Central Company, or that it received any of the money for which they were sold. In *this view* of the case, the decree should not be sustained against that company.

JAMES M. BAKER,
Solicitor for Florida Central Railroad Company.

STATEMENT OF CASE NO. 668.

In this case the complainants, J. Fred Schutle, *et al.*, filed their bill against the Jacksonville, Pensacola and Mobile Railroad Company, to enforce their claims for certain bonds of the State of Florida held by them, alleged to have been exchanged for the bonds of said company, praying for a decree against the company for the full amount of the bonds so held.

The Jacksonville, Pensacola and Mobile Company filed its plea, setting forth in bar of recovery, that the statute under which said bonds were issued and exchanged were unconstitutional, and the bonds issued under it void, and could constitute no lawful agreement between the State of Florida and said company, and no sufficient consideration to sustain the contract. The company also filed an answer setting up the same and other grounds of defence.

The court, at the hearing, gave a decree against said company for $2,751,000 and interest $1,655,000.

The said company alleges the following errors in said decree:

1. In that the decree declared the said bonds held by the claimants constituted a statutory lien on the company's railroad.

2. In that the decree was rendered for more than sixteen hundred bonds. The amount authorized to be issued on the completed line of railroad between Jacksonville and Quincy.

3. In that the court held that the State of Florida was under the statute, the trustee of the holders of the State bonds.

4. In that the decree was rendered for the full amount of the bonds claimed to have been held by the complainants,

whereas the decree, if any, should have been for the amount of purchase money received by the company for said State bonds.

5. In that the defendant's plea ought to have been sustained and the relief prayed by complainants refused.

THE ARGUMENT.

The evidence shows that the three thousand State bonds first issued and exchanged, were for the Jacksonville, Pensacola and Mobile Company's bonds, issued upon the line of railroad between Quincy and Lake City, and the extensions to St. Mark's and to Monticello, and that said bonds were issued and exchanged after the consolidation with the Tallahassee Company, in May, 1870.

The fourth section of the amended act which authorizes the issue of bonds on that line of completed railroad between Quincy and Jacksonville, contains a proviso limiting the issue upon that entire line to one hundred miles.

The argument and authorities quoted in the foregoing brief in the case of the Florida Central Company, are respectfully referred to as applicable to this case in the construction of the Fourth Section of said act, and also in sustaining the following points taken in this case:

The Jacksonville, Pensacola and Mobile Company issued its bonds payable to the State of Florida. They were not negotiable, and have not passed into the hands of innocent purchasers without notice, so that the principles applicable to negotiable paper do not apply to these bonds. Neither does the doctrine of estoppel apply. (See authorities in above brief.)

The company received these bonds in good faith, and it was no fault of the company that they were afterwards declared unconstitutional and void. The part of said bonds sold by the company were sold in good faith, but were not guaranteed by it.

Whatever liability the company may have incurred by selling said bonds, it ought not to be decreed to pay said void bonds, or the amount of its own bonds for which the State gave no consideration.

There was no sufficient evidence before the court at the hearing to show the possession and ownership of the state bonds alleged to be held by the complainants. It is not claimed that there was any of the bonds of the company offered or introduced in evidence in this case.

The deposition taken by the complainants in Holland, and suppressed by order of court, improperly appears in the record, and should be stricken out.

That the statutes of 1879 and 1870, authorized a contract between the Railroad Company and the State as debtor and creditor, but did not constitute the State a trustee for the holders of the State bonds exchanged under said statute.

That when the State bonds were declared unconstitutional, the company was no longer liable to the State upon its bonds so exchanged, and the right given to the State by the statute to seize and sell the company's railroad in default of payment of interest, ceased.

The only standing of the complainants in a court of chancery, is upon the ground of mere equity. They are not entitled to any lien on company's railroad. And if they have any claim against said company, it would be for the purchase-money paid said company for the State bonds.

Such relief, however, is not sought in this case.

JAMES M. BAKER,
Of Counsel for J. P. & M. P. R. Company.

Jno Strong

Supreme Court of the United States.

OCTOBER TERM, 1880.

Nos.—667-8-9.

THE FLORIDA CENTRAL RAILROAD COMPANY

vs.

SCHUTTE AND OTHERS, &c., &c.

Brief for the Florida Central Railroad Company,

AND THE

Western Division of the Western North Carolina Railroad Company.

S. F. PHILLIPS,
For the Florida Central and Western Division Companies.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1880.

Nos.—667-8-9.

THE FLORIDA CENTRAL RAILROAD COMPANY

vs.

SCHUTTE AND OTHERS, &c., &c.

Brief for the Florida Central Railroad Company, and the Western Division of the Western North Carolina Railroad Co.

The *Western Division* Company, (above,) claims in general that by virtue of certain transactions in the course of which persons who occupied fiduciary relations to it, appropriated its funds, &c., it is virtually a stockholder in the *Florida Central* Company, (above,) and also in another Florida company, known as the Jacksonville, Pensacola, and Mobile Railroad Company, which also is a party to the above suits. In this character it participates with those companies in contesting the claims of certain parties—Schutte and others—who allege that they are holders of bonds issued by such companies.

A brief statement of the substantial facts of the transactions above alluded to, which occupied several years, is as follows:

The Western Division is a North Carolina Company, which in 1868–9 received (Record, p. 607) of that State, through the hands of Swepson, then its President, some $6,600,000 in State bonds. Swepson embezzled the proceeds of those bonds, and in the spring of 1869, through one Houston, applied a part of these, about $130,000, to the purchase of more than 4,000 shares in the stock, (capital, 5,500 shares) of the Florida Central, and another part, about $500,000, (Record, p. 727,) to the purchase of about $960,300 in State bonds issued in behalf of the "Pensacola and Georgia" and "Tallahassee" Railroad Companies, at that time also corporations in Florida.

A.

As regards the investment in the stock of the Florida Central.

In October, 1869, Swepson was succeeded as President of the Western Division by Littlefield, (p. 726,) and thereupon (p. 317) transferred the stock in the Florida Central to him—the latter being privy to the original embezzlement and the rights of the Western Division. In May, 1870, Littlefield transferred it to Houston, (p. 146, &c., and p. 733,) to secure to the latter a private debt, part of which arose out of a claim for commissions, &c., in making the above purchases for Swepson. This debt was paid in April, 1871, but the stock remained in Houston's hands, and after his death (in 1875) went into those of his personal representatives. At present it is still in their hands, or in that of one or two of certain receivers appointed by courts. This circumstance is not important in the present litigation, as in any event the stock is not in the hands of a *bona fide* purchaser without notice.

In May, 1870, Swepson being then also President of the Florida Central, caused to be prepared $1,000,000 of bonds of that company, (pp. 592, 658.) These were signed by himself as President, and by "H. H. Thompson" as Secretary. Thompson was appointed Secretary *pro hac vice* by Swepson, one Flagg being at that time the regular secretary of the company. These bonds were exchanged, under color of certain legislation of that State, (Stats. June 24, 1869, and Jan. 28, 1870,) for Florida bonds to the same amount. After their issue, and before and after such exchange, they became the subject of various resolutions by the directors and the stockholders of the company, (pp. 1333, 1334, and 37;) one such resolution ratifying the appointment of Thompson, another ordering the bonds to be withdrawn, and a third ordering the State bonds obtained in exchange for them, to be delivered to an agent for sale. The exchange occurred in January, 1871, (pp. 787, 783,) the State bonds were carried to London in April, 1871; subsequently they were transferred to New York. For eighteen months they were the subject of negotiation, litigation, and arrangement, to some of which the Western Division was a party. At last 224 of them were returned to the State for cancellation, 2 were lost, 206 were sold, (in January, 1873,) and the remainder (568) are still in the hands of persons who hold them subject to the orders of the company, &c., (p. 1133.)

These bonds were declared by the Supreme Court of Florida, at the January Term, 1870, to be *unconstitutional.* (15 Florida, 455.)

The holders of the 206 bonds sold as above, allege themselves to be *bona fide* holders thereof for value, without notice, and claim that they have a right to resort, for satisfaction of their debt, to the property of the company for whose benefit they were sold; and, to that end, can avail themselves of the statutory lien upon such property given to the State in consequence of the exchange of bonds (above.)

The Florida and Western Division Companies deny each of these allegations, and assert besides that, even if they were true, the claim of the bondholders extends at most to a repayment of the money paid by them for such bonds to the agents for sale of the Florida Company.

B.

As regards the investment in the State bonds issued for the " Pensacola and Georgia" and the " Tallahassee" Companies.

These bonds had been exchanged by the State for bonds of the companies respectively, upon conditions required in all such cases by a general statute, that the companies should regularly take up their coupons and should besides create a sinking fund for the redemption of the principal, or upon default their property might be seized and sold. The companies in question had made default, and on the 20th of March, 1869, their roads, &c., accordingly were sold. " F. Dibble and associates " became the purchasers of these roads. Six days afterwards the purchasers agreed with Swepson that for certain considerations he should pay the purchase money. Accordingly, he paid to the State officers the $960,300 mentioned above, and accepted a draft by " Dibble and associates " for the balance, some $472,000. By arrangement with the State officers, this draft was received as cash, and thereupon, (April 8, 1869,) a title to the two roads was made to " F. Dibble and associates." Upon the 22d of the same month, these persons conveyed the same property to Swepson, to secure him for his advances and certain other claims. Afterwards the same parties conveyed it again to the [2d] Tallahassee Company. (P. 303.)

[It may be as well to say here that the $472,000 never was paid, and that it has been decided in the courts of Florida, that upon that account, the conveyance by the State officers to " Dibble and associates " was unauthorized, and thereupon that the holders of such of the State bonds exchanged with the two companies as were not taken up by Swepson, (amounting to the $472,000 and interest,) still have a lien upon the property so conveyed, a lien superior superior to all subsequent encumbrances.

This decision is, of course, a matter of no interest to the Florida Central Company; and it is acquiesced in by the Western Division.]

Upon the 24th of June, 1869, a statute was enacted incorporating "F. Dibble and associates" as the [2d] Tallahassee Railroad Company. Upon the same day another statute incorporated a company, (Swepson, Littlefield, &c.,) by the name of "the Jacksonville, Pensacola & Mobile Railroad Company." This company was authorized to consolidate with the Florida Central and the [2d] Tallahassee Companies. Swepson was President of the [2d] Tallahassee Company, and upon *its* organization Littlefield became President of the Jacksonville, Pensacola & Mobile Company. The capital stock of the [2d] Tallahassee Company was $3,000,000, and of this Swepson, on account of his payment as above, owned $1,799,800. Upon the 23d day of May, 1870, a consolidation of the [2d] Tallahassee and the Jacksonville, Pensacola and Mobile Companies took place, and thereupon Littlefield, (who was still President of the Western Division,) was declared to be entitled, as assignee of Swepson, (p. 476,) to 38,433 shares in the latter Company, the capital stock therein being $60,000 of $100 each. (P. 1328.)

In June, 1870, the Jacksonville, Pensacola and Mobile Companies exchanged with the State of Florida $3,000,000 in bonds. In November, 1870, these were placed in the hands of Hopkins & Co., for sale, and between then and July, 1871, (p. 685,) they were sold, in Holland, the purchasers paying more than 76, (p. 1409,) but the terms of agreement with its various brokers being such that the Company was to receive about 45. (P. 1195.)

The propriety of the issue of these bonds by the State was violently attacked in the public press in Florida, New York city, and Holland during the year 1870; and communications to like effect were made by the Governor of the State and others to bankers in Holland who held them for sale. In February, 1871, the opinion of the Supreme Court of Florida was taken by the Governor as to their constitutionality, and the result of such opinion was telegraphed abroad as having established that point. (P. 1440.) The Governor also (pp. 33 and 1441) issued proclamations that they were valid.

In March, 1870, the Legislature of North Carolina, with the consent of the Western Division, appointed Commissioners on behalf of that company, to bring Swepson and Littlefield to a settlement on account of the funds received from the State. Upon the 16th of April, 1870, these Commissioners, Woodpin, &c., made an agreement, in writing, with Swepson and Littlefield, by which the latter were to apply the proceeds of the State bonds, which they were to receive on account of the Florida Central and the Jacksonville, Pensacola and Mobile Companies, in satisfaction of the $1,287,000 of the funds of the Western Division, which the latter admitted had been used by Swepson in his transactions (above) in Florida. This agreement subsequently was modified, but in no form was it ever executed. In the meantime, and for more than a year, the Commissioners were engaged in negotiation thereabouts, and in litigation, in which they demanded, sometimes, a share of the State bonds specifically, and, sometimes, proceeds thereof. All that was received by them upon this account (not taking into account money paid or otherwise secured to them by Swepson, in April, 1870) was £10,000, paid by Hopkins upon a draft by Littlefield, and an advance upon an expected sale of certain of the bonds issued to the Florida Central, such sale, however, in the end not having been made, (p. 1203.)

No interest was paid upon the State bonds in question in this suit after January, 1873, and the last bonds sold (those above No. 2,800) were sold in that month for the purpose of taking up the coupons then due, (pp. 794, 1133.) They were sold at 65 cents, (pp. 1408, 1410.)

In 1877 application was made to the Governor of Florida by the bondholders to sell the property of the Florida Central and the Jacksonville, Pensacola and Mobile Companies for satisfaction of their claims, based upon the circumstance that the State bonds in question had been sold, and that their proceeds had gone into the hands of the agents of such companies.

The present litigation, which has been *consolidated*, and by order below, is to be heard here only *upon the merits*, (pp. 547, 553,) represents an attempt by the Dutch bondholders to enforce their alleged *lien* upon such property, together with an application by the Florida Central, the Jacksonville, Pensacola, and Mobile, and also the Western Division, to defeat such alleged lien and debt; or, that endeavor failing, to reduce the amount to be recovered.

The questions as to, (1) the validity of the bonds deposited with the State by the Florida Central and the Jacksonville, Pensacola, and Mobile Companies, (2) the equity of the holders of unconstitutional State bonds to resort either to the statutory, or any other remedy against the companies, and (3) the superiority of the equity of the bondholders to that of the Western Division, has been fully presented in the briefs of my learned associates. I propose, therefore, to ask attention only, (1) to the question of the amount properly recoverable by the bondholders—supposing the court to hold them entitled to recover at all;—and (2) to the respective rights of the Western Division Company; and the Western North Carolina Company, under the North Carolina legislation of March, 1879, and the action of the Western North Carolina Company, dismissing their appeal in September, 1879.

1. The bondholders are entitled to recover only so much as they paid to the agents of the companies.

Admitting, for this argument's sake, that under the circumstances a lien upon the property of the company exists in favor of the State, and that the bondholders have an equity to avail themselves of this lien, still the trust is not an express one, but has to be *worked out* through the State, upon the theory that if the bondholders were technically in the position of the State, they would not be required to surrender their lien without satisfaction. The case, therefore, is, Suppose that the State had taken up its bonds issued on behalf of the companies (say) at 65 cents, would equity allow it to exact more than this from the companies? The case put of course requires the assumption that the State were in a situation in which it would be amenable to the rules of equity in asserting its claims; which is the case of the bondholders here. What is asserted is, that whatever different result might be arrived at by spelling out the Florida statute by syllables—the true relation by the companies to the State is that of indemnity against loss, and that a court of equity will not assist the State in making a profit by compelling the companies to pay it more than *it is out* by the transaction.

The companies are not parties to the paper held by the bondholders. Their liability is by reason of the claim which the State has upon them. The case is not one in which holders of *valid* obligations upon the State have filed a bill to subject a fund appropriated to their use by the original contract. There is in law no connection of contract between the State and the supposed bondholders. The only equity arises from the advance of certain money, and it is measured by the amount so advanced.

It would probably occur to most persons that, as *the State* has really advanced *nothing* here, there is no ground upon which an equity worked out through it can result in anything. That point has been maintained in the other briefs. But if it be admitted that there is upon the State a *moral* obligation, of that class of such obligations as is recognized and enforced by courts, the obligation is to see that the parties are placed in *statu quo;* or, the moral obligation being sufficient in this case to set the State in motion—upon a survey of the equities which it possesses and can marshal in behalf of the bondholders these are seen to be only for *indemnity*, indemnity *of itself*, or, at furthest, of any one who has a moral right to stand in its shoes.

This is a point somewhat considered, I admit, by the Supreme Court of Florida in the case of The State *vs.* The Florida Central Railroad Company, 15 Fla., p. 724. No decision is arrived at however. It is true that the learned judge who delivered the opinion announced an *inclination*—contrary to the above suggestions. It may be proper to remark in this connection that it is to be lamented that the cases in the Florida courts involving the questions now being argued here have, of necessity, been decided by a court constituted *pro hac vice* alone, and that the only member of the regular supreme court who sat therein had, previously to his going upon the bench, been, upon the record, so much concerned with these matters. No doubt no one has regretted the necessity under which he has been placed more than himself. It might, however, somewhat affect the value of his decisions, and *à fortiori*, *inclinations*, herein, so far as those depend upon personal and notmerely official authority. A mere judicial *inclination*, it is submitted, has no *official* authority.

It is submitted that the doctrine of *indemnity* is especially proper as regards the claims of the Western Division. That company is a great loser by the general transaction developed in this record. Admitting, for the purpose of this argument, that it is implicated in all that was done by its Commissioners, &c., in the way of putting these bonds upon the market—it seems that such involvement is only to the extent of *indemnity*. Having so acted (say) as to induce another to change his position in respect to certain property, (*i. e.*, under the above concession, *that* of the Florida Companies,) it cannot reverse such action without placing that other in *statu quo*.

[It will be borne in mind that this argument is of practical importance, probably, only as regards the holders of bonds sold for the Florida Central; inasmuch as the property of the Jacksonville, Pensacola, and Mobile, after being applied in part to pay the money due to the holders of these $572,000 bonds and interest not paid by Swepson, will not extend to satisfy the *Dutch* bondholders, whether upon the theory of indemnity or any other. Practically, the question touches only the 206 bonds sold for the Florida Central in January 1873, at 65 cents.]

2. As regards the respective rights upon this record of the Western Division, and the Western North Carolina Railroad Company, or those who are interested under its dismissal of the bill in September last:

In this connection it appears that, by the constitution of North Carolina, adopted in April, 1868, all laws thereafter passed creating corporations might be "*altered or repealed*," (Art. 8, Sec. 1;) that, by general statute (Rev. Code, p. 134, Section 4) then in force, all corporations whose charters should be annulled, should have three years thereafter in which to wind up; that the Western Division was *created* by act of August 19th, 1868, (p. 954;) and that the *repealing* act of March 19th, 1879, transferred, *absolutely and at once, all the property, rights, credits*, &c., of the Western Division to the Western North Carolina Company, with the express condition that the latter *should not be responsible for any debt, &c., of the former beyond the sums it should actually realize and receive from the transfer, &c.*, (p. 953.)

It is well settled that such statutory alterations and repeals of charters have no power to impair the obligation of contracts theretofore entered into by the corporation either as creditor or debtor.

Admitting, then, that the Legislature of North Carolina could repeal the charter of the Western Division, and that it could also, as regards that company, modify the general statute giving to corporations upon their dissolution three years in which to wind up their affairs, and itself provide a receiver to effect such settlement, I submit that upon its face the statute in question was not a statute for dissolving a corporation, but for transferring one corporation to another: for merging one corporation in another; and that the difference between merger and dissolution is material; and is, in consideration of the provisions of the constitution of North Carolina, amongst other things, the difference between the impairing and not impairing of a contract. The Western Division, and those who dealt in its shares and its contracts, knew that it might be dissolved—but had no reason to anticipate its being merged. If dissolved, the courts would give them redress for their claims against the assets of the company—no matter where or in whose hands. Somebody would be bound to administer these assets, and in the course of administration would be bound for due diligence in collecting and turning over. That diligence is *of the essence* in any case of attorneyship; but the agent shall be liable not only for what he does, *but for what he might collect.* I submit that, amongst other things not so distinctly to the same purpose, the provision that the Western North Carolina Company shall be liable for only so much of the assets of the Western Division as it shall actually receive, is an ear-mark to show that the transfer was not upon the footing of a receivership or administration, and that it imposed upon the shareholders and creditors of the latter a material risk that was not incident to their original contract, and which therefore impairs it.

A railroad company would hardly be the best sort of *receiver;* nevertheless, the *impolicy* of such an appointment might not warrant a charge of unconstitutionality. If the supposed receiver were, however, by express statutory provisions, to be chargeable only with what he actually *received,* without imposing upon him the ordinary duty of diligence, it seems that the importance of the principle so asserted would go to the root of the contract.

If so, the only time for successfully resisting its application, is when the transfer is demanded; for, if that be allowed, the parties interested will be bound to treat the receiver according to the law under which he accepted the office, *i. e.*, as bound only for what he actually receives.

The result of this argument is that, however it may be that for any purposes of further active railroad life, either of construction or transportation, &c., the Western Division is no longer in existence, yet it exists for the purpose of winding up its connection with debtors and creditors, and so for carrying on the present suit. The *obligation* of its contracts with creditors has not in its essence been transferred to any representative, and therefore remains upon it.

It is of course only in case the Court shall consider that the Western Division is entitled to recover something in this suit, that it is important to decide the point now suggested. Upon the present state of the record, in which the Western North Carolina Company only is party, and not the Western Division, the only practical question is whether the former shall be allowed to dismiss the bill in character of *sole dominus litis.* Probably its action in *dismissing*, heretofore, was upon the ground that it owed no account of its doings in that regard to any one, *cestui que trust* or other; but inasmuch as that cannot be true, a court of equity will not permit it to dismiss a bill which virtually is that of its *cestui que trust*, especially when the cause has come to hearing, and when, by the only hypothesis in which the question is interesting, the *cestui que trust* is about to obtain a decree; [including in the term *cestui que trust* those stockholders, creditors, &c., of the Western Division that are interested in the recovery.]

S. F. Phillips,

For the Florida Central and Western Division Companies.

Elect only a special, State decisions not binding

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OFFICE SUPREME COURT U.S.
FILED
OCT 6 1880
JAMES H. McKENNEY, Clerk.

SUPREME COURT

OF THE

UNITED STATES,

OCTOBER TERM, 1880.

FLORIDA RAILROAD CASES,

Nos. 667, 668 and 669.

ASSIGNMENT OF ERRORS AND POINTS SUBMITTED BY MR. EDMUNDS,
COUNSEL FOR THE FLORIDA CENTRAL RAILROAD COMPANY, AND
THE WESTERN DIVISION OF THE WESTERN NORTH CAROLINA
RAILROAD COMPANY, APPELLANTS.

FLORIDA CASES.

I.

Errors alleged by the Florida Central Company.

1. It was error to render the decree entered in favor of the complainants in the Schutte case, and to hold them entitled to any relief against the Florida Central Company or its property, and not to pronounce a decree dismissing this company with costs.

2. It was error, if any relief was proper, to decree that the holders of the bonds claimed in the Schutte bill had any lien or security on the roads purchased by Dibble, etc., paramount to that of the old bonds of the roads turned in on the sale, and which, under the circumstances, ought to have been decreed as subsisting for the benefit either of this company or of the North Carolina company.

3. It was error to decree any relief to the complainants beyond the sum actually paid by them for their bonds, and interest if allowable.

4. It was error to dismiss the cross-bill of this company, if the same was dismissed.

5. It was error not to grant a decree on the cross-bill, either declaring this company and its road and property entirely free from any claim of the holders of the State bonds or the alleged bonds of this company, or else declaring that only the holders of those numbered from 3001 to 4000 were entitled to any such claim, and that only to the extent of the money paid and interest, if allowable; or else that, if the holders of all the bonds were entitled, their claim must be limited in the same way.

7. It was error not to decree that, if the holders of the bonds claimed in the Schutte bill, or any of them, were entitled to relief as against this company or its property, this company was entitled to be substituted or subrogated to their place and have security and relief over against the Jacksonville, Pensacola & Mobile Company, and the property, etc., purchased by Dibble, etc.

II.

In addition to the errors assigned by Mr. Stewart on behalf of the North Carolina Company, the following are stated:

1. It was error to dismiss the bills of the Western Division Company and the Western North Carolina Company as its successor.

2. It was error to refuse a decree allowing these complainants to follow their money, which had been invested in the stock of the Florida Central Company and bonds of the Pensacola and Georgia and Tallahassee Companies, as a lien on the property of the F. C. Co., and the P. and Ga. and T. Companies respectively, paramount, under the circumstances, to any lien of the holders of the bonds claimed in the Schutte bill; or else in not decreeing the same in respect of the said P. and Ga. and T. Companies' bonds; or else in not decreeing that the complainants were entitled to a lien in respect of said stock and bonds, or in respect of the bonds if not of the stock, in common with the holders of the bonds claimed in the Schutte bill; or else in not decreeing that the holders of the last named bonds were not entitled to any lien on the property beyond the sums they had actually paid for them, with interest, if in such a case interest is to be computed; or else in not decreeing, if the holders of the bonds claimed in the Schutte bill were entitled to any relief, that the complainants were entitled to be substituted or subrogated to their rights against the property.

POINTS.

The facts to which the following points apply are condensed in a digest of the record, submitted herewith, and which, for convenience, is referred to.

AS TO THE FLORIDA CENTRAL COMPANY.

I.

The charter of the company of 29 July, 1868 (Rec. p. 36), did not authorize the issue of the bonds claimed, or the making of any mortgage securing the same. It did authorize a mortgage of property other than its road, etc., that it might acquire (Sec. 1); and expressly authorized a lease of the road (Sec. 4). Any implied power of mortgage is, therefore, conclusively excluded.

II.

The act of June 24th, 1869 (Rec. p. 69), incorporating Dibble, etc., as the purchasers of the P. and G. and T. roads by the name of the Tallahassee Company did not have any relation to the F. C. Co.

The act of 24th June, 1869, entitled "An act to perfect the Public Works of the State," relied upon as conferring authority on this company to issue these mortgage bonds, it is submitted, does not do so, either expressly or by implication.

The 1st section creates a new and independent corporation, successor to nobody, under the name of the J. P. & M. Co., and invests it with power of mortgage, etc.

The 2d section provides for the meeting and organization of the stockholders, etc.

The 3d section provides for the management of the business of the company.

The 4th section grants the right to build a railway from Quincy, which was then the western terminus of the road sold to

Dibble and imputed to the Tallahassee Company, westward to the Alabama State line.

The 5th, 6th and 7th sections provide for right of way, etc.

The 8th section provides for fares.

The 9th section provides that the Governor, to aid the company to complete its road, etc., shall deliver to the president of the company, bonds of the State to an amount equal to $14000, per mile of estimated length, under certain limitations and restrictions.

The 10th section provides that in exchange for the State bonds, the president of the company shall deliver to the Governor its bonds, payable to the State of Florida, to an equal amount.

The 11th section provides that "to secure the principal and interest of the said company bonds," the State shall have a statutory lien on the part of the road on the estimated length of which the State bonds were delivered, and on all the property of the company appertaining to that part of the line which it may now have or may hereafter acquire, etc.; and in case of failure of the company to pay either principal or interest on its bonds, the Governor may enter and sell.

The 12th section requires the company, as *additional* security to the State, to deposit with the treasurer security for the payment of the interest, until the completion of the road, etc.; and as *additional* security for the faithful application of the State bonds, the company shall also give, before the issue of the bonds, a lien upon the entire railroad from Quincy to Jacksonville. But at the time of the passage of the Act there was not the slightest claim that the company had any title to or control over the F. C. road, running from Jacksonville to Lake City, or the Tallahassee road from Lake City to Quincy.

The 13th section provided for discharging the company's "debt to the State" before maturity.

The 14th section provided that it should be "lawful" for the several companies owning the roads, or parts of roads, from Quincy to Jacksonville, from Tallahassee to St. Marks and the branch to Monticello, or either of said companies, by a vote of the owners of a majority of the stock, and with the consent of the owners of a majority of the stock of the J. P. & M. Co., to consolidate with the latter so as to become one corporation under its name, etc.; and with like consent of the owners of a majority of the stock of each company, without such consolidation, they were authorized to make arrangements for a common management of the property. And "*after*" the consolidation the J. P. & M. Co. was authorized to raise money by mortgage of the property acquired by such consolidation. The same section then proceeds thus: "The said Jackson-"ville, Pensacola & Mobile Railroad Company, as to the road, or "roads or parts of roads thus acquired, may likewise issue coupon "bonds, or other evidences of debt, with coupons or otherwise, "bearing such rate of interest, and payable at such time and place, "and on such terms, as the directors may determine, and to each are "hereby granted the same privileges as are herein granted to the "Jacksonville, Pensacola & Mobile Railroad Company."

It is submitted that it is a misconstruction to hold that the clause just quoted conferred any power on the F. C. Co. either to issue bonds or to make a mortgage, even for its own purposes, much less for the purpose claimed. The "privileges herein granted" were evidently only the privileges mentioned in the same section 14, and they are the privilege, First, to consolidate; Second, "after consolidation," to raise money on mortgage of the property acquired by the consolidation as a whole and not at all to exchange bonds with the State; Third, the privilege of the J. P. & M. Co. to issue coupon bonds "as the road, or roads, or parts of roads thus acquired" (i. e., by consolidation on such terms as the companies might determine). There was no privilege to raise money on mortgage or other bonds under this section until after consolidation, or to exchange bonds with the State in any case. It might happen that neither the F. C. or the Tallahassee Company would be willing to consolidate with the company created by the act, and which had neither capital or constructed road, while they might be willing to consolidate with each other, and it is submitted with confidence that the words used at the end of the quoted paragraph refer to that state of things, and not to an entirely independent and separate subject, not at all within the general scope or purpose of the act. If it were held that the words in the clause in question, "herein granted," applied to the whole act, it would lead to the absurd result that the other companies were authorized to incorporate themselves separately under the new name, with new capital, and were authorized to build a new road to the Alabama line, which the act itself in terms gives exclusively to the J. P. & M. Co. It is manifest, therefore, that the substantial intent of these words in section 14 was what the section expresses plainly, and that was a right of all or any two of the three companies to consolidate, and after consolidation to issue bonds on the road or roads "thus acquired," i. e., by consolidation, for legitimate purposes.

Again, the authority conferred by this section to raise money by mortgage has no reference to the issuing of the bonds to be exchanged for State bonds; all that had already been explicitly provided for. Whatever power was conferred by this section was a power to raise money for the legitimate use of the road of the company raising it. and not in any sense a power to loan credit to other companies or enterprises. If a distinct statute had authorized the F. C. Co. to raise money on mortgage it would furnish no authority for the transaction in question here. And if, in such a case, the officers of the F. C. Co. had put out these identical bonds, payable to the State of Florida alone, and so not negotiable, and the Dutch had bought the identical bonds and relied directly and exclusively upon them, their good faith and want of knowledge would not help their case, unless it is held that paper which an agent has no right to issue and which the payer has no right to receive, and which is not negotiable, is negotiable paper and entitles the holder to all the immunities of commercial law.

The act of the 28th of January, 1870, conferred no authority on the company to make a mortgage for this purpose or for any other.

This act provides, 1st, a change as to the course of the line to be built by the J, P. & M. Co.

2nd. It amends the 9th section so as to provide for exchanging with the company the bonds of the State to an amount equal to $16,000 per mile, "for the whole line of road and length of rail-"road owned by or belonging to said Jacksonville, Pensacola & "Mobile Company in exchange for first mortgage bonds of said "railroad company of the denomination of $1000, when the president "thereof shall certify upon his oath that the road or parts of road "for which he asks an exchange of bonds, is completed and is in "good running order."

3rd. It amends or supersedes the 11th section by providing that "to secure the principal and interest of the said company bonds, the "State of Florida shall by this act have a statutory lien which shall "be valid to all intents and purposes as a first mortgage duly regis-"tered, on the part of the road for which the State bonds were de-"livered and on all the property of the company, real and personal, "appertaining to that part of the line which it may now have or "may hereafter acquire, together with all the rights franchises, and "powers thereto belonging," etc.

4th. It provides as section 4, "that the Governor shall, for the "purpose of further aiding said Jacksonville, Pensacola & Mobile "Railroad Company in the speedy construction of its road, deliver "to the president of said company coupon bonds of this State, of the "same character as those above described in this act, to the amount "of sixteen thousand dollars per mile, upon receiving for and from "the president of said company first mortgage bonds of like amount "on any part or portion of the road between Quincy and Jackson-"ville; provided, however, that the State bonds under this section "shall not be exchanged for first mortgage bonds for a greater "length than one hundred miles of any part of railroad between "Quincy and Jacksonville. Provided the said railroad company or "companies shall not issue first mortgage bonds to a greater amount "than sixteen thousand dollars per mile."

5th. It repeals the sec. 12th of the original act which required the company, as additional security, to give a lien on the entire line of railroad from Quincy to Jacksonville and from Tallahassee to St. Marks.

When this act was passed, on the 28th of January, 1870, the J. P. & M. Co. had no right whatever to any road east of Quincy —the consolidation of the Tallahassee Company not having occurred until May following. The act, then, left the company authorized to consolidate with the Tallahassee Company, and also with the F. C. Co.; that authority existing, the first provision as to bonds was for an issue by the State in respect of what the J. P. & M. Co. then had or might have, independent of any consolidation or purchase. This provision is in sec. 2, and it can have no possible application to any part of the lines then existing east of Quincy, unless it should be held that in connection with the 4th sec. above quoted, it was the intention of the act to allow a double issue of State bonds as to some part of those roads east of Quincy.

The statutory lien created by the third section was in terms a lien upon the property of the J. P. & M. Co. and no other, and referred to bonds mentioned in the 2nd section.

It was then necessary to provide for the contingency of the J. P. & M. Co. acquiring, by consolidation or otherwise, a title to one or both of the roads existing between Jacksonville and Quincy, in which case, to give further aid to the J. P. & M. Co. "in the " speedy construction of its road the Governor might exchange with " the company, State bonds, upon receiving for and from the presi " dent of said company first mortgage bonds of like amount on any " part or portion of the road between Quincy and Jacksonville," limited to not more than 100 miles in length. The Tallahassee road between Quincy and Lake City was about 120 miles in length, and the F. C. road between Lako City and Jacksonville was about 60 miles in length, The 12th section of the previous act did not allow the J. P. & M. Co. to have *any* State bonds until it should give a lien upon the entire line between Quincy and Jacksonville, no part of which it owned. That condition was repealed, and the provisions above named took its place, allowing, first, the issue of State bonds to the company on its then basis and property; Second, allowing the company to take further State bonds when it could give a first mortgage on any part of the road between Quincy and Jacksonville. The use of the singular number proves nothing. It was used in a previous act as describing a *thing*, and not a corporation. Neither, it is submitted, did the words "between Quincy and Jacksonville" imply that the mortgage bonds were to touch either.

The property owned by each corporation was between the two places. The meaning of *between* is, in the intermediate space of, without regard to distance—as New York is between Boston and Philadelphia. It is insisted, therefore, in the light of the two acts and of the situation of the property, that this 4th section dealt exclusively with the J. P. & M. Co. and provided for giving it further aid to a limited extent, if it should, as was expected, acquire the property on which it could give security. If the Legislature had desired to authorize the F. C. or any other company to loan its credit in aid of another corporation, it would have been perfectly easy to say so in plain terms; and no forced construction or ingenious implication ought to be brought to bear to produce such an unusual and generally improper result. The *proviso* limiting the issue of *any* first mortgage bonds by "said railroad company or companies" to sixteen thousand dollars per mile, cannot be construed to enlarge the statute.

III.

If the act of 28th January, 1870, could be tortured into an authority to the Central Company to issue bonds secured by mortgage in aid of another company, it would be entirely invalid without the consent of *all* the stockholders of the company. The charter of the company fixed the rights of each stockholder independently of the others, to the operations of that one road, and did not authorize it to loan its credit to any other corporation. The legislature, therefore, could not involve any stockholder in such a scheme without his consent There is no evidence that all the stockholders consented to what was done, but the evidence shows that some of the stockholders never did consent, but resisted, and that the bonds were executed falsely, and that the pretended meeting of January 2, 1870, was a sham, and that the alleged meeting of April 13, 1871 (Rec. p. 1333), was never held, and the entry in the book was fictitious, (Rec. p. 734.)

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. fact

IV.

The thousand bonds were made up by Swepson and signed by him and Thompson, falsely assuming to be treasurer, in New York, on the 17th of April, 1870. (Dig. p. 42-46.)

The books of the company contain an entry of a so-called stockholders' meeting of the 2nd of June, 1870, relied upon as purporting to recognize the bonds and authorize their issue as a first lien on the road, and directed them to be placed in the hands of Houstoun for the purpose agreed upon between himself and Littlefield, and not for the purposes claimed to be authorized by any act of the legislature of Florida (Rec. p. 1334). Littlefield swears that no notice was given for the stockholders' meeting, as required by the by-laws, and that only two stockholders, himself and Houstoun, were present; that they transferred stock temporarily to two other persons to make a meeting; that the directors' meeting was not called by the president, but that the persons then present converted themselves from a stockholders' meeting into a directors' meeting, at the office of one of them (Rec. p. 734-5).

On the 21st November, 1870, at a regular meeting of the directors, it was resolved that the resolution of the 2d June, be rescinded and the bonds be destroyed (Rec. p. 37-8). At this time these bonds were in the hands of Houstoun or some officer of the company, the State bonds having been recalled and the railroad bonds delivered up (Reed, Rec. p. 833). On the 11th January, 1871, the bonds were, without even color of authority, taken by Houstoun and Coddington to the Governor's office and deposited, and the one thousand State bonds received for the special purposes named in the arrangements of the parties, as to the private debts etc. (Rec. p. 783-4). On the 18th April, 1871, Coddington delivered the bonds to Hopkins, the agent of the J. P. & M. Co., in London (Rec. p. 785). The certificate required by law to justify the issuing of the State bonds was not supplied when the bonds were delivered, or at any other time (Rec. p. 738). Before the State bonds were delivered to Hopkins and on the 8th February, 1871, L'Engle, counsel for the F. C. Co., addressed a letter of notice to Boissevain, the Dutch banker engaged in disposing of other State bonds previously issued to the J. P. & M. Co., stating that the F. C. Co. was 60 miles long; had not consolidated with the J. P. & M. Co.; that it had discovered that bonds previously issued and those to be issued, were to be diverted from their proper purposes, and that the action of the companies had been rescinded, and the F. C. Co. bonds had been returned, but they had again been fraudulently deposited and State bonds fraudulently issued, and charging the whole transaction with fraud and illegality (Rec. p. 135-839). The receipt of this letter is not denied by Boissevain.

The State bonds which Boissevain afterwards proceeded to obtain and which the Court below held to be the basis of a lien on the F. C. road, were on their faces and by legal effect, the bonds of the State as a principal and only debtor, and were signed by Reed, as Governor, and Conover, as treasurer, below whose signatures was a reference to the act of January 28th, 1870, as authority for their issue. Each bond contained an endorsement signed by Reed as Governor, stating that it was "one of a series issued in aid of the "*Jacksonville, Pensacola and Mobile Railroad Company*, to "the extent of $16,000 per mile upon completed road. The "State of Florida holding the first mortgage bonds of *said* "railroad company for a like amount, as further security to 'the holders thereof" (Rec. p. 1354-1383).

The purchasers of the bonds were bound to inquire into the authority for their issue. (Floyd, acceptances, 7 Wal. p. 666.) If the paper was illegal and void, as now appears to be clear, the purchasers, however good their faith, can have no standing as the holders of commercial paper without notice of its history. For whatever they may be entitled to, they must stand upon the actual history of the transaction.

But the endorsement of the Governor himself upon each of the bonds distinctly declared that the "further security to "the holders thereof" was that the bonds were issued" in aid " of the *Jacksonville, Pensacola & Mobile Railroad Company,*" and that the State held "*first mortgage bonds of said rail-" road company* for a like amount;" (Rec. p. 1354); and the letter of the Governor of June 1870, (Rec. p. 1428) and the proclamation of February 24th, 1871, (Rec. p. 1441) state the same explicitly. If, then, the purchasers relied upon the professed or asserted security, they relied upon the bonds and mortgage of the J. P. & M. Co., and not at all upon any security of the F. C. Co. If the original facts create a lien in favor of the purchasers of the State bonds upon the road of the F. C. Co., they, if honest purchasers, are entitled to the benefit of it, whether they knew of the security at the time they purchased or not; but if otherwise, they can have no standing in court. *They never knew or heard of any vote or bonds, real or apparent, of the F. C. Co.*

V.

There is no evidence of any paper or document showing either that the F. C. Co was consolidated with the J. P. & M. Co., or that the latter in any manner acquired title or color of title to the road of the former, in any manner whatever. The witness Cheney states that there was what amounted to a "practical consolidation" in 1870, after the J. P. & M. trustees possessed the road. (Dig. p. 54,); but his testimony is contradicted by that of the other witnesses and by the records of the proceedings of both companies. (Dig pp. 37, 46, 48, 50, 55, 56). The purchasers of the bonds did not rely upon any apparent title to the property they now claim. They rely, as they say, upon the certificate of the Governor, on the State bonds and his letter and proclamation, the statutes of Florida, and the declarations of the brokers.

The Dutch bill itself explicitly states that the F. C. Co. bonds were executed for the purpose of paying private debts. (Rec. Folio 420) That after the issuance of the State bonds, the management of the J. P. & M. Co. took possession of the F. C. Co. road and *treated* it as a part of its line; it does not pretend that any title was acquired. It does allege that the J. P. &. M. Co. conveyed it to trustees in the year 1871, by deed, but this is disproved by the deed itself. (Rec. Folio 3991). The bill itself, then, rests solely upon the claim that the J. P. & M. Co. acquired the F. C. road as a part of its line and that, by force of that circumstance, the equity of the holders of the State bonds attaches to it. It is clear that such a claim has not the slightest foundation.

If it is of any consequence, it is insisted that the proof demonstrates such a state of public notoriety, even in Holland, of the questionable character of the transactions, that every purchaser of a bond, even legally valid upon its face, as these are not, would be bound to make inquiry concerning it.

VI.

The testimony of Schutte and his associates taken in Holland was suppressed (Record p. 517), so that we are left in ignorance of what they personally knew; but in cases even of purely commercial paper the rule of law is that, if it be shown to be not valid in fact, according to its tenor, the holder must prove affirmatively that he took it under due, for value, and without notice or fair means of notice of its infirmity. There is no such evidence. Certainly in cases of this character they were bound to know all that was notorious in Florida;—ignorance and good faith in Holland or Siberia will not avail: and in Florida the fraudulent character tainted the whole atmosphere and filled the courts with injunctions and other proceedings.

VII.

The State bonds, void as they were, and all their endorsements referring exclusively to the mortgage bonds of the J. P. & M. Co. and not to those of the F. C. Co., the claimants must at best rest upon the fundamental circumstances of the transactions, in the same way as if they had notice of everything. Their want of knowledge, if such was the fact, cannot create an equity. Going back to the only railroad bond mentioned on the State bonds (Record p. 255), we find it to be the bond of the J. P. & M. Co., payable to the State of Florida only and, of course, not negotiable. It purports to be issued under the act of the 28th of January, 1870, in exchange for bonds of the State issued to the J. P. & M. Co. for an equal amount. There is no statement of or reference to any mortgage, or particular distance of road. They, therefore, who rely upon such paper must rest their rights upon the actual state of things, in the same way as if they had been parties to them all.

The F. C. Co. bonds (Record p. 254) are also non-negotiable, payable to the State alone, and purport on their face to be issued under the act of the 28th of January, 1870, and to be given in exchange for bonds issued by the State to aid the J. P. & M. Co. to complete, equip and maintain its road; but the State bonds delivered by the Governor to Coddington and Houstoun numbered from 3000 to 4000, did not purport and were not certified to have been issued in exchange for them, but they all purported, and were certified to be, in aid of the other company, and secured by *its* bonds (see the bonds on file). Any one, therefore, claiming an equity in the F. C. Co. bonds and the property of the company, must show that they were lawfully issued for the purpose to which they were applied. But the Dutch bill alleges and the evidence conclusively proves that they were not in fact created or issued for such a purpose, and that they were not devoted to it, but were made the pretence for putting out 1000 of the State bonds that did not purport to be issued on the faith of them, or to have any reference to the transactions of the F. C. Co. If, in such a case, the F. C. Co. had been a corporation sole, and had itself sold the State bonds, how could the transaction create an equitable mortgage or other lien upon the real estate of the company? Obtaining money on void paper or on false representations does not create a lien upon real estate. The injured party may cause the guilty to be punished, but, as a creditor, he stands like every other creditor, and may be entitled to recover back his money. How much more is this true when it was an entirely different corporation that obtained the State bonds, and whose agents disposed of them.

VIII.

This a case of general equity jurisprudence and it is not, therefore, controlled by State adjudications if any such have been had; Pine Grove vs. Talcot, 18 Wall. p, 666. But the Florida court, whose opinion of the law is relied upon to sustain the claim of the bondholder, found that the facts did not exist to which its law would apply, and its assumption of facts is in important respects entirely unfounded. Its opinion, therefore, was a mere abstraction and on no principle controlling in this court.

IX.

The State (even if all the transactions had been legal and fair) did not, and could not under its law, occupy the position of a trustee or a surety in respect of the property. Its bonds were issued in its sovereign character, and it rested in its own political discretion whether it would avail itself of the security or "debt," as it is called in the act of 1869, it had chosen to take from the company. The State might have refused to pay its valid obligations and at the same time refused to appropriate its security for that purpose, or have released it altogether, without there being any judicial redress open to its bondholders. The endorsement of the Governor that a mortgage to the State by the company was a further security to the bondholder, was entirely unauthorized. The statute made no such declaration. As the transaction, if valid, would have been purely an exchange of bonds merely, each importing a separate and distinct obligation, so the issue of State obligations being void, the bond and mortgage transaction, as the essential part of it, was also void, the State officers having no authority to receive such a mortgage for such a purpose, and clearly none to receive it without issuing State bonds. Even between private parties, the raising money upon a void mortgage cannot give the lender a lien upon the mortgaged property. To hold this would be to say that, for all practical purposes, a void mortgage is just as effectual as a valid one. It is true the act provided that it should be "lawful" for the Governor to enter for default and sell; and, *if he sold for cash*, the *money* should be held in trust for the bondholders, but this was declaring a trust after a valid transaction should be wound up in a certain way. Can it be denied that any stockholder or taxpayer could have enjoined the exchange of bonds as illegal, or the deposit of railroad bonds without exchange?

There was no action between the companies providing for the issue of the bonds of the F. C. Co., for the benefit of the other. The pretended vote of the 2d June, 2870, (Rec. p. 1334), provided for a transaction entirely outside of any statute, and made no reference whatever to their being deposited with the Governor, or to their being used in aid of the J. P. & M. Co., or to their being a basis for the issue of State bonds. It is true the papers themselves did so purport, but there is no pretence that they were ever seen or heard of by any State bondholder. The meeting itself was a sham. (Dig. p. 46).

XI.

The F. C. Co. had no power to issue bonds in any form to aid other roads. We have already shown that its charter did not authorize it to mortgage its road at all, and that the acts of June 24, 1869, and January, 1870, cannot be construed as conferring any such powers upon this company. But, if the statute had expressly authorized it, such action would have been invalid, without the consent of every stockholder, it being entirely beyond and different from the enterprise into which the stockholders had entered. Some stockholders did object (Dig. p. 36-46) and suits and injunctions were resorted to. (Rec. p. 859-871.)

XII.

There was no instrument of mortgage by the F. C. Co., or attempt at any. The statutory mortgage in the act of 1869 (Sec. 11) was exclusively of the property of the J. P. & M. Co. and for the bonds of that company only; and the amended act of 1870 (Sec. 3) is in this respect precisely the same, and refers to the bonds mentioned in section 2 of that act, and not to any other, while section 4, above quoted, only calls for a deposit of "first mortgage bonds," and does not profess to create any lien upon any property. It only provides by the use of the words "first mortgage," that such a mortgage must be made in order to authorize the issue of the bonds in that section named. The bonds of the F. C. Co. (Rec p. 1105) do not profess to create or promise any mortgage or lien, but refer to the law. Therefore, if these provisions authorize the F. C. Co. to do anything, whatever it has done, it has certainly *not* made or undertaken to make any mortgage ; and the 1,000 State bonds were issued on bonds that if they were the bonds of the company, were not and did not purport to be mortgage bonds.

The property of the F. C. Co. is real estate, and on any principle yet known to equity law, it can only be charged with a lien, either in favor of the vendor, or an equitable mortgagee, by the authorized deposit of the title deeds, or by an authorized conveyance in writing by the agents of the company, or by the provisions of the statute. None of these conditions existed. Even the making of an illegal mortgage by a party borrowing money, does not give the lender any special equity against the property.

It follows that if the Dutch holders are entitled to any interest in these company bonds, it is simply the interest of an unsecured creditor.

XIII.

The claim that the F. C.Co. is estopped to deny that its road is charged with a mortgage or lien for the payment of these bonds, is unfounded. Estoppels by record and by deed may be laid out of view, for there is no pretence that any such record or deed exists. An estoppel *in pais* must be relied upon. This estoppel exists only when the speech or conduct of one person has led another, who knowing it, relied upon it, to do something which he otherwise would not have done. The bill, so far as it relates to the F. C. Co., makes no such allegation, and it is demonstrated that the bondholders, when they took their bonds, did not know and had never heard of any action whatever of the F. C. Co. or its officers.

(*a.*) The agreement between Swepson and Littlefield, and the commissioners, of 16th April, 1870 (Rec.p.p317 and 566) is disposed of by the fact that Swepson had no authority from the directors to make it, and his mere office of president, if he then held it, does not include such power.

(*b.*) Before the bonds were used, all action of the company about then had been rescinded by the resolution of 21st November, 1870, and the bonds ordered to be destroyed and they had been returned and the State bonds restored.

(*c.*) The pretended resolution of 13th April, 1871, did not exist in fact and, if any stockholders at all were present, the meeting was entirely illegal, there having been no adjournment of a previous meeting to that time.

(*d.*) The bond-takers never relied upon or heard of any such action.

(*e.*) If they had, they would have seen that such an exchange and disposition of bonds was illegal and fraudulent.

(*f.*) A mortgage cannot be created out of whole cloth by estoppel.

(*g.*) Had the settlement been entirely fair and true, it was entered into under a mistake of facts, rights and duties, and not having led any one into an investment, it concludes no one.

(*h.*) If the F. C. Co. itself had put out the State bonds in the form they were, and received the cash on them, there could be no estoppel to deny that its road was mortgaged, for the State bonds did not so purport, but the reverse, and it was never alleged to anybody that it was. It was not even stated in any paper or document of the companies or State sent abroad that the J. P. & M. statutory mortgage covered the road from Jacksonville to Lake City.

As to the North Carolina Company.

In addition to the points submitted by Mr. Stewart, it is insisted:

I.

The money of the company was, by its agent, invested in the bonds of the P. and G. and T. companies that were turned in as payment on the sale of those roads. On admitted principles of jurisprudence the company was the owner of those bonds and, as such, had a mortgage interest in the property, which could not be divested without its consent. There is no pretence that it consented, unless the subsequent action of the N. C. commissioners had that effect.

II.

The North Carolina act (Rec. p. 955) was not to take effect until assented to by the company (sec. 3). There is no evidence of any action of the company assenting thereto.

III.

The act appointed Woodfin, etc., "a commission to examine "and fully investigate the condition and affairs of the Western "Division, North Carolina Railroad Company, as far as concerns "the administration of G. W. Swepson, late president thereof, and "to make a full and final settlement of all accounts and liabilities "of said president, G. W. Swepson, in connection with said company." It made it the duty of the commission "to collect and "receive the funds and other assets belonging to said company and "due from said G. W. Swepson and all other officers of said company elected or appointed since its organization, and to place the "same in some safe bank," etc. This was their whole authority, and it is insisted that it conferred no power to enter into any arrangement for the disposition of any State bonds in any form. The duties of the commission were, First, to make a settlement of the accounts and liabilities of the president. That duty only involved the definite ascertainment of a balance. The next duty was to collect and receive the funds and other assets belonging to the company and due from Swepson. Such a duty could not involve the entering into executory contracts for putting securities of any kind upon the market. The funds and assets of the company which they were to collect were neither the Florida State bonds nor the bonds of the Florida Central Co. They were embezzeled money and the thing for which the money had been paid out, viz: shares of stock in the Florida Central, and the first mortgage bonds of the P. & G. and T. companies, and nothing else. Any contract, therefore, with Swepson and Hopkins, or any one else, looking to the raising of money by a sale of the Florida State bonds was entirely outside of their powers, and cannot bind the State of North Carolina, or the N. C. corporation.

IV.

The arrangement, such as it was, appears first in a paper without date. verified 15th August, 1870 (Rec. p. 317). It recited that Swepson had conveyed the roads to Littlefield, subject to the payment of the N. C. claim, and that Littlefield had received authority from the legislature of Florida and the railroad companies, to receive State bonds, and had made a contract with Hopkins for their disposition, for the purpose of paying existing liabilities, etc. It then provided that out of the proceeds of the sale certain sums should be paid to the commissioners. This certainly did not involve the commissioners in any responsibility concerning the bonds. As to them, it was simply an agreement to receive money.

The next paper is of the 16th April, 1870 (Rec p. 319), which recites, apparently, the last named paper, and in it the commissioners agree to release Swepson when he shall have given certain further securities named.

The next paper is an order by Littlefield on Hopkins, New York, August, 1870 (Rec. p. 1008), directing him to pay the money which may come into his hands from the sale of *any* bonds, over to the treasurer of the N. C. Co., according to the contract of April.

The next paper is a letter from Woodfin, to Hopkins, New York, 11th August, 1870 (Rec. p. 1009), stating he had handed Hopkins a copy of the contract of April 16th, by which it was stipulated that the N. C. Co should receive one-half of the proceeds of the sale of certain State bonds, etc., and asking an acknowledgment.

The next paper is a letter from Hopkins to Woodfin of the same, date (Record p. 1009), acknowledging the receipt of the previous letter and contract, and saying they shall have the attention to which they are entitled.

The next paper is dated at London, 10th November, 1870, (Record p. 324). It refers to the agreement of the 16th of April, and recites that the J. P. & M. have received certain bonds of the State of Florida under sundry acts of the Legislature. That the commission is pressing immediate payment from the J. P. & M. Co. of $1,287,436.03. It then purports to stipulate that, in order to avoid a hasty sale by the J. P. & M. Co. of the bonds and to satisfy the claim of the commissioners, a certain quantity of iron shall be delivered, and in addition, that the J. P. & M. Co. does "sell and deliver" to the commissioners 800 bonds of the State of Florida, the numbers to be designated by the J. P. & M. Co., but that the bonds shall be left with Hopkins for sale at such price as the commissioners may direct. That when the foregoing undertaking shall be performed, it shall be a final discharge. This paper is endorsed by Hopkins on the same day, agreeing to perform the stipulations as to the iron. This was an executory agreement respecting iron and for the sale of certain bonds thereafter to be designated by numbers by the J. P. & M. Co. This argreement was entirely beyond the powers of the commission. If valid, it imported no warranty and operated no estoppel on their part. No particular bonds were agreed upon, and if any of the bonds issued were legal, it could not be construed as affirming the legality of others not legal. The 1000 bonds in question were not then in the hands of Hopkins. They were in the possession of the State Treasurer in Florida, unissued, and there remained until the 11th of January, 1871. They did not come into the hands of Hopkins until the 18th of April, 1871. (Dig. p. 49.)

The next paper is a letter from Littlefield to Hopkins of the 16th of November, 1870 (Record p. 747), referring to the argreement of the 10th of November, and directing Hopkins to place 800 State bonds to the order of the N. C. Co., etc., but without designating the numbers.

The next paper is a letter dated the 16th of November, 1870, (Record p. 1014), from Woodfin to Hopkins, instructing Hopkins to sell the 800 bonds of the State of Florida, given in aid of the J. P. & M. Co., "now lodged with you," at a certain price.

The next paper is a letter dated the 16th of November, 1870, from Hopkins to Woodfin (Record p. 1014), acknowledging the receipt of the preceding letter and the order of Littlefield, and agreeing to hold the bonds, without giving any numbers, as agents for the N. C. Co.

The next paper is a letter from Woodfin, etc., to Hopkins, London, the 3rd of April, 1871 (Record p. 1015), advising draft £10,000 as an advance against 800 Florida State bonds, held by him for negotiation, etc.

The next paper is an agreement between the commissioners and the J. P. & M. Co., dated 15th of June 1872, (Record p. 988), by which it was agreed that all claim of the commissioners upon any of the State bonds should be released on payment of $200,000, but saving and reserving all equities, liens, etc., whatever they might be, against the property. This was followed by an order of the New York Supreme Court of the 27th of December, 1872 (Record p. 987), referring to the last mentioned paper and, by consent, directing that the New York Trust Company should pay $200,000 to the commissioners, out of the first proceeds of the bonds which should be paid into the Trust Company in pursuance of the order of the 6th of December, 1872 (Rec. p. 31), which had directed the bonds to be delivered to Collinson.

This covers all the operations between the commissioners, Littlefield and Hopkins, important in this connection, touching the bonds. At this last date, even, when the draft was drawn, the 1000 State bonds had not reached the hands of Hopkins, and when they did reach him in the manner already stated, they were not sold, but went back to New York and were judicially impounded, and so remained until after the consent decree in London in 1872, to which the N. C. commissioners were not parties (Rec. p. 28), and until after the consent order in the New York case of the 6th December, 1872, to which the N. C. commissioners were parties (Rec. p. 31).

There is no pretence that the commissioners had any knowledge of the history of these bonds, but it appears that they took the steps they did, upon the supposition that the bonds were valid State bonds which, when disposed of, would furnish means to the parties responsible to the commissioners for the N. C. embezzled money, to repay it. No step of theirs induced the J. P. & M. Co., or its agents, to dispose of them, and the final and only effective transactions of the commission and which was to supersede all previous arrangements, only provided for their receiving money which might be raised by a disposition of the bonds by the people and in the interest existing entirely independent of the commissioners. Such steps, it is insisted, could have no effect as an estoppel against insisting upon the fundamental and pre-existing lien of the N. C. road on the property, even if the purchasers of the bonds had been informed of every step so taken by the commissioners. But neither the purchasers nor their agents ever relied upon or had any information of the fact that the N. C. commissioners had said anything or done anything upon the subject.

V.

The N. C. Commissioners had no connection whatever with the 2800 bonds sold by Hopkins. And the 2800 bonds sold by Hopkins to Collinson were the only bonds that Hopkins ever sold. (Rec. Folios 1747-48 and 2729). The 1000 bonds appear to have been disposed of as follows:

Lost	2
Returned to Florida and sold	224
Leaving	774
Deposited in Bank of England	568
Leaving	206

These bonds were not disposed of until after the last agreement between the commissioners and Hopkins. Hopkins says that 800 were placed in the hands of the Receiver of the Supreme Court, and 200 were delivered to the representatives of the J. P. & M. Co. (Rec. Folio 1748), 224 were cancelled, 568 tied up in Chancery in England, and the remainder went into the possession of Collinson to pay interest on maturing bonds, and that Hopkins sold none of them. (Rec. Folio 1748–9.) It thus appears that Hopkins never put out any of these bonds under the agreement with the commissioners. They had no agreement with Collinson. Hopkins disappearing from the scene, the further transactions were between Collinson and Chase trustee of J. P. & M. Co., by agreement of 29th August, 1872, to which the comissioners were no parties. (Rec. Folio 1624.) Whatever of these bonds, then, that got out through Collinson, could not have been taken by the holders in consequence of any of the agreements with the commissioners. At most, then, the bondholders and the commissioners were equally acting under a misapprehension of law and fact, and as neither were influenced by the action of the others, both parties must be remitted to their independent and original rights, whatever they were.

VI.

The deeds from the internal improvement trustees to Dibble by name, conveyed the title to the two sold roads. The deed from Dibble to Swepson, dated April 22, 1869 (Rec. p. 299), conveyed the same estate to him. The subsequent act of incorporation (of June 24, 1869, Rec. p. 300) of Dibble and associates as the Tallahassee Co., even admitting that it would otherwise have invested them with the estate, could not operate to divest the estate of Swepson. But the act of incorporation could not so operate in law. The title to the property was vested, by the deed of the trustees, in Dibble alone. In such a case an act incorporating Dibble and several others, for the purpose of operating the property, could not on its face operate to invest the corporate being with Dibble's personal title, any more than it could had Dibble's name been left out of the act. The two beings were entirely distinct and separate in law. The act, therefore, did not vest the corporation with an apparent title, which might have been good in the hands of an innocent purchaser, without notice of Dibble's deed to Swepson. It follows, therefore, that the legal title to the property, as well as the apparent title, remains in Swepson.

The paper purporting to be a deed without date (Rec. p. 952) from Dibble and others to the Tallahassee Co. was entirely inoperative on its face. There were five wives named in the deed who did not sign. There was no date or acknowledgment. And, so far as appears, there was neither delivery or record. Nobody, therefore, ever relied or could have relied on any apparent title arising from that paper.

In this attitude, if the bondholders have any lien upon the property at all, it must be subject to the prior equity created by the prior deeds.

The very act itself declares (which was quite unnecessary) that "any deed of trust, mortgage, conveyance, bond or bonds, "or security, which may have been executed, made, created or "contracted for, as a lien on said railroads or otherwise" by Dibble, prior to the passage of the act, shall be valid and effectual to all intents, etc. This provision is exhaustive. It is not limited to an ordinary railroad mortgage, but it is universal, and inclusive of every species of interest that Dibble could have created in the estate. One loaning money on the credit of the sold roads, then, on examining the title, would have traced it regularly to Dibble personally. He would then have found this subsequent act of incorporation, and would have been put on inquiry as to what Dibble had done with the estate meantime. Looking to the registry records he would have found no record that Dibble had conveyed either to Swepson or to the corporation, and, if he supposed that the act of incorporation transferred the estate and freed it from prior unregistered conveyances, he would have seen that the act declared that, if any such conveyances had been made, they had become a statutory lien, for the act so declared. It is plain, therefore, that whatever may be the effect of the act as a mere transfer of the title from Dibble to the corporation, the principle of *caveat emptor* applies.

VII.

But, if it could be supposed that the rights of the N. C. Co. have been in any way affected by estoppel, they can only be affected to the extent that the conduct of the commissioners may be supposed to have injured or misled the bondholders. As has been shown, only 206 of the bonds can have any possible relation to the action of the commissioners. The utmost consequence, then, would be that the trust claim of the N C. Co., as the equitable owner of the old bonds of the roads, which were turned in on the sale, must be diminished by the amount advanced by the bond holders on the faith of the 206 bonds, and no further.

GEO. F. EDMUNDS,
Of counsel for the Florida Central Company
and the Western Div. W. N. C. Company

OFFICE SUPREME COURT U. S.
FILED
OCT 6 1880
JAMES H. McKENNEY, Clerk.

SUPREME COURT

OF THE

UNITED STATES,

OCTOBER TERM, 1880.

Florida Central Railroad Company, Appellant, vs. J. Fred Schutte, et al., Appellees.

The Jacksonville, Pensacola & Mobile Railroad Company, Appellant, vs. Schutte, et al., Appellees.

The Western Division of the Western North Carolina Railroad Company, Appellant, vs. Drew, et al., Appellees.

DIGEST OF THE RECORD.

DIGEST OF RECORD.

The chronology of the filing of the several bills touching this controversy in the Circuit Court for the Northern District of Florida is as follows:

First, the bill of the Western Division of the Western North Carolina Company vs. Drew et al. was filed Feb. 9th, 1877.

The bill of the same Company vs. Jacksonville, Pensacola and Mobile Company et al., was filed March 8th, 1877.

The bill of Schutte et al. vs. Jacksonville, Pensacola and Mobile Company et al. was filed May 23d, 1877.

The cross-bill of the Florida Central Company vs. The Western Division Company et al., was filed July 20th, 1877.

The cross-bill of the Florida Central Company vs. Schutte et al. was filed July 30th, 1877.

The supplemental bill of the Western Division Company vs. Drew et al. was filed May 21st, 1879.

The first bill of the Western Division Company states that it is a North Carolina corporation; that for the purpose of constructing the railroad, it was in the year 1868 the owner of the $6,000,000 of bonds of the State of North Carolina in the hands of Swepson, its president and agent; that Swepson, under color of its being for the company's use, raised on said bonds in the city of New York about $3,000,000; that Swepson in breach of his duty placed about $1,000,000 of said money in the hands of Houstoun, who had notice that this was the orator's money; that Houstoun, conspiring with Swepson, invested this money, among other things, in the purchase of about 4,370 shares of the Florida Central Company, a corporation of Florida; that in October, 1869, Swepson ceased to be president of orator's company and Littlefield succeeded him, whereupon Swepson transferred said shares of stock to Littlefield; that in the Summer of 1867, the orator was informed of the fact of this breach of trust and that its money had been so used, and also used in the purchase of certain bonds called the Pensacola and Georgia Railroad bonds, and that said stock had been pledged by Swepson and Littlefield with Houstoun for a debt of Littlefield and was about to be unlawfully sold, whereupon the orator instituted suit in the Supreme Court of the State of New York, enjoining such sale; that Houstoun fled with the stock from New York to Georgia; that the Florida Central Company, a corporation of Florida, owns and operates a railroad from Jacksonville to Lake City, in that State, and that the Jacksonville, Pensacola and Mobile Company, a corporation of Florida, owns and operates a railroad from Lake City westward; that by an act of the Legislature of Florida passed the 24th of June, 1869, and certain amendatory acts, the Jacksonville, Pensacola & Mobile Company was authorized to issue its bonds to the amount of $16,000 per mile, to be exchanged for bonds of the State of Florida of like amount, which were required by said law to be applied to the building and completing of the road of said Jacksonville, Pensacola and Mobile Company; that said act secured to the State of Florida and the holders of said bonds, a statutory lien on said railroad, but the Florida Central Company was not mentioned in the act and was no party to the transaction; that in 1870, Swepson was president of the Florida Central, and without authority caused to be printed bonds of the Florida Central to the amount of $1,000,000, and without authority signed the same as president, and caused the same also to be signed by Thompson as its treasurer; that said Thompson was never treasurer of said company and had no right to sign the same; that said bonds so signed were wholly false and fraudulent; that on or about the 13th of May, 1870, by an arrangement between Swepson, Houstoun and Littlefield, Littlefield gave his draft to Houstoun for about $163,000, and deposited with Houstoun, as collateral security therefor, the 4,370 shares of Florida Central stock before mentioned and 103 of Pensacola and Georgia Railroad bonds, making in all about $537,000; that on the 30th of May, 1870, and before the maturity of the draft, Houstoun and Littlefield agreed to issue bonds of the Florida Central Company to the amount of $1,000,000 for the alleged benefit of the stockholders of that company, which also were placed in the hands of Houstoun as further security for said draft of Littlefield; that on the 7th of June, 1870, and before the maturity of the draft, Houstoun and Littlefield made another agreement by which the said $1,000,000 of bonds were to be returned to the company, and coupon bonds payable to bearer were to be issued in their place, the proceeds of which, except $340,000, were to be applied to the payment of certain private debts; that when the project of issuing said $1,000,000 of bonds came to the knowledge of the board of directors of the Florida Company, the transaction was repudiated and two stockholders, Gamble and Westcott, filed bills enjoining their issue; that under the act of the Legislature of Florida of the 24th of June, 1869, and on or about the 1st of June, 1870, there were issued and placed in the hands of Reed, its Governor, 4,000 bonds of $1,000 each, consecutively numbered, for the purpose of being exchanged for the bonds of the Jacksonville, Pensacola and Mobile Company, and were so registered in the office of the State treasurer; that of these bonds, Reed, on the part of the State, handed over to the Jacksonville, Pensacola and Mobile company 3,000, numbered from 1 to 3,000; that in the year 1871, Littlefield paid Houstoun the $163,000 draft; that afterward one Coddington induced Houstoun to let Coddington take the $1,000,000 of said false bonds of the Florida Central and $1,000,000 of said State bonds; that at this time Houstoun had deposited the Florida Central bonds with Gamble the Comptroller of the State, by whom they were held subject to the injunction in the suit of Gamble and Westcott; that this injunction was agreed to be waived or dismissed on the payment of certain sums to Houstoun, Gamble, Westcott and others, amounting to about $650,000; that under an agreement between Houstoun, Coddington and Littlefield, Coddington was authorized to obtain from Reed said 1,000 State bonds to be issued for the Jacksonville, Pensacola and Mobile Company; that with said transactions the Florida Central Company had nothing to do; that by these transactions Coddington got possession of the Florida Central Company's bonds and exchanged them for the State bonds as aforesaid; that Florida Central bonds were never delivered to or in the possession of the Jacksonville, Pensacola and Mobile Company, and were never its property, but were received by Coddington under an individual agreement between him, Gamble, Westcott and others, including Reed, who, pursuant to said illegal arrangement, delivered the State bonds to Coddington personally, who immediately escaped from the State of Florida with the same to avoid legal proceedings on the part of the stockholders; that such bonds to be valid at all required the certificate of the Governor of Florida, stating that they were issued pursuant to law and for the special purposes specified, but that such certificate was never affixed to said bonds and that the same, for the reasons before mentioned, were entirely null and void, and that the same were cancelled by a resolution of the board of directors of the Florida Central Company and for that purpose returned to said Houstoun by the Governor by endorsement thereon, thereby divesting all title of the State of Florida thereto, if any such ever existed; that Houstoun applied to the Florida Central Company for new bonds in place thereof, which were never issued; that said Houstoun afterward brought said bonds to the State of Florida and wrongfully and fraudulently obtained the seal of said company and caused to same to be impressed upon said bonds. Folios 1 to 13.

That said false bonds were afterward placed in the custody of the treasurer of the State, who now holds the same without right and without consideration, and that the same ought to be surrendered to the company; that the treasurer and Drew, the governor of Florida, pretend to some right thereto and threaten to use the same; that after Coddington had so got possession of said Florida Central bonds and escaped from Florida, he took them to New York and then proceeded to London in the year 1871; that said State bonds numbered from from 3,001 to 4,000, remained in New York in some judicial custody until 1872, when one Chase proceeded to London as the agent of the Jacksonville, Pensacola & Mobile Company and of said Littlefield, for the purpose of arranging to retire said State bonds and to issue first mortgage bonds to the Jacksonville, Pensacola & Mobile Company, but without any authority to act for the Florida Central Company; that at this time the State bonds obtained by the Jacksonville, Pensacola & Mobile Company amounted to 4,000, of which 1,200 remained undisposed of in London and New York. Folios 13 and 14.

That no part of said bonds issued in pretended exchange for Florida Central bonds were sold previous to July, 1872. Folio 15. That long prior to this time all parties in interest had full notice of the fraudulent character of said 1,000 State bonds pretended to be exchanged for Florida Central bonds. Folios 15 and 16. That Reed, Governor of Florida, was impeached for his share in the transaction. Folio 16. That the directors of the Jacksonville, Pensacola & Mobile Company on 10th Dec., 1870, by resolution declared the whole of said bonds issued fraudulent, and required the return of their bonds, and sent said resolution to the parties claiming to be in interest in London. Folio 17. That Reed was privy to the corrupt transactions by which the pretended Florida Central bonds were issued and exchanged, and was corruptly interested therein. Folio 17. That the State of Florida is affected by such knowledge and conduct, and that said Florida Central Company is in no manner bound by any of said transactions. Folios 17 and 18.

That at this time litigation was pending both in England and New York, touching the said bonds, but to which the Florida Company was not a party. Folio 18.

That a consent decree was taken in the English suit to which Collinson was a party, by which decree 166 of the State bonds were sold by Collinson, which still left 34 of the first issue of the bonds on hand in London. Folio 18.

That by said decree Chase gave 40 bonds to Collinson to apply on a breach of contract of Hopkins & Co., which disposed of all of the first issue, together with six of the second issue. One hundred and ninety-two bonds of said second issue were ordered to be delivered to Collinson to secure the interest on the whole of said bonds due in January, 1873, leaving 1,800 bonds of the second issue in New York to be delivered to Collinson under said decree. Folio 19. That by said decree 224 bonds were ordered to be returned to the State of Florida and cancelled, which was done. That 576 bonds of the second issue were taken by Collinson under said decree, from New York to England, but were to be held subject to the order of the State of Florida or the Jacksonville, Pensacola & Mobile Company. Folio 19.

That none of the Florida Central bonds were issued by its authority or for its benefit, and that the whole proceeding as to the Florida Central Company was null and void. Folio 20. That during all this time Houstoun, Coddington and Reed had full notice of the wrong attempted against the orator and that the orator had suits pending for the purpose of protecting its rights in the premises, of which they had notice Folio 20. That the Dutch defendants pretend to have in some way acquired an interest in said bonds of the Florida Company, although they claimed that all the said bonds were issued in aid of the Jacksonville, Pensacola & Mobile Company. Folio 21. That in the proclamation of Reed, Governor, of 2d Dec., 1872, touching the matter, the Florida Central Company was not referred to as in any way affected by the transaction. Folio 21. That Sherwin on the 30th

Dec., 1876, professing to represent the Dutch bondholders but having no authority so to do, petitioned the Governor of Florida to seize the Florida Central road and sell the same for default of payment of interest. Folio 22. That thereupon Stearns, then Governor, did seize and advertise the road to be sold on 2d April, 1877. Folio 22. That the orator, as well as the Florida Central Company, soon afterwards protested to the then Governor, Drew, against the legality of the transaction, but that the Governor did not regard such protest or give up the seizure. Folio 23. That the Acts of the Legislature of Florida, of 24th June, 1869, and the 28th January, 1870, had no application to the Florida Central Company, and that if they had, their provisions were not complied with in respect of issuing and exchange of bonds for want of a certificate by the president that the road was completed and in good running order, and that there was no law authorizing the Florida Central to issue bonds for the benefit of the Jacksonville, Pensacola & Mobile Company, or for the latter to accept the same, or to issue bonds to the State of Florida, and that the constitution of Florida conferred no authority upon the Legislature to pass laws for any such purpose. Folios 24 and 25. That the Act of the 28th January, 1870, did not change the charter of the Florida Central Company, and that company never accepted the same. Folio 26. That the Florida Central Company was embarrassed by internal controversies and different and contesting boards of direction and management, and is so situated that the orator cannot have relief through the action of that company, and so stands upon its right to follow its funds, which have gone into the stock of said company. Folio 28. That the proceedings of the Governor undertaking to sell the road were so indefinite that it cannot be ascertained what sum, if any, the Florida Central ought to pay in order to preserve its road from the sale. Folio 29. That the orator offers to pay whatever interest on the 206 State bonds, if the same are valid against it, shall turn out to be equitably due from said company, and to pay all just charges in the premises which may be adjudicated by the Court. Folio 29. The bill then prays for an injunction and for special and general relief.

A copy of the Florida Central bonds in controversy, signed by Swepson and Thompson, appears in Folio 40, and on its face puts the holder on inquiry into the lawfulness of its issue.

The written contract touching the transfer of stock and bonds between Houstoun and Littlefield, appears in schedules C, and D, Folios 41-2-3-4 and 5.

The final disposition of the proceeds of the draft of Littlefield on Hopkins through Coddington, appears in schedule F, Folio 46.

The action of the board of directors of the Florida Central of the 10th of Dec., 1870, in endeavoring to put a stop to these transactions, appears in schedule G, Folio 47.

The consent decree in England appears in schedule H, Folios 48-49 and 50.

The proceedings in the Supreme Court of New York touching the same matter and a decree in furtherance of the English decree and a receipt by Collinson of the Jacksonville, Pensacola and Mobile bonds of the last issue, appear in schedule I, Folios 51 & 52.

The proclamation of Reed, Governor, of 2d Dec., 1872, reciting that 4000 bonds were issued in aid of the Jacksonville, Pensacola and Mobile Company and stating that the 224 have been returned and cancelled and 2800, therefore, sold, and that the balance of the 400 belong to the Jacksonville, Pensacola and Mobile Company, appears in Folio 53.

The proclamation of seizure and sale of the Florida Central by Governor Stearns of the 30th Dec., 1876, appears in schedule K, Folio 56.

The charter of the Florida Central Company appears in schedule L, Folios 57 and 8.

The action of the board of directors of the Florida Central on 21st Nov., 1870, reciting the action of the 2d June, 1870, adopting the Swepson bonds and providing for an issue of $700,000 of mortgage bonds, appears in schedule M. Folio 59.

The second bill of the Western Division Company omits the Florida Central Company as a party; makes the Comptroller and Attorney-General and Commissioner of Lands, as trustees of the internal improvement fund of the State, and James Gibbs and Spooner new parties, and is directed chiefly to the recovery of its funds used by Swepson to the amount of $720.000, in purchasing bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, which companies were succeeded by the Jacksonville, Pensacola and Mobile Company.

The bill alleges:

That Swepson, the orator's president and agent, in breach of his duty, invested $720.000, of the orator's funds in bonds of the Pensacola and Georgia and the Tallahassee Companies. That the amount of the bonds so purchased is $1,063,000, and that they were obtained through Littlefield and Houstoun, who had knowledge of the breach of trust. Folios 64 and 5.

That Swepson made no record of the purchase of the bonds, but took them in his own name. Folio 65.

That in March, 1869, the Internal Improvement trustees sold the Pensacola and Georgia and Tallahassee railroads to pay the first mortgage bonds of said company, including the bonds so purchased by Swepson. Folio 65.

That the purchase of said road was made by an association of persons described as F. Dibble and associates, which ultimately included Swepson. That Dibble, &c., were permitted to pay the purchase money by surrendering to the internal improvement trustees the bonds so purchased by Swepson to the amount of $960,300, exclusive of interest, and the paper of Swepson for $472,065, which paper was unlawfully accepted by the trustees as representing the outstanding portion of these railroads bonds, and that no other payment was made at the time of the sale. Folio 66.

That on the occasion of the sale Dibble, &c., declared a trust on the property in favor of Swepson for the $960,300 of said bonds and for his paper, being the entire purchase consideration. Folio 66. That this declaration of trust made the said purchase consideration a prior lien upon the property and that the same has never been discharged or extinguished. This declaration of trust appears in schedule A, Folio 113. That the declaration of trust provided also for obtaining an act of incorporation of the purchasers of the property; that the internal improvement trustees accordingly conveyed both said roads to Dibble for himself and associates. Folio 67. These conveyances appear in schedules B and C, Folios 115 to 122.

That the paper of Swepson for $472,015, given on the occasion of sale, was a sham, falsely purporting to cover other bonds of said roads than those so purchased with orator's money, but which in fact had no existence, and that said paper was not intended to be and never has been paid. Folio 68. That on the 24th June, 1869, the Legislature of Florida did incorporate Dibble, &c., under the name of the Tallahassee Railroad Company, for the purpose of operating the property so purchased, and that by said act the new company was authorized to issue bonds for the purpose of discharging the trust before mentioned, but it was expressly provided that all existing liens and securities upon the property made by Dibble, &c., prior to the passage of the act should remain in force against the property and should not be affected by the act, and that this provision was noticed to all the world and especially to the State of Florida and its officers. Folios 69 and 70. That no bonds were ever issued by said new Tallahassee Company as authorized by the act, although in fact 1500 one thousand dollar bonds were signed by Dibble and placed in the hands of Swepson, but were never used. Folio 70.

That on the 24th of June, 1869, the Legislature of Florida passed an act incorporating the Jacksonville, Pensacola and Mobile Company, the incorporators being Swepson, Littlefield and others. That this last company had no property, but was organized for the purpose of becoming the owner of said Tallahassee Railroad as held under the charter to Dibble and his associates. That under said acts, or one of them, Dibble, etc., conveyed the Pensacola and Georgia and Tallahassee Railroads, subject to said trust, to the Jacksonville, Pensacola and Mobile Company. Folio 71.

That the orator's money so invested by Swepson in the bonds of the Pensacola and Georgia and Tallahassee roads and paid to the State trustees on the sale thereof, thus became a first lien and charge upon all said property and followed it into the hands of the said Jacksonville, Pensacola and Mobile Company so incorporated, and the orator became in equity the owner of all said property. Folio 72.

That Swepson transferred all such interest as he appeared or pretended to have in said trust agreement of said 22d of April, 1869, and in said property, to Littlefield, who by that time became the president and agent of orator; which transfer Littlefield received for the use and benefit of the orator. Folio 73.

That after said transfer and the incorporation of the Jacksonville, Pensacola and Mobile Company, Littlefield caused certain papers called bonds to be executed in the name of said Jacksonville, Pensacola and Mobile Company, professedly under the authority of the acts of the Legislature of Florida of the 24th of June, 1869, and of the 28th of January, 1870, to the amount of $3,000,000, in 3,000 bonds of one thousand dollars each, payable to the State of Florida, and placed the same in the hands of the treasurer of the State for no valuable or lawful consideration, which bonds are now held by the defendant Gwynn as treasurer.

A copy of one of these bonds appears in schedule E, Folio 125, and states the professed authority under which it is issued.

That after said 3,000 bonds were placed in the hands of the treasurer, Swepson, Littlefield and others conspired with Reed, the Governor, to issue so-called bonds of the State, professedly under said acts of the Legislature, as an exchange for said railroad bonds and as a charge against the property of said company, and that the directors of the company, learning thereof, did on the 10th of December, 1870, annul said issue and forbid the use thereof, and demanded the return of the professed railway bonds. Folio 74-5

This action appears in schedule F, Folio 126.

That the orator being advised of this fraudulent use of its money and the issue of said bonds and their going into the hands of Hopkins & Co., of New York, for sale, instituted proceedings in New York for relief, and obtained an injunction against this disposition. Folio 75.

That said Jacksonville, Pensacola and Mobile Company bonds are still in the hands of Gwynn, treasurer, and are claimed by the officials of the State of Florida. Folio 76.

That the bonds of the Pensacola and Georgia and Tallahassee companies, so in equity belonging to the orator and paid over on a purchase of said road, were unlawfully and against the right of the orator destroyed on the 26th of February, 1872, whereby the orator is prevented from particularly describing the same by numbers, etc., and prays a discovery thereof. Folio 77.

That the orator's right to the extent of its money so used is paramount against the property as it respects all subsequent proceedings and issues, good or bad, and that the issue of said 3,000 Jacksonville, Pensacola and Mobile bonds and of the State bonds was wholly contrary to the constitution of Florida and to law. Folios 78-82.

That if the issue of these bonds was lawful, it could not destroy the pre-existing equitable right and property of the orator in the original bonds against said roads, but must be subject thereto. Folio 82-83.

That after the issuing said 3000 bonds of the Jacksonville, Pensacola and Mobile Company and before the sale of said bonds to be exchanged therefor, the invalidity of the transaction became known to the defendants, and thereupon a new agreement was made between Reed, Governor, and the Jacksonville, Pensacola and Mobile Company, in the shape of a deed of conveyance, differing from and superseding any supposed statutory arrangement under the acts of 24 June, 1869, and 28th Jan., 1870, which provided in case of default that the Governor of Florida might take possession of the property and run the same for the benefit of the bondholders. Folio 84-5.

That the Dutch bondholders had notice of the premises, but nevertheless claimed some interest in the property as holders of some of said state bonds. Folio 86.

That on the 19th Feb., 1877, the Governor of Florida seized the railroad and advertised the same for sale and still holds the same. Folio 87 and 88.

That none of the said 3000 bonds of the Jacksonville, Pensacola and Mobile Company were ever disposed of after being placed in the hands of the treasurer of the State, who still holds the same without authority of law and against the right and interest of the orator. Folio 88.

That Coddington has got into the possession of $25,000 of coupons of said railroad bonds, under color of a corrupt agreement with Littlefield, &c., and holds the same without right. Folio 90.

That Gibbs claims an interest in a part of said road as an unpaid contractor, but that he has received from the funds of the orator more than he is entitled to. And that Gibbs, under color of a judgment taken by default and a sale thereunder, pretends to have purchased part of said road Folio 90-1-2.

That the road has for five years been in the possession of persons holding under Drew as Governor, who excluded the rightful possessors and took the profits and unlawfully kept or applied the same, and that said Governor and other parties contemplate and threaten other steps injurious to the orator. Folios 93 and 95.

That the orator offers to pay any sum of money in the premises that may be found it, in equity, ought to pay in order to entitle it to relief in respect of its property which has gone into said roads. Folio 97.

That Foster has got possession of part of the earnings of the road. Folio 98.

That the orator has applied to the officers of the Jacksonville, Pensacola and Mobile Company to bring a suit to protect the property and the rights of the orator, which they have declined to do. Folio 98.

The bill then prays for discovery and for special and general relief. Folios 99-112.

An amendment to this last bill was filed on the 3d July, 1877, making some additional parties, and alleging that the defendants had notice of the illegality of the bonds numbered above 3000. Folios 136 to 139.

That the defendants, the claiming bondholders, had no dealings with and gave no credit to the Florida Central Company in the transactions, but bought the Florida bonds on the credit of the State. That these bonds were declared to be issued for the use of the Jacksonville, Pensacola and Mobile Company and did not purport to have, or have in fact, any legal connection with the Florida Central Company; and that the claim that these State bonds were in any way a lien on the property of the Florida Central Company is the result of a conspiracy. Folio 139. And states that pursuant to this conspiracy, Sherwin and others agreed to obtain a reorganization of these railroad companies as per plan appearing in schedule N, Folio 144, and that the Dutch bondholders or some of them, are not the original purchasers of the State bonds, but are confederating with Sherwin and the others in the scheme. Folio 140 to 142.

Drew, the Governor, filed a demurrer to the whole bill and also an answer to the whole bill. Folio 204 to 250. The demurrer was for want of equity as well as sundry technical objections. The answer admits that Swepson obtained the $6,000,000 of North Carolina bonds, but denies that they were the lawful bonds of the State; admits that Swepson purchased 3,100 shares of the Florida Central stock, but with his own money; admits the sale of the stock to Littlefield, but says that the orators knew of it and acquiesced. Admits the incorporation of the Florida companies and refers to the laws affecting them. Alleges that the stockholders of the Florida Central, on the 2d of June, 1870, ratified the action of Swepson in issuing the Florida Central bonds and provided for carrying the arrangement into effect, and alleges that Reed, Governor, delivered to Sanderson, president of the two Florida companies, $4,000,000 State bonds in exchange for $3,000,000 bonds of the Jacksonville, Pensacola and Mobile Company and $1,000,000 of bonds of the Florida Company, and that Sanderson was acting as attorney for the Jackson ville, Pensacola and Mobile Company, and then delivered to Reed two certificates, the one in the record referring to the act of the 24th of June, 1869, signed by Littlefield as president of the Jacksonville, Pensacola and Mobile Company and sealed with its seal and stating that he has turned over said bonds in exchange for the State bonds; and that the Florida Central bonds were issued "for and upon a part or portion of the road between Quincy and Jacksonville said part or portion of the railroad being from Lake City to Jacksonville, and that said exchange of bonds is asked for the purpose of farther aiding said Jacksonville, Pensacola and Mobile Company to the speedy completion of its road." Folio 221 and preceding.

The answer claims that the decision of the Supreme Court of Florida on the subject was final and conclusive, and that it is a bar to this proceeding, and claims that as to the stock, the courts of the State of Georgia have exclusive jurisdiction on account of Houstoun's administrator residing there and those courts having taken jurisdiction of the stock Folio 225. It admits that he has taken possession of the road and property of the Florida Central Company for the purpose of sale for the benefit of the bondholders, and alleges that the Dutch holders purchased them on the faith that the bonds were valid against the State and that the State had a lien on all the roads as security, and that the selling bankers, Hopkins & Co., were the agents of both roads as a consolidated line, and alleges that the orator by its action is estopped from making any complaint, and alleges that 3,206 of the State bonds were sold—how many more, he does not know—and refers to the English consent decree, and avers that the orator was a party thereto, being represented by Woodfin, one of the North Carolina Commissioners, acting with the assent of his co-Commissioner; and that such decree and the agreement of the 15th of June, 1872, between the Commissioners and Littlefield, etc., bind the orator. Attaches a copy of the agreement and refers to a later agreement between the same parties of the 10th of November, 1870, changing details, and that orator in the year 1871 brought suit in the courts of New York to enforce these agreements, and that afterward, pursuant to the provisions of said consent decree, said suit was dismissed.

It denies that there have been conflicting boards of directors of the Florida Central Company, but admits that pursuant to a mandamus of a Florida Court, another board was elected who claimed the road, but insists that said mandamus and proceedings under it were null and void. This answer was filed the 19th of May, 1877.

Drew filed another answer to the other suit of the orator, setting up substantially the same history and insisting upon the same defences Folio 253-282.

The Jacksonville, Pensacola and Mobile Company filed an answer not admitting the orator's corporate existence or its ownership of the North Carolina, or the frauds of Swepson and others; but admits the sale of the Pensacola and Georgia and Tallahassee roads, their purchase by Dibble and payment thereof by $960,300 of Pensacola, Georgia and Tallahassee bonds and Swepson's check for $472,000, and that Dibble conveyed the roads to Swepson on the 22d of April, 1869. That Dibble and associates were incorporated on the 24th of June, 1869, as the Tallahassee Railroad Company, from Lake City to

Quincy, with branches, and that on the same day the Jacksonville, Pensacola and Mobile Company was incorporated and authorized to construct a line west from Quincy. That by the act and that of the 28th of January, 1870, the company was authorized to exchange bonds to the amount of $16,000 per mile with the State of Florida; that the statutory contract for this purpose was null and void, and insists that the company's bonds are null and void. It admits the issue of 3,000 of the State bonds under said statutory agreement and that Littlefield fraudulently diverted the same; and denies that it ever had delivered to it more than 3,000 of the State bonds, and denies any agreement with the Florida Central Company to receive any bonds of the latter, or that it ever did receive any. It admits that its road had been taken possession of by the officers of the State of Florida, ostensibly for the benefit of the Dutch bondholders, and denies all privity with them and all right on their part. Folio 285-295.

The Florida Central Company filed an answer, averring want of knowledge of many of the allegations of the bill and admitting others. It admits the creation of the $1,000,000 of its bonds by Swepson, but denies his authority to do so, and denies that Thompson was its treasurer; and admits these papers were fraudulently put forth, and alleges that the Dutch bondholders had notice of the fraudulent transaction and want of authority sufficient to charge them, and sets forth letters and telegrams to Collinson and Boissevain, a Dutch banker, from Reed, Governor, and L'Engle, counsel, showing such notice as early as the 18th of December, 1870, while the disposition of the bonds was going on. Folio 299 to 302. Exhibit A, Folio 314.

The Florida Central Company also filed a cross-bill, alleging its charter on 29th July, 1868, and the existence of its road from Jacksonville to Lake City, completed long previous. That its capital stock was fixed at 5500 shares of $100 each. That conflicts have existed between contending boards and about elections, and alleges that 1000 bonds purporting to be those of the company have been issued as under the act of 28th Jan., 1870, and attaches a copy of one of the bonds [Exhibit A, Folio 336], which are now in possession of Gwynn, Treasurer of the State, and denies that they are the bonds of the company; asserts that they are fraudulent and void, and alleges that Thompson purporting to sign them as treasurer was not treasurer, and that the seal of the company was fraudulently attached; and alleges that the act of 28 Jan., 1870, under which said bonds were claimed to be issued, has no relation to or effect upon the Florida Central Company, and that there was no legal authority in the company to issue the bonds under any circumstances. And alleges that said act was invalid, and denies that any State bonds were issued in exchange for its bonds, or that its bonds were ever lawfully delivered to the Jacksonville, Pensacola and Mobile Company, or that that company had ever received them, and avers that the bonds were issued under an agreement between Littlefield and Houstoun on the 30th May, 1870, for their benefit, and refers to proof thereof in Exhibits B, C, and E, and avers that the bonds were delivered to Houstoun, who on 11th Jan., 1871, delivered them to Coddington to be disposed of for the benefit of Houstoun. That the bonds on their face were never completed. That the printed certificate attached thereto that they were "issued in accordance with the provisions of the act of the legislature," was not signed by the Governor, but that Reed collusively endorsed the same. That the company, by a resolution of the 21st Nov., 1870, rescinded the resolution previously passed adopting the bonds, and ordered the same to be destroyed, and refers to Exhibit G. Folio 147. Alleges the execution of the 4000 State bonds professedly under the act of 28th Jan., 1870, to be exchanged for the bonds of the Jacksonville, Pensacola and Mobile Company, and that after the rescinding resolution of the Florida Central Company, Reed, Governor, with notice, fraudulently exchanged $1,000,000 of State bonds for a like amount of said company's bonds, so illegally issued and recalled, and delivered the same to Coddington as agent of Houstoun under the contract before referred to, and that said company's bonds were deposited with Gwynn, Treasurer. That Drew threatens to sell the road for payment of the same, that the defendants had notice of the illegality and fraud of the bonds, first, by suit pending in Leon County, Florida, in which an injunction order restraining the delivery of the bonds to the State was granted ; second, by despatch sent by Reed, Governor, to Boissevain on 18th Dec., 1870 ; third, by letter of L'Engle of 8th Feb., 1871.

It alleges that none of the State bonds exchanged for the bonds of this company were claimed to have been sold prior to July, 1872, more than a year after the notice. It claims that the issue of the State bonds being unconstitutional, the State, through its officers, had no right, under whatever circumstances, to seize the railroad property under the alleged trust. Folio 310. It alleges collusion, certain of defendants claiming to be bondholders, and the Western Division Company dismissed the original suit in which an injunction was in force in order to seize the railway, and that accordingly attempts have been made to procure the dismissal of said suit, Folio 310. It offers to pay any holder of the 206 bonds if the same shall be adjudged a debt against the company, and prays special and general relief. Folio 311.

The answer of the trustees of the internal improvement fund to both bills of the Western Division of the Western North Carolina Company, after stating that they do not know concerning the transactions between the orator and Swepson, or Littlefield and Houstoun Folios 358 to 9, states that on 20th March, 1869, the trustees sold the Pensacola and Georgia Railroad for $1,220,000 and the Tallahassee road for $195,000, and the sum obtained for the Pensacola road exceeded the total amount of all its outstanding bonds, but the sum received for the sale of the Tallahassee road did not equal its outstanding bonds, but the Pensacola bonds were a first lien upon its road and the same with the Tallahassee bonds. Folio 360. That

Dibble and associates were the highest bidders and that the sale was not made for cash and the possession was not to be delivered until the purchasers paid, and that they did pay only about $960,000, which was done in the first mortgage bonds of the Pensacola and Tallahassee roads, viz.: $806,000 of the Pensacola at par, and $153,700 of the Tallahassee at 95 cents, and that no other payments have been made on the purchase. Folio 361. That no cash payment was in fact required or made, but that the possession of the roads was delivered to one Robert Walker to hold as the agent of the trustees until the payment of the purchase money should be completed and title deeds delivered. That after the sale and before any payment, Swepson, who was holder of all the bonds paid in on said purchases as aforesaid, negotiated with Dibble and associates to become one of the association and turned over to them said bonds to be used in making the payment. Folios 361 and 362. That on 22d March, 1869, Swepson and the associates with Meeks Attorney-General of Florida, and one of the trustees, held a conference and it was then agreed by Dibble and associates that Swepson should receive the amount paid out by him for bonds and $150,000 more, and such further amount as should be necessary to purchase outstanding bonds, these sums to be realized from the sale of new bonds to be placed in the hands of Swepson and Dibble, and that Swepson should hold one-third of the stock and turn over to Dibble the bonds then in his hands, amounting to about $900,000. Folio 162.

That thereupon the internal improvement trustees directed Meek to prepare a deed of conveyance of the roads to the purchasers and when completed to take the same to New York and consummate the transaction by receiving payment in full and delivering the deeds. Folio 363 and Exhibit B referred to.

That after the execution of the deeds, the board of trustees appointed Dibble and Swepson their confidential agents to take up outstanding bonds and directing the attorney-general and comptroller to turn over to them, or either of them, all moneys received respecting the roads. Folio 364, and Exhibit A, Folio 379.

That the deeds were thereupon at New York delivered to Swepson representing the purchasers, and Swepson delivered to Meek and Gamble $806,600 of the Pensacola and Georgia bonds and $153,700 of Tallahassee bonds. That nothing else was received, except a check or draft drawn by Dibble on Dibble, Worth & Co., New York, an insolvent firm, which check was immediately delivered by Meek to Swepson in exchange for his receipt acknowledging that Swepson had received the sum of $472,065 to be applied to the retirement of the outstanding bonds, no funds or cash passing and no security being given, except that Swepson paid Meek $5,000 for his own benefit. Folio 364.

That these agents reported to the trustees that the purchase money had been fully paid, and thereupon Walker delivered the railroads to Dibble and associates. That the agents reported to the trustees that they had completed the transaction and that they had turned over the purchase money aside from the bonds turned in according to the resolution of the board to Swepson as confidential agent. Folio 365. That the whole transaction by these agents as to the balance of the purchase money was a fraud and sham, in order to get possession of the property. Folio 365. They deny that the bonds so surrendered were purchased with the money of the orator and claim that if they were, the orator, under the circumstances, has no lien on the property. Folio 366. They admit the making on 22d of April, 1869, the instrument marked schedule A, annexed to the bill. Folio 366. They claim that the balance of the purchase money is still a lien upon the property for the benefit of the prior bondholders. Folio 367. They admit the incorporation of the new company by the name of the Tallahassee Company and the passage of the act of the Legislature authorizing the issue of bonds and the final transfer of these two roads to the Jacksonville, Pensacola and Mobile Company as successors under the acts of the 24th of June, 1869, and 24th of January, 1870, and allege that such consolidation occurred after the 28th of June, 1870. Folio 369. They declare that the Pensacola and Georgia and Tallahassee bonds so turned over on the sale of said roads were burned on the 26th of February, 1872, and allege that such destruction was legal and proper and file a list of the bonds destroyed. Folios 370 and 371. They claim that if the orator ever had any right, it has been lost by the lapse of time or estopped by its own conduct and that the bonds were received by the trustees without notice. Folio 371. They admit that the earnings of the roads have gone into the hands of the Treasurer of Florida, but subject to the directions of the Supreme Court of the United States. Folio 372. They allege that by a judgment of the State Court of Duval County, of 4th April, 1874, the unpaid purchase money for said roads was declared to be a lien on all the property, (Folio 375), and that by the judgment of the Supreme Court of the United States in a suit by the State of Florida, the prior lien of the trustees for unpaid purchase money is recognized. (Folio 375.) They allege that the orator was party and privy to the issuance of the State bonds, so called, to the Jacksonville, Pensacola & Mobile Company and in the sale thereof and received a portion of the proceeds and contracted for receiving other portions, and is, therefore, estopped to complain. (Folios 376 and 377.)

On 21st May, 1879, the Western Division Company, by leave, filed an amendment to the bill, charging that no conveyance of Pensacola, Georgia and Tallahassee railroads, sold on the 20th March, 1869, was made or executed to the Tallahassee Company, or to the J. P. & M. Co. and that no title ever vested in either of said companies, and that on the contrary by a deed executed by Dibble, etc., 22d April, 1869, were conveyed to Swepson, in whom the title still rests; and that neither the Tallahassee Company nor the J. P. & M. had any estate in the property which could be charged with the bonds alleged to have been issued and exchanged. Folios 409–412.

The answer of Coddington to the bill of the North Carolina Company, filed October, 1877, denies all charges of fraud on his part, and states that he believed at the time that the Governor had authority to make the issue and exchange of the bonds, and accordingly agreed to assist in taking the million of dollars of bonds to London for sale, and delivered them to Hopkins by order of Houstoun, Littlefield and Reed. Does not know whether Littlefield and Swepson embezzled the money of the N. C. Co. and insists that the complaint is barred by laches in not prosecuting sooner. Says he has no knowledge of the illegal charge against Littlefield, Swepson or Houstoun. That of the 1,000 bonds, numbered from 3,000 to 4,000, he believes 800 were in 1872 in the hands of the receiver of the Supreme Court of New York, and that the complainants in December, 1872, entered into an arrangement by which they consented that the 800 bonds should be turned over to Collinson for sale, and that the complainants in April, 1870, entered into an agreement with Littlefield and Swepson to get new bonds from the State of Florida, in the place of those so issued, and that they received the proceeds of such arrangement to the extent of $50,000, and that they are chargeable with all the consequences of these acts. He claims that he is a creditor of the J. P. & M. Co. to a large amount and is entitled to a lien on the property for its security. Says that he and Houston got the 1,000 bonds of the F. C. Co. from Gamble on 11th January, 1871, took them to the Governor's office and exchanged them for the 1,000 State bonds, which they carried back to the hotel where they were left with him; and sets out copies of the directions from Reed, Houstoun and Littlefield for the disposition of them. That he received no benefit from the transaction, but the contrary. He asserts that through the whole transaction he was acting as agent of Houstoun and nobody else, and that Houstoun procured an order from the stockholders of the F. C. Co. directing Houstoun to deliver the bonds to Hopkins. Folios 2532–54.

On the 23d May, 1879, the Dutch bondholders, by their solicitor, and not under oath, answered the Western Division bill, denying all its allegations and averring that their own bill is true, and refer to it as a particular answer. Folios 414 and 415.

The bill of the Dutch bondholders against the Western Division Co, the J. P. & M. Co., the F. C. Co. and the various other parties in interest, is only verified by Willard as counsel, upon information received from the Dutch bondholders of his professed clients, and sworn to 23d May, 1877. The date of the filing does not appear. Folio 440.

It alleges the sale of the Pensacola & Georgia and Tallahassee roads by the Florida trustees on 20th March, 1869, conformably to law, for $1,415,000. That Dibble, etc., purchased the roads and paid the purchase money, and received the deeds thereof, and the possession of the property. That part of the purchase was paid by bonds of the corporations where roads were sold. The balance of the money was lawfully placed in the hands of Swepson as agent of the trustees for the purchase of the outstanding bonds. That Dibble, etc., became incorporated under the name of the Tallahassee Company, and that the Tallahassee Company and Dibble conveyed the roads to the J. P. &. M. Co. of which Swepson and Littlefield owned nearly the whole stock. Folio 418. That in 1870 the J. P. & M. Co. obtained from Reed, Governor, 4,000 bonds of $1,000 each, issued in accordance with the law incorporating the J. P. & M. Co. and purporting to obligate the State of Florida to pay the bearer the sums named, with interest at 8 per cent; (copy of bond, Folio 2834.) That the J. P. & M. Co. delivered to the Governor in exchange for these bonds, 3,000 bonds of the J. P. & M. Co., and 1,000 of the F. C. Co., payable to the State of Florida. (Copies Folios 441 and 442.) That these bonds were delivered in order to comply with the terms of the law incorporating the J. P. & M. Co. That Littlefield then owned a large majority of the stock of the F. C. Co. and had contracted with Houstoun, etc., for other stock—substantially the whole. That Littlefield purchased for the purpose of consolidating the J. P. & M. Co. and F. C. Co. That the F. C. bonds were caused to be issued by

Houstoun and other stockholders, to enable the J. P. & M. Co. to obtain from the Governor the State bonds, with the agreement that they should be sold and Littlefield pay for the purchased stock out of the proceeds, which he did, except as to Gamble. Folio 419. That the F. C. stockholders had notice of the premises and acquiesced therein. That Littlefield took possession of the F. C. road and treated it as constituting a part of the line of the J. P. & M. Co. That in 1871 the J. P. & M. Co. conveyed the whole of said roads to trustees to pay the debts of the company, and the trustees took possession and operated it some time without objection by the F. C. company Folio 420.

That the J. P. & M. Co. sent the State bonds to England and sold nearly all, through an agent in London, to a banker at 138 pounds per bond. That the buyer resold the same through bankers in Holland to the public, the buyers relying upon the representations of the London agents that the bonds were the lawful obligations of Florida; that the State law provided a security for their payment by a lien on the whole line from Jacksonville west, represented to be owned by the J. P. & M. Co. Folio 421. That the complainants are the owners of a large number of these State bonds, between the Nos. 1 and 3,200, and offer to produce the bonds. That interest from the 1st January, 1873, is due and unpaid, and that they have applied to the Governor to seize the roads, and claim that they have a right to have them sold for the payment of their State bonds. That interest was paid on the bonds to January, 1873, by the agents of the State, by money represented to have been provided by the State. Folio 422. That Vose and other defendants named, claimed to be the owners of unpaid original bonds of the road, with a subsisting lien thereon for payment, etc., but deny that such lien exists. Folios 423–25. That certain of the defendants fraudulently pretending to be stockholders of the F. C. Co, elected a spurious board of directors and issued certificates of stock and are about to issue bonds in the name of the F. C. Co., professedly pursuant to a judgment of a Florida State court alleged to be fraudulent. Folio 426. That the Governor has seized the F. C. and that from Lake City west, advertised the same for sale separately, but they claim that the whole is one property of the J. P. and M. Company, Folio 427. That, with a view to a speedy termination of the matter they entered into a combination with certain persons, as per plan marked D, (Folio 443-47,) which has been prevented by legal proceedings Folio 428. That the Supreme Court of Florida in a suit touching the matter has determined that the complainants have a lien upon the property, and claim such judgment to be conclusive in this case. Folio 429-430. That the North Carolina road united with Littlefield. Swepson, etc , in procuring the Governor to issue to the J. P. and M. Company the State bonds and in all the acts and representations attending the sale thereof. and received a portion of the proceeds, and claimed that they are thereby estopped, Folio 432-3 That L'Engle has illegally got possession of the stock of the Florida Central Company, and brought sundry unjust suits concerning the same. Folios 433-4. That sundry original bonds have been purchased by Littlefield and ought to be turned in for their benefit, Folio 434. That Littlefield has conveyed to the North Carolina Company the stock of the Florida Central Company contrary to equity. Folio 435.

On the 23d of May, 1879, the Dutch, by a solicitor, suggested that the Legislature of North Carolina, by an act of the 13th of March, 1876. repealed the charter of the North Carolina Company. Folio 486.

On the 26th of May, 1879, the Western North Carolina Company under order (Folio 1174), filed its bill, called a bill of revivor, to revive the suits supposed to have been abated by the repeal. Folios 490-496. On the same day the Dutch filed an answer admitting the facts stated for revival. The various answers, etc., were traversed. Folio 504 et seq.

It was stipulated that papers in comptroller's and trustees' offices might be read without proof; Folio 525 ; under this the papers are set out. Folio 526-535.

The North Carolina Co. answers the Dutch bill, 14th July, 1877, by setting out and insisting upon substantially the same case made in its original bill; Folio 584-627 ; and therein set out the transactions with Littlefield, Hopkins and Collinson, by which 800 of the State bonds were to be restored, being an order of Littlefield on Hopkins, dated and accepted 16th Nov., 1870; Folio 614; and letter of North Carolina Commissioners advising of draft against the same. Folio 614-15; Also the agreement between Dibble, &c., and Swepson concerning the railroad bonds and roads of 26th March, 186 9. Folio 628-30. The conveyance by the State authorities of the Tallahassee road to the same on the 8th April, 1869. Folio 634-36. Also further agreement by Dibble to Swepson, purporting to convey all the property to Swepson, to be held for the benefit of a corporation to be created, consisting of Dibble and his associates, and to secure Swepson for all the advances of the purchase money, &c., he had purported to make. Folio 638-9.

On 24th June, 1869, Dibble and associates were incorporated under the name of the Tallahassee Company as successors of the Pensacola and Georgia and old Tallahassee Co., and by sec. 6, authorized the new corporation to issue bonds to secure by mortgage provided, "that any deed of trust, mortgage, conveyance, bond or " bonds, or security which may have been executed, made, created " or contracted for as a lien on said railroads, or otherwise, by said " Franklin Dibble in behalf of himself and his associates prior to " the passage of this act, shall be valid and effectual to all intents, " either at law or in equity as a lien or mortgage or security on " said railroad as if the same had been made by virtue of this act, " and shall in no wise be affected by any provisions thereof." Folios 640-642. Also a copy of a new Tallahassee Company bond. Folio 642. Also partly executed and incomplete deed of conveyance from Dibble and associates, of the roads to the new Tallahassee Co. Folios 643-4. Also the act incorporating the F. C. Co., of 29th July, 1868; Folio 645-6. Also the contract between Houstoun and Littlefield of 13th May, 1870, touching the stock of the F. C. and the 110 bonds of the P. Ga. and Tallahassee Companies; Folios 647-8; Also additional agreement between the same of 30th May, 1870, on same subject; Folio 649-50; Also additional agreement between the same of 7th June, 1870, on same subject., Folio 651-2. Also action of F. C. Co., directors, of 21st Nov., 1870, rescinding the action of 24th June, 1870, touching the issue of the 1000 bonds of F. C. Co., and ordering the same to be destroyed, and providing for an issue not exceeding $700,000 of mortgage bonds as a first lien on the property. Folio 653. Also the receipt by Coddington from Houstoun of the 1000 F C. bonds with other provisions for the disposition of the moneys. Folio 655. Also the action of the board of the J. P. & M. Co., of 10th Dec. 1870, reciting the issue of its bonds in exchange for State bonds pursuant to its act of incorporation, and that such issue was made previous to the complete consolidation of the Tallahassee Company, with it, and the existence of a contract by its president with Swepson. as President of the F. C. Co., and the North Carolina Commissioners, by which the proceeds of the State bonds were to be divided, and declaring that such contract was unauthorized and unlawful and prohibiting the negotiating of such bonds, and directing them to be returned and that notice be given Hopkins & Co. and all others. Folios 656-7. Also the memorandum plan of 12th Jan., 1877, between Sherwin and others, agents of the Dutch and others, for dividing out the property and organizing. Folios 658-661. Also the agreement between Swepson, as President, F. C. Co., and the J. P. and M. Co., Littlefield and the North Carolina Commissioners, concerning the disposition of the difficulty, of about 15th, Aug., 1870. Folios 663-64. Also another agreement between the North Carolina Commissioners and Swepson on the same subject, dated 16th April, 1870. Folios 665-67. Also affidavit of Swepson in New York suit, 3d Oct., 1870, stating the use of the North Carolina Company's money in the transactions, &c. Folios 669-70. Also agreement of settlement 10th Nov., 1870, at London, between Littlefield for self and J. P. & M. Co.. and Woodfin for North Carolina Commissioners. And also articles of impeachment against Reed. Folios 677-8.

The answer of Baker and other directors F. C. Co. to the Dutch bill was filed the 20th of April, 1878, denying its equity as against them and setting forth the grounds thereof. Folios 679-85.

The J. P. and M. Co. answer the Dutch bill, 14th of July, 1877, denying its equity upon substantially the same grounds as those state by other defendants. Folios 694-704.

The answer of L'Engle, filed on the 14th of Sept., 1877, denying the equity of the Dutch bill and setting forth the history of the transactions as previously stated. Folios 704-724. And setting forth proceedings in the suit of L'Engle vs. Littlefield and others in the Florida Court in 1872. Folios 725-742. Also his letter of notice to the Dutch bankers of the 8th of Feb., 1871. Folios 742-46. Also the resolution of the F. C. Co. directors of the 21st of Nov., 1870, rescinding the previous action touching the bonds, etc. Folios 747-8. Also the action of the J. P. and M. Co. of the 10th of Dec., 1870, referring to the disposition of the State bonds and the deposit of the railroad bonds, declaring the same to be without authority and contrary to law, and requiring the railroad to be delivered up, etc. Folio 746-50. Also a writ of mandamus by the Florida Court requiring the election of the directors of the F. C. Co. Folio 752-59. Aalso the action of the stockholders in obedience to said writ; Folio 760; also the contract of the 13th of May, 1870, between Houstoun and Littlefield; Folio 762; also contract of the 12th of April, 1871, between Houstoun and Hopkins & Co.; Folios 763-65; also the decree in the United States Court of Florida in the case of Washington vs. Florida Central Co. et al., appointing a trustee for holding disputed stock, etc.; Folios 766-67; also proceedings at the stockholders' meeting of the 28th of May, 1877, at which said trustee represented a majority of said stock, and wherein L'Engle and associates were elected directors; Folios 769-71; also meeting and organization of the board of directors of May 28th, 1877; Folios 772-73; also letter of notice of June, 1871, by Brevard, counsel for the bondholders of the P. and Ga. and Tallahassee Railroad companies, addressed to the London committee, putting them upon inquiry concerning the whole transaction; Folios 775-781; also articles of impeachment against Reed before referred to. Folios 782-784.

The answer of the F. C. Co. to the Dutch bill denies its equity and states the case substantially as in its cross-bill before referred to, and particularly denies that the Dutch holders purchased without notice and that they are the holders of any Florida bonds issued to or upon the credit of the company; Folios 785-804; and it attaches papers to show that the consolidation of the Tallahassee and J. P. and M. companies had no reference to the F. C. Company; Folios 805-810; also a copy of the alleged F. C. Company bonds, showing the purpose for which they were ostensibly issued; Folios 810-11; also the receipt of Coddington of the 1,000 of such bonds; Folios 812-13; also the petition of Sherwin to Stearns of the 22d of Sept., 1876. Folio 814-16.

On the 30th of July, 1877, the F. C. Company filed its cross-bill in the Dutch case, setting forth the transactions substantially as in its answer and cross-bill in the Western Division Company's case, and praying that the transactions may be declared void and that 1,000 bonds so issued in its name may be cancelled, etc. Folios 822-824. The cross-bill has attached exhibits of the before mentioned proceedings in the Florida court in the case of L'Engle vs. Littlefield and others; Folios 844-859; and the notice of L'Engle to the Dutch bankers; Folios 861-3; and the writ of mandamus of the State Court for the election of stockholders; Folios 864-6; also the agreement between Houstoun and Littlefield of the 13th of May, 1870; Folio 867; also proceedings relating to the stock in suit of Washington; Folios 868-71; also proceedings of stockholders of the 28th of May, 1877, electing directors; Folios 871.74; also meeting and organization of the board so elected; Folio 785; also copy of the alleged F. C. Company bonds issued by Swepson; Folios 877-8; also further agreement of the 30th of May, 1870, between Littlefield and Houstoun; Folios 879-881; also further agreement between same of the 7th June, 1880; Folios 881-3; also receipt of Coddington to Houstoun for F. C. Company bonds Jan. 11, 1871; Folios 883-85; also proceedings of the directors the 21st of Nov., 1870, rescinding former actionas to the bonds and requiring them to be destroyed; Folios 885-6.

On the 10th January, 1879, Schutte, etc., filed a supplemental bill, stating that on the 28th May, 1877, the defendants, combining with one Doggett, met and pretended to be a majority of the stockholders of the F. C. Co., and proceeded to elect directors, who falsely claimed that they were lawfully chosen, for the purpose of defeating some of the rights of the complainants; that such meeting was not called pursuant to law, and asking relief as in the original bill. Folios 2449–50.

Guerrard and others, holders of original Pensacola and Georgia and Tallahassee bonds, answer the Dutch bill on the 4th of Feb., 1879, setting up their claims as paramount; Folio 888-96.

The Florida trustees answer the Dutch bill on the 22d of Dec., 1877, setting forth the sale of Pensacola and Georgia, and Tallahassee roads on the 20th of March, 1869, for the payment of the bonds which were a first lien on the road; that Dibble, etc., were the highest bidders, but denying that they paid the purchase money, and set forth the circumstances of ostensible payment as before appears in the record, and the transactions of Swepson and Dibble in connection therewith and the representations of Meek, attorney-general, and the proceedings of Gamble, etc., and the representations made to them that the purchase money had been paid, and the execution delivery of the deeds of the property, the incorporation of the new Tallahassee Company and of the J., P. and M. Company as its successor, and the consolidation of the P. and Ga. and T. Companies into one road under said acts of the Legislature, and that the stockholders had notice of the fraudulent transactions at that time, and denying that the bonds claimed by the Dutch were issued in conformity with law, and referring to the statutes on the subject, and denying that they were a lien on the property and insisting that, if the laws were valid, the Governor had no authority to issue the State bonds in the manner that he did, and alleging that the amount of bonds issued was in excess of the law, and alleging notice to all the officers of the State of the preceding transactions, and that the original bonds constituted a prior lien, and setting forth a fraudulent alteration of the act of the 24th of June, 1869, and proceedings against the Governor at the suit of Scott and others to enjoin the issue of any bonds, and the injunction of the Florida Court issued on the 14th of July, 1869, still in force, enjoining Reed against issuing, or signing, or sealing any such bonds and enjoining the President of the J., P. and M. Company from receiving the same, and stating that the act of the 28th of January, 1870, validated the act of the 24th of June, 1869; that Reed issued the bonds in fraud of the rights of the State and of the holders of the original bonds, and insist upon proof of the bonds claimed by the Dutch and all other allegations in relation thereto. And allege that 224 of the bonds have been cancelled, two lost, unsold, 575 impounded in another litigation unsold. And denying that the Dutch holders purchased for value without notice, and on the faith alleged by them, and deny all the allegations of representations by the agents of the State, or bankers, concerning the same, and deny that Florida ever paid any interest on the State bonds; and allege that the money paid for interest was taken out of the purchase money on the sale; and allege that Vose & Co. are holders of large amounts of the original bonds, and allege that the purchase money on the sale of the roads was not paid; and deny that the Dutch holders have any paramount or other lien, or claim, on the railroad property, and refer to the proceedings in the case of the State of Florida in the United States Supreme Court; and allege the recovery of a judgment in a State court by said trustees for the unpaid balance of the purchase money and its declaration as a lien on the property; and allege that every effort was made to notify the public of the frauds and particularly a notice to Collinson on the 21st of June, 1871, at London, and to Hopkins & Co., and that L'Engle notified the Dutch bankers on the 8th of February, 1871; Folios 897-931.

This answer has attached exhibits showing the order for a deed of conveyance on the sale of property; Folio 931. The deed of conveyance of the Tallahassee road on the 8th of April, 1869; Folios 933-35. Deed of conveyance of P. and Ga. road, on the 8th of April, 1869; Folios 936-9. Appointment of Dibble and Swepson as confidential agents of the trustees to receive the purchase money, etc., on the 8th of April, 1869; Folio 941. Report of Gamble and Meek turning the thing over to Swepson; Folio 942. The agreement of Dibble and Swepson on the 22d of April, 1869; Folios 944-5. The injunction of the Florida Court against

Reed, etc., prohibiting the issue or delivery of the State bonds; Folios 946-7. The letter of Brevard to the Governor; Folio 948. The decree in the State of Florida vs. Anderson, United States Supreme Court; Folios 951-3. The notice of Brevard to the foreign committees, before stated. The notice of L'Engle to the Dutch bankers, before stated; Folio 954-65. Sundry formal and interlocutory proceedings in the cause then appear; Folios 965-1079.

On the 31st of May, 1879, the bills of the North Carolina Company were dismissed and an appeal taken; Folios 1178 and 1181; and on the same day the prayer of the Dutch bill was granted, subject to the rights of the original bondholders, and the cross-bill of the F. C. Company was dismissed, from which an appeal was taken; Folio 1201-1238.

TESTIMONY.

Reed.—Says he was Governor of Florida from June, 1868, to Jan., 1873; he signed the State bonds corresponding to the whole distance from Jacksonville west as under the act of Jan., 28th, 1870; and in the year 1870 exchanged those numbered from 1 to 3000 for the bonds of the J. P. & M. Co., and those from 3000 to 4000 for the bonds of the F. C. Co. He delivered the last million to Houstoun, who returned them, and afterward they were re-exchanged with Coddington, Houstoun ann Gamble. Littlefield approved the exchange. Folio 1364. The exchange was made with Coddington for the purpose of raising means to pay $300,000 to Houstoun, Gamble, Coddington, &c., and the balance to be placed to the credit of the State of Florida in the National Trust Company, of New York. Does not personally know what became of the State bonds, except 224 which were cancelled. Charges of illegality and fraud were circulated touching them. He received letters and telegrams from Amsterdam and London inquiring whether the bonds were valid and to the first inquiry replied that they were legally issued; but to a later telegram from Amsterdam replied that no provision had been made for their interest and none would be under the circumstance. He cannot find the papers. At the time of the re-exchange had heard that some members of F. C. Co. objected to it. May have had official notice. The statement of Coddington in his deposition and the papers attached to it relating to Reed, are correct, except that Coddington was required not to deliver the bonds until the amount due the State was provided for. Folios 1365-66. In his annual message to the legislature, 4th Jan., 1872, he said: "The last million of the "four were delivered and held in trust, to be disposed when the "amount of $300,000 balance due the internal improvement fund

" is paid. This sum is still unpaid, and remains a lien on that " portion of the road between Lake City and Quincy. "Folio 1367. The four million State bonds were delivered simultaneously to the President of the J. P. & M. Co., or on his order and on his certificate of the length of the road then constructed between Jacksonville and Quincy and branches, on the representations of Sanderson that the company was entitled to receive bonds on the whole line of the road constructed and operated by the company. Cannot produce the certificates. The last million of bonds were delivered under the authority of Littlefield, then President of the J. P. & M. Co. The re-issue was under the authority of the act of the legislature. Folio 1368-71.

Foster.—Says he is stockholder of F. C. Co.; and a director since May 25, 1870. Secretary from 1873 to 1875. Does not know that the company issued any bonds. Some authorized to be issued at meeting 2d June, 1870, for certain purpose; this the only authority until 1877 Folio 1378-80 ; and produces and proves the records of the company : and that Thompson was not Treasurer. Folio 1380.

Ely.—Says he is Secretary of J. P, & M. Co.; consolidation of Tallahassee and J. P. & M. Co., occurred 25th May, 1870. The Tallahassee Co.'s road commenced at Lake City and extended to Quincy, and ran from Tallahassee to St. Marks, and had the Monticello branch. Folio 1382. The consolidation proceedings appear in record, copy annexed. Folios 3606-3623. The J. P. & M. Co. at that time had no road. Folio 1382 and the F. C. Co. did not consolidate with J. P. & M. Co., and no proceedings for such a purpose appear in record of J. P & M. Co. The F. C. Co.'s line was from Jacksonville to Lake City. Knew of no arrangement between these two companies for an issue or exchange of F. C. Co. bonds. No record of any such proceeding or that the J. P. & M. Co. ever agreed to receive or did receive any F. C. Co. bonds, or have any connection with the same. He produces the records for inspection, and files a copy. Is familiar with management of F. C. Co., which has always been controlled by its own board of directors. Folio 1383-84.

Stewart.—Is counsel for the N. C. Co. When the Governor was about to seize the Florida road on the petition of Sherwin for the Dutch, he remonstrated, and endeavored to persuade the officers of the corporations to take steps to resist, which they declined. That there were two or more boards of direction of F. C. Co. at that time and accordingly brought these suits. Folio 1385-87.

Stevens.—Acquainted with both the Florida Cos. Acting with Stewart endeavored to present the Governor from seizing the roads. No books of F. C. Co., could be found. Folios 1387-8.

Rainey.—Attorney General of Florida since Jan., 1877. Verifies the application of Sherwin to Stearns, Governor, for seizure and sale. First saw it in Jan., 1877. First saw the paper of Schutte, et al., dated 31 March, 1877, in March. The first paper was thought to be insufficient. Folios 1389-92.

Rollins.—Stockholder of N. C. Co. Director since 1868 and president since Oct., 1870; one of commissioners under the act of N. C. for recovering the money misappropriated by Swepson, &c. A conditional settlement was arrived at 16th April, 1870, in Washington, by the commissioners with Swepson and Littlefield. Folio 1408. Swepson had received over $6,000,000 of N. C. State bonds in payment for the State stock in the corporation and had raised on that about $3,000,000 to apply to constructing and equipping the road. Swepson had used only a small portion of this for this purpose, and misappropriated the balance—part of which he had invested in purchasing the stock of the F. C. and bonds of the P., and Ga. and T. Cos., which Cos. became the J. P. & M. Co. Swepson had no authority for these steps. Swepson's breach of trust was not known to witness until April, 1870; commission ascertained the amount of Swepson's misappropriation in this direction to be about $1,287,436. Folios 1409-1411. Conditional settlement was in writing, copy produced. Folios 1417 and 1420. The terms of the conditional settlement were not complied with by the other party. Folio 1411. Had no knowledge at that time of the origin, character or object of the Florida State bonds, or how Swepson or Littlefield were to obtain them, nor had his associates. Had never heard of these State bonds until they were referred to in the conditional settlement. The settlement proceeded entirely as an act of restitution. Folio 1411. Had no knowledge of the character of the act of the Florida legislature connected with the bonds, but supposed the legislature had issued valid bonds. Folio 1412. Nothing further occurred until Oct.. 1870, when the commissioner learned that the Florida bonds had been disposed of at the date of the settlement, which gave rise to judicial proceedings in New York against Littlefield and Houstoun, and caused Woodfin, chairman of the commission, to proceed to London to see if the proceeds of the bonds could be obtained. Folio 1412. Woodfin in London entered into a further conditional agreement with Littlefield and Hopkins & Co. Copy produced (Folio 1422) by which 800 of the bonds were to be held by Hopkins, subject to the order of the commission. Folios 1425-1426. This agreement was not performed and nothing was ever obtained under it. Folio 1413. On 8 Sept., 1871, he instituted suit against Hopkins to enforce the surrender of the bonds, but the court decided that according to the law of Florida the bonds were dedicated to a special purpose and could not be claimed by plaintiff. Folios 1313-14. The commission did succeed in April, 1871, in obtaining £10,000 from Hopkins on account of the transaction, obtained by threatening to sue Hopkins on the agreement. Folio 1414. As a part of the settlement the commission was to have turned over the whole of Swepson's and Littlefield's interest in the Florida roads, and the commission hold 5000 shares of F. C. Co., and claim the entire stock of J. P. & M. Co. Folio 1415. All the transactions of the commission were efforts to obtain restitution of the misappropriated funds, by following the money into the property it had been used to obtain. Folio 1416.

Candler.—Stockholder and director in N. C. Co., also N.

C. commission under act of legislature 24th March, 1870, states substantially the same facts as Rollins. Folio 1427-33.

McLoud.—Stockholder and director and counsel of N. C. Co. Swepson was its president from Oct., 1868 to Nov., 1869. Succeeded by Littlefield, who was president from Nov. 1869 to Nov., 1870, succeeded by Rollins, president ever since. Folio 1448. The company first knew of Swepson's misappropriation about 15 April, 1870, through the investigations of the commission. Thereupon the stockholders at a meeting of 23d May, 1870, by resolution, denied the authority of Swepson, and soon after suits were instituted and other steps taken to endeavor to obtain restitution. Folio 1449-50.

Swepson.—Produces copy of charter of N. C. Co. Folio 1462-63. Received $6,000,000 of State bonds for the use of the company in building its road. Disposed of the same through Soutter & Co., N. Y. The matters stated in his affidavits previously made and produced are true. Folio 1465-72. Proves settlement between Littlefield and himself and N. C. commissioners at Washington, 16th April, 1870. Had no authority for using the money of the F. C. Co., nor so far as he knows had Littlefield for using that of the J. P. & M Co.; but each owned large majority of the stock. Proves the drafts drawn by Houstoun as his agent on Soutter in payment of F. C. stock and the P. & Ga. & T. bonds. Folios 1451-1454. Proves the agreement between Dibble and himself of 26th March, 1869, and 22d April, 1869, touching the Florida roads. Folio 1473-79. He paid $960,700 on the sale of the P. & Ga. & T. roads in the bonds of said roads, and that Dibble was to provide for the balance of the purchase. Folios 1453-56. Dibble did not pay, and the check for $472,065 was taken instead and to be retired by the use of bonds to be issued under the agreement of March 26th. The commissioners thereupon conveyed the roads to Dibble. Folio 1456. In order to protect him in the matter, the deed of Dibble to him of 22d April, 1869, of the sold roads and the delivery of the trustees' deeds to Dibble was made to be held for the purposes mentioned in the deed, and when this trust should be fully executed, he was to convey the roads to the company to be incorporated. Folios 1456-57. The act incorporating Dibble, &c., 25th June, 1869, was accordingly passed containing provisions recognizing his lien and security. The only conveyance of the property he ever made was to Littlefield of Nov. 1869, referred to in his affidavits. Folios 1457-8. The balance of the purchase money has never been paid, nor has he been reimbursed. Folio 1458. Some new Tallahassee bonds partly executed were placed in his hands under the deed of 22d April, 1869, of which he still holds $724,000. Folio 1458. He thinks Littlefield has the others; that none of them have been disposed of to his knowledge. Folio 1459. The P. & Ga. & T. bonds paid in on the sale were delivered to Gamble, treasurer, and destroyed. Folio 1459. N. C. Co. first knew of his transactions in the matter by his informing the commissioners thereof, 16th April, 1870. The action of the commissioners was with a view to follow the money of the State and had nothing to do with the Florida bonds as such. Folio 1460.

Slater.—Supposed to be not material. Folio 1490.

Herzberg.—Supposed to be not material. Folio 1494-96.

Bayne.—He is a broker in New York; arranged with Littlefield to sell the Florida bonds in 1870, but they were not delivered, but were placed with Hopkins of New York and London. When the bonds were first brought to his attention. they were represented as legal and valid; but in a short time charges of fraud and illegality were circulated and it was very difficult to introduce them into the market. They were then offered on the London market by Collinson, where he thinks they failed to be taken, and were subsequently placed on the Amsterdam market at reduced prices, and he understands were sold at 50 cents on the dollar. He visited London in 1872, in reference to the subject; found the standing of the bonds in the market was very bad on account of the alleged fraud and illegality. These rumors and reports were based on written and published statements by parties and officials in Florida, and were very numerous. The bonds were controlled in London by Hopkins & Collinson, and in Amsterdam by Boissevain. Folio 1497-99.

Thompson.—Says he was never a stockholder or director; signed some F. C. Co. bonds as treasurer; lives in North Carolina. Was informed by Swepson that he had been elected treasurer and believed it, and at his request signed 1000 bonds as such, without any suspicion that Swepson's statement was untrue. Did this at Littlefield's room in a New York hotel. Folio 1500-1502.

Herzberg.—Again. Nothing.

Porter.—Knows the various companies and Swepson and Littlefield and Coddington. Was a member of the firm of Soutter & Co. Proves the deposit of N. C. State bonds by Swepson and their sales, the money being drawn out by Houstoun, as agent of Swepson, and produces a large number of drafts. Folio 1507-34.

Wilson.—Day editor of the New York World. Produces a copy of the World of 15th June, 1870, containing an article dated Florida, 10th June, 1870, of which he attaches a copy to his testimony; Folio 1536; referring to the State issue of bonds and claiming that they are illegal and that proceedings had been commenced to enjoin their issue as fraudulent, and an injunction granted. The World had a large circulation in Europe and contained, in the year 1870, several other articles and paragraphs tending to put people inquiring as to the fraudulent and illegal character of these bonds. Folio 1540-5. Folio 1434-41.

Chapman.—Member of the firm of Hopkins; knew the J. P. and M. Co. in the year 1870, and the Florida bonds in question. Sold 2,800 of the 4,000 bonds for the J. P. & M. Co., and agreed to allow 50 cents on the dollar for the same. Folio 1541-2. Before any of the bonds were placed on the market, the newspapers of Florida and City of New York charged that the issue of the bonds was fraudulent and illegal, in consequence whereof they were put on the market at the prices named. There were also verbal rumors of the same character afloat as early as June, 1870, but before this he had given credit on the faith of the bonds; consequently Littlefield president of the company, agreed to let them be accounted for at the price named, and they were disposed of through Collinson, in London, at £138 10s. The bonds were taken at the reduced price under correspondence with Littlefield, June 16th and 17th, and Nov. 14th and 28th, 1870—letters attached; Folios 1545-46-47-48 and 49. Certain parties in Amsterdam were also interested in the sale and purchase. The first real sale of bonds was on the 19th of Nov., 1870, and the last on the 31st of July, 1871. About $400,000 of the proceeds of the sale were used for paying the interest on the bonds and floating them on the market. Folios 1541-45.

Chase.—Proves the handwriting of three letters of W. G. M. Davis, (Folios 1585-93 and 1597-1600) and says that he received them as trustee of the J. P. and M. Co. Davis was then in London, assuming to act for the same company. About the time of the issue 3,000 State bonds to that company there was a controversy about their constitutionality, which appeared in the public press. He visited Europe in the Summer of 1870, in reference to the bonds. Found the bonds being handled by Collinson and a Dutch syndicate composed of Boissevain, etc. When he arrived in Europe 2,800 of said bonds had been disposed of. Folios 1570-71. He learned from Collinson and his brother-in-law, one of the syndicate, that about 500 of the bonds were outside of the syndicate. Folio 1572. There were damaging reports in circulation in Europe at that time. He heard them first from Collinson on the 4th of July, and they were published in a Dutch paper in Amsterdam, in consequence of which he was requested by Collinson to procure from Florida statements to counteract the reports. Folio 1572. Attacks had been made on the bonds as illegal, etc., which had been suppressed as far as possible by the syndicate. Folio 1574. The attorney required a mortgage of the road to be made and recorded to secure the bonds, on the ground that a lien on the road would be worth nothing without it. Produces a paper written by Collinson in Dec., 1872, (Folio 1600), stating the same thing and that there must be an endorsement by the Governor that the old bonds are no longer a lien on the road, with a foot note of his own—the object being to satisfy the Amsterdam people that the P. and Ga. bonds were not ahead of theirs. Folios 1575-6. Met persons of the syndicate in London, Aug., 1872, who said they wanted the interest on the State bonds which they held provided for out of the proceeds of the sale. Folio 1576. Verifies other correspondence attached on the same subject between himself and Littlefield, etc., and between Collinson and himself, (Folios 1601-1610), the general purport of which is that the whole affair is in bad odor and involved in dispute and litigation. The bonds then disposed of numbered from 1 to 2,800; Folio 1578; $461,736 were taken out of the sales of the bonds to pay coupons on the 2,800. Folio 1579. There were 1,200 more of said bonds which went to Europe, numbered to 4,000, which he was charged with the duty of negotiating. Folio 1579. At that time there was litigation concerning the same both in New York and London. Folio 1579. These 1,200 bonds were charged with the payment of sundry particular debts described in schedules D, E and F, attached to the bill. Folio 1579. He verifies the papers between Collinson, Chase and others, of London, July, 1872, touching the last 1,200 bonds, and attached to his deposition; Folios 1603-27; which papers bear upon the disposition of the controversy touching the bonds and provide for their disposal. The controversies resulted in a consent decree in England before referred to. Folios 1580-83. The provisions of the consent decree were not complied with. Folio 1582. There was no consolidation of J. P. and M. Co. and F. C. Co Folio 1583. The F. C. Co. was kept a distinct and separate one and was managed distinctly and separately by its own board of directors. Folio 1583. The Florida State bonds had no market value in Europe in 1872, and he could not dispose of any of them except through the agency in London of the Holland syndicate, because the reputation of the bonds was bad as to their legality, and because the syndicate had so arranged it that none could be disposed of without their stamp. Folio 1584.

Littlefield.—Says he is president of the J. P. and M. Co. since Aug., 1869. Knows N. C. Co. Was president of it, Oct., 1869, to Oct, 1870. Swepson expended about $500,000 of the N. C. Co.'s. funds in first mortgage bonds of the P. and Ga. and T. companies, and about $130,000 in stock of the F. C. Co. Demand was made on Swepson for refunding the money, April, 1870. He proves the paper executed between Swepson and himself and the N. C. Commissioners, on the 16th of April, 1870. (Folio 1661). His notice to Hopkins of final settlement with the Commissioners of the 10th of Nov, 1871; (Folio 1664); the agreement between Dibble, etc., and Swepson, of the 26th of March, 1869; the conveyance of Dibble, etc., to Swepson of the 22nd of April, 1869; (Folio 1669;) his certificate to the Governor of Florida of the 6th of June, 1870, for the issue of bonds to the J. P. and M. Co.; (Folio 1671); agreement between Hopkins & Collinson of the 28th of Dec. 1870; (Folio 1674); and sundry telegrams; (Folios 1673 and 76-77); the draft of the mortgage from the J. P. and M. Co. to Reed, Governor; (Folios 1678, 1684 and 1686). He says the terms of the settlement with the Commissioners were not complied with. (Folio 1629). That he had no authority to act for the N. C. Co. or Commissioners, and that no Florida bonds were present at the settlement. That the N. C. Co. had nothing to do with the disposition of the bonds. That the railroad bonds purchased with the N. C. company's money amounted to $960,000 principal, and were delivered to Dibble and associates. Folios 1630-1. That these bonds were the only real paid on the sale of the railroads; Folio 1632. That the terminus of the F. C. railroad was at Lake City, 60 miles west of Jacksonville, and the eastern terminus of the J. P. and M. Co., is at the same place. Folio 1634. That the F. C. Co. was never consolidated with the J. P. and M. Co., or any other road; Folio 1635. That the F. C. Co. bonds were made up in New York by Swepson and Thompson, carried to Florida, and delivered to Houstoun, according to the understanding between Houstoun, Swepson and himself; Folio 1636. That the bonds were not complete in respect of stating the place of the office of the company and the certificate of their object not being signed, before which completion the consent of all the stockholders was to be obtained, and that only two or three were consulted and they did not consent. That Flagg at that time was the treasurer of the company; Folio 1640. That the professed meeting of the stockholders of the F. C. Co., on the 2d of June, 1870, occurred without notice as required by the laws, and only by two stockholders, himself and Houstoun, were present. They transferred temporarily some shares to Huling, Foster and Papy to make up a meeting for the purpose of bringing the bonds mentioned in schedule B into use as provided in schedule D; Folio 1641. The by-laws of the company required for meetings of the stockholders, the call of the president, or any three stockholders by ten days public notice in the newspapers, which on this occasion was not done; Folio 1641. That the professed meeting of the directors on that occasion was not called at all. The president, Sanderson, was not present, but Huling, Houstoun, Foster, Papy and himself met and passed the resolutions converting themselves from a stock holders' into a directors' meeting, not at the office of the company, but in that of Papy; Folio 1642. That there was never any contract or agreement between the F. C. Co. and the J, P. and M. Co., by which the J. P. and M. Co. were to have or use the F. C. Company's bonds, and the J. P. and M. Co. never received any. That the F. C. Co. were charged with the payment of a large amount of private claims; Folio 1644. That Flagg, the treasurer of the company and custodian of its seal, refused to seal the bonds on account of their illegality, etc., and that Houstoun in some way obtained the seal, brought it away from the railway office, and one Saunders affixed it to the bonds at his room in Tallahassee; Folio 1644-5. That from April, 1870, to April, 1871, Sanderson was president of F. C. Co.; Folio 1647. That in June, 1870, the J. P. and M. Co. exchanged with the State 3,000 of its bonds for State bonds, numbered 1 to 3,000; Folio 1647. That the certificate of the president of the company under oath required by law to be made to the Governor before the issue of the State bonds was never made; Folio 1648. And that he, as president, refused to make it because it was not true; Folio 1647-8-9. That he refused to execute a receipt to the Governor for either the 3000 or the additional 1000 bonds after the exchange was in fact made. Folio 1649. He proves the record of the proceedings of the J. P. & M. Co. stockholders as to the exchange of the bonds, and says there is no other. Folio 1650. That at that time, or since, the J. P. & M. Co. owned no road. It was a prospective road, not built, to commence at Quincy and go west. Folio 1650. Afterward it consolidated with the new Tallahassee Company, which owned the line between Lake City and Quincy. Folio 1650. That the consolidated company took to action as to the exchange of bonds. Folio 1651. That the State bonds were disposed of at great discount on account of damaging statements of the public papers in Florida and New York which were sent to Europe. That he tried to dispose of them in England, Germany and

Holland without success, on account of these public damaging reports. Folio 1652. That a syndicate was formed for taking the bonds in 1871, of which Collinson was the head, who stated that Boissevain and others were members. Folio 1653. That the bad charactor of the bonds was notorious in the bond market of Europe. Folio 1653. That two questions were raised by Collinson and his associates in the negotiation. First, whether the State had any authority to issue the bonds, &c., and, second, whether there was any lien under the statute upon the roads for the benefit of the bondholders. Folio 1654-5. That Collinson took the opinion of Barlow, counsel in New York, which was adverse to the legality of the bonds. Folio 1655. That the mortgage of the road desired by the syndicate was not executed. Folio 1656. That he executed a deed of trust upon the J. P. & M. road to Reed, Governor, in Dec., 1872, without the authority of the stockholders and sent it for record to the county clerk, where, with other papers, it was burned. Folio 1658.

Barnet.—Was director of J. P. & M. Co. after the exchange of bonds. Collinson, agent of Hopkins and Co., told him the bonds could not be negotiated, as they were objected to in Holland as illegal, etc. Folio 1705. In summer of 1872 was in Holland and England; saw articles in the papers published in Holland attacking the validity of the bonds, and the impeachment of Reed, Governor, in connection therewith was a matter of public notoriety. Folio 1708. Was elected president of the F. C. Co. in 1872, and acted about a year. There was no consolidation of that company with any other, and it acted independently. Folio 1709. Knew of no contract or agreement between F. C. and J. P. & M. Cos. for issue or exchange of bonds. Folio 1710.

Engler.—Says he is trustee for the foreign owners of a certain number of Florida bonds—cannot give their names, there are hundreds. Became trustee about March, 1877. Acts by authority of powers given by the then bona fide owners of the bonds. Says he will produce the powers. Received under the powers about 2,700 or 2,800 State bonds. Folio 1711. That his trusteeship had no relation to anything else than the "memorandum plan." Folio 1713. Has no personal knowledge as to who were bona fide holders. Folio 1715. Produces Florida bond No. 1,240 as specimen of the whole. Folio 1719. Produces and proves "the memorandum plan," Folio 1724, and specimen power of attorney, Folio 1720, and produces his correspondence, Folios 1719–21.

Coddington, one of the defendants, makes his answer to the bill a part of of his testimony and repeats the material parts of it and says it is true; in which he gives an account of the steps by which the last thousand of State bonds were obtained, viz: That he and Houstoun received the one thousand F. C. bonds from Gamble on 11th January, 1871, carried them to Reed, Governor, who then delivered therefor 1,000 State bonds, numbered from 3,001 to 4,000, which were taken by him and Houstoun to the hotel and left with him. The next morning the paper, Schedule F, was delivered to Houstoun with the authority and assent of Littlefield, as president of the J. P. & M. Co., Folio 1736, and a direction from Reed to deposit the amount called for in the instructions in the National Trust Co. Folio 1737. He then left the State with the bonds and went to New York and thence to Europe and kept the bonds in London until 18th April, 1871, being unable to raise money on them. He then, under orders from Houstoun, confirmed by Littlefield and Reed, Folio 1738, delivered the bonds to Hopkins. Folios 1736–7. Hopkins & Co. had a house in New York, as well as London, and were the fiscal agents of the Florida and of the J. P. & M. Co. On the delivery of the bonds he obtained the signature of Hopkins as required. Schedule F. At that time a suit was pending by Westcott and Gamble and injunctions existing against the disposition of the bonds, but Gamble and Westcott consented that they should take the bonds, and he supposed the suits were dismissed, but they were not. Folio 1740. He presents the receipt of Coddington of 11th January, 1871, and the agreement of Hopkins of 18th April 1871. Folios 1741-2. He received no money on the bonds. Folio 1743.

Hopkins.—Contracted on 13th April, 1870, with J. P. & M. Co. for negotiation of all the State bonds which it was to receive under the laws of the State. Folio 1746. During the negotiation of the bonds, letter was received by Holze and Borssevain, of Amsterdam, in February, 1871, attacking the validity of the whole issue and he believes there were other statements circulating in public, affecting them. Folio 1747. On 16th November, 1870, accepted an order by Littlefield in favor of Woodfin, commissioner, for 800 bonds to be held subject to Woodfin's order, and fixed upon 800 bonds out of the 1,000 which were to go into his hands, numbered above 3,001. The bonds did come into his hands, but were not delivered under the order. Folio 1748. Eight hundred of them were placed in the hands of the receiver of the Supreme Court of New York, and 200 were delivered to the representatives of the J. P. & M. Co. Folio 1748. 224 of the same were sent back to the State of Florida and cancelled; 568 were or are tied up in chancery in England, the remainder went into the possession of Collinson to furnish money to pay maturing interest on bonds previously negotiated. He did not sell any of the 1,000 bonds. Folio 1748-9.

Requa.—One of the directors and large stockholder in J. P. & M. Co. The company was consolidated with Tallahassee Company after its sale to Dibble, etc, which, under the new name. extended from Lake City west. Has no knowledge of any consolidation with F C. Co. Never knew of any action of the companies of that kind. There was discussion, but nothing was done. The question of the illegality of the F. C. Co. bonds was very generally discussed both privately and publicly at the time they were issued. Folios 1751-3.

Porter.—Head of the firm of Soutter & Co. Sold the N. C. State bonds for Swepson, president. Proceeds paid out on order of the president. Does not remember the particular persons to whom proceeds were paid. Folios 1760-1

Wertheim.—Amsterdam, lawyer, etc. Knows Borssevain, Schutte, etc. Is counsel for the Dutch bondholders. Identifies copy of a speech he made to the Dutch bondholders, April, 1877, Folios 1774-85, supporting "the memorandum plan" Says he is a holder of some of the Florida State bonds purchased at 80 on the faith of the State of Florida and the managers of the railroads, through his brother, a stock broker, who took him to the office of Borssevain, where he inspected the official documents. He does not state the time or that he had heard nothing adverse to the legality of the bonds. Folios 1771-2.

Gamble.—Treasurer of Florida in 1869. Terms of sale of P. and G and T. roads, cash as advertised. At the sale the terms were changed to a small deposit of cash. Corroborates previous witnesses as to the amount bid and the purchase by Dibble. Folios 1788-9. Houstoun was then president of both roads. Folio 1789. He went to New York to carry out the provisions of the resolutions of the Florida commissioners in receiving payment, etc. The check of Dibble for $472,062 was produced and Swepson asked if he would take it as cash The subject of the production of the money being up, Swepson said there was no need of that, as the Florida commissioners had ordered the money to be turned over to Dibble and himself, and they would take the check as so much money, which was accordingly done, and the bonds, which had been turned in on the sale, were turned over to the Florida commissioners. Folios 1792-3. The Florida commissioners approved the transaction about the check in New York on its being reported to them on his return. Folio 1796.

Brevard.—Was counsel for some of the holders of the original bonds. Payment on the sale was made in part by turning in first mortgage bonds of the company. Balance was not paid in fact. Folio 1803. He notified Collinson, agent of Hopkins, and addressed a letter to the chairman of the corporations arrears committee in London, of the existing condition of things, and objecting to the issue of the bonds under the Act of 1870. Had copies of his letter printed and sent to various persons, among whom were Hopkins & Co., of New York, and Collinson, of London. Folios 1803-7.

Foster.—Finds no bill of Cohen on file in clerk's office. Folio 1809.

Meek.—Was attorney general of Florida; went to New York with Gamble to receive payment from Dibble, etc., on the sale of the road. Confirms Gamble's statement as to what took place when the deeds were delivered. Folios 1812-13.

Reed.—Governor of Florida from June, 1868, to January, 1873 Delivered the $4,000,000 of State bonds in spring of 1870 to J. P. & M. Co. to aid in the construction of the road and received in exchange $4,000,000 of railroad bonds, $3,000,000 of J. P. & M, and $1,000,000 of Florida Central Company. Delivered $1,000,000 of the State bonds on the order of the president of the J. P. & M. Co. to Houstoun. The first three million were numbered from 1 to 3,001 and were delivered to some representative of the J. P. & M. Co. The other million numbered from 3,001 to 4,000. The delivery was on certificates, required by the law, as to the number of miles of the road, which were delivered by Sanderson, who represented himself as attorney of the entire line of road from Jacksonville to Quincy, and as vice-president of the Central Company. The million delivered to Houstoun was in exchange for the Florida Central Company bonds. Does not know Houstoun's relation to the F. C. Co. Folio 1816. Heeds that the law only authorized the issue of bonds on a one hundred miles from Jacksonville west. Sanderson construed it differently and on his and Papy's written opinion, he issued the whole $4,000,000. Folio 1817. At the time of the first delivery the roads had been sold. The $1,000,000 delivered to Houstoun were returned on the understanding that the negotiation for the sale of all the bonds had failed. Houstoun afterwards demanded re-delivery, representing that the negotiation for the sale had succeeded. Then the question was raised by stockholders and bondholders of their claims, and Reed required on the re-delivery of the bonds to Coddinton that before they were delivered to the commissioners provision should be made for the payment of these claims. Folio 1817. It was represented by Sanderson, Houstoun and Littlefield that the J. P. & M. Co. owned the whole line from Jacksonville west, and giving a reason for keeping up separate organizations. Folios 1817-18. The $1,000,000 of State bonds delivered to Houstoun in exchange for F. C. Co. bonds were delivered on the order of Littlefield, president of J. P. & M. Co. Sanderson presented two certificates, one as to the length of the road operated from Jacksonville to Lake City, and one as to the line from Lake City west. Recollection is that both these were signed by Littlefield, and Sanderson said they complied with the law. Folio 1818. The million bonds were first delivered June, 1870, re-delivered in December or January following. When Houstoun returned the State bonds, he returned the F. C. bonds to Houstoun. No objection was made by F. C. Co. to the re-delivery. Do not know that the F. C. Co. knew the bonds had been returned, Recollects no additional authority to re-deliver the bonds, nor any original authority for the company or companies. Folio 1818.

Baker.—Immaterial. Folio 1820.

Henderson.—Says a deed of trust was executed by J. P. & M. Co. to Flagg and others, and attested by him on 2nd

October, 1871. Does not know where the deed is. Deed was delivered to Chase, one of the trustees. Trustees accepted the trust and entered into possession and management of the J. P. &. M. Road, and continued in it until the appointment of a receiver. Folio 1821-2. They took possession of the whole line from Jacksonville west. Says Chase is not in the State. Proves a copy of the Floridian newspaper of 10th and 17th October, 1871, and states that the contents of the trust deed were correctly set forth therein. Folios 1822-3.

Cheney.—Director of J. P. & M. Co. from its organization in 1870. Company first had its office at Tallahassee, afterwards at Jacksonville, in building now claimed by the F. C. Co. The removal was on occount of both roads being under one management. Folio 1824. From the time of the removal of the offices until the appointment of Greeley receiver, the entire line was run as one, under the name of the J. P. & M. road, under the management of the directors of that road, and all contracts in regard to the line were made in the name of the J. P. & M. Co., etc.

Sanderson ~~Sanford~~ in May, 1870, was president and attorney of F. C. Co., and vice-president and attorney of J. P. & M. Co. Folio 1825. Flagg and Chase, under deed of trust, took possession of the whole line of road and ran it under the name of the J. P. & M. Road. Folio 1825. After the organization of J. P. & M. Co. meetings were held by stockholders and directors, the stockholders all being directors, at which resolutions were passed and arrangements made "looking to the consolidation" of the J. P. & M. Co. and F. C. Co. Do not know what records were made, but the result was the practical consolidation. Company had books, secretary always present and took minutes. Custom to read minutes at each meeting of the preceding one. Was not an officer of F. C. Co. Cannot give the date of the consolidation, but it was after May, 1870, when the two roads were under one management. Folio 1826.

L'Engle.—Proves his letter of February 8, 1871, to the Dutch bankers, (Folio 1848.) and its being sent them by mail in the summer of 1871—thinks June. Has had search made for bill in chancery in his his name against Littlefield, Barnett and others, Duval County. Original cannot be found. Proves a printed copy of it. (Folio 1854). Proves copy of injunction in same suit issued 11 May, 1872, against Littlefield, Houstoun, Swepson, J. P. & M. Co., Florida land commissioners, etc., and Hopkins & Co., forbidding the receipt or expenditure of the proceeds of the State bonds, or the carrying out of the arrangement made respecting the same, etc., etc. (Folio 1871.) Folio 1829. Proves press copy of a letter of the 21 January, 1871, from Sanderson to Houstoun. (Folio 1878.) Folio 1831. Puts in copy of proceedings in United States Circuit Court, Florida, Precher *v.* Florida Central Company, etc., etc., touching these matters, and praying injunction filed 1st May, 1872, and injunction granted. (Folio 2880-1891.) Also copy of the opinion of the Supreme Court of Florida, January, 1875, in case between State of Florida the trustees internal improvement fund and the F. C. Co., etc. Folio 1831-2.

Buckman.—Clerk of Duval County. Proves search for the papers referred to in evidence of L'Engle. Folio 1832.

Reed, Recalled.—Says he received in December, 1870, from Boissevain and others, bankers, Amsterdam, telegraphic despatch inquiring whether provision had been made for the payment of the interest on the State bonds issued to the J. P. & M. Co., which he answered stating that no provision had been made and none would be. That the bonds were recently recalled by the company. Folio 1833.

Taylor.—Previous to 1876, resided in Tallahassee; connected with railway; knows Walker, general superintendent J. P. & M. Co., and Anderson, superintendent F. C. Co., Flagg, secretary and treasure, of J. P. & M. and F. C. companies. Indentifies and proves sundry papers and accounts of isbursements, etc., of J. P. & M. Co, and F. C. Co., called exhibits 1 to 8. Folios 1834-37. The same books were used by both companies, but separate accounts kept with each company, and earnings were kept separately according to ticket and way-bill reports, mail earnings according to mileage, wharfage earnings entirely to the F. C. Co. Expenses distributed on a similar ratio. Folios 1837-8.

L'Engle, Recalled.—Proves handwriting and signature of Flagg, deceased, secretary of F. C. Co., on copy of proceedings of 21 November, 1870, called exhibit No. 9, E. M. L. Folio 1838.

Braden.—Employed as clerk, etc., of F. C. Co., since 1867. Produces books and papers concerning the business operations and shows that the two corporations kept separate accounts of their respective interests and did not act as one company. Folios 1841-3.

Washington.—Claims certain shares in stock of F. C. Co., as trustee under deed between himself and L'Engle, executed in 1875. He was acting for L'Engle, who attended to the business and furnished the necessary funds. The suits instituted by him were only under the authority of L'Engle. That he only claims referred to in suits in his character as trustee under the deed, and that L'Engle was fully authorized to represent him in the whole matter. Folios 1992-95.

Pierce.—Resided in London in 1870-1 and was chief clerk of Hopkins & Co., and as such had knowledge of the handling of the Florida State bonds by that firm, who acted, as he believes, as agents of the railway company by whom they were issued. Folio 2024. Never saw the paper purporting to be appointment of Hopkins & Co. as agents by Littlefield, president J. P. & M. Co. (Folio 2004-5.) Hopkins & Co. sold to Collinson, of London, 2,800 of said bonds at 138£, 1s and 10d each, during the years 1871-2. That Hopkins & Co. endeavored to negotiate the bonds in Paris in 1870, but failed on account of the war. Does not know what Hopkins did to induce purchasers to buy the bonds. Collinson was introduced to Hopkins & Co. by Mendell, of Brussels, who was to have a commission on the transaction. Hopkins & Co. sold to nobody else than Collinson. Folios 2024-26. Thinks paper marked A. is a copy of one of the bonds. (Folio 2004.) The bonds were sold privately to Collinson and were originally taken by Hopkins on speculation at about one-half the face value. To the best of his knowledge and belief Boissevain, Mildeus Zaddocks, Stoope, Manga and others were jointly and personally in the speculation, Hopkins & Co. selling to Collinson, and Collinson to the Amsterdam parties—who in their turn issued the same on the Amsterdam market. Believes these parties were in constant communication. Nothing came to his knowledge in regard to the invalidity or illegality of the bonds. Some of the money was set aside to float the issue, and flattering paragraphs appeared in the newspapers. Folio 2028. The agreement between Hopkins & Co. and Collinson was on 14th November, 1870—the modified agreement in December following. At that time no question was raised as to the validity of the bonds, though the question was raised and warmly discussed in Holland, as he saw by the newspapers some time after. Does not recollect any attempt to issue the bonds in London. Hopkins & Co. represented themselves in these transactions as being the fiscal agents of the State. He submits a copy of his correspondence with Davis on the subject of communicating what he knows. Folios 2027-29. This correspondence is not material except as showing the reliability or want of reliability of the witness, and methods of attorneys in procuring testimony. Folios 2029-44. Form of original P. and Ga. bond. Folios 2045-47. The Act of the Legislature of N. C. of 13th March, 1879, repealing the laws creating the Western Division N. C. Co. Folio 2073. The Act amending the charter of the Western N. C. Co., and creating the Western Division thereof of 19th August, 1868. Folio 2076. The Act providing for the completion of the Western Division road and the appointment of Woodfin and others commissioners, of 24th March, 1870.

Folio 2079. The order of the 27th December, 1872, in the New York suit of Collinson vs. Hopkins & Co., touching the claims of the N. C. Co. and the conditional agreement of settlement of 15th June, 1872, on which the same is based. Folios 2131-38. Ratification thereof by J. P. & M. Co. Folios 2140-47. Order of Woodfin of 16th November, 1870, to Hopkins & Co. to sell the 800 Florida bonds. Folio 2211. Agreement of 28th December, 1870, between Hopkins and Collinson on the subject of the alleged unconstitutionality of the State bonds, providing for deposit for part of the price until decision of the Supreme Court of the State can be had. Folio 2473. Definitive prospectus of Florida State loan referred to by Wertheim. Refers to Act of 28th January, 1870, as authority for issue. Says the money raised was to be devoted to railroad purposes and paid on the completion of every 20 miles, State being secured by first mortgage. The J. P. & M. Co. has 250 miles completed and has mortgaged to the State its entire property, etc., for security. Folio 2477.

Collinson.—Says that he dealt with Hopkins & Co. in the purchase of the bonds during the years 1870, '71, '72 and '73, or some of them. All the papers are in England and he cannot state more particularly. The bonds were put on the Dutch market and sold there, as he is informed, and he sold the bonds to Boissevain and Milders and Maingay of Holland. Nothing was done by him to induce persons in Holland to purchase the bonds from them. Mendell, of Brussels, was interested with him in the transaction. The purchase money used with Hopkins & Co. was found in certain proportions by Boissevain, Milders, Maingay, Mendell and himself. There was no association created by him to buy the bonds. He made no representations to any one of such persons, except copies of documents received from Hopkins. Did not receive any bonds from Chase. Does not remember whether he received any by his authority. Folios 2512-16. That he received and delivered the 1,000 State bonds, numbered from 3,000 to

4,000, as stated in his answer in the case. He claims a lien on them for $40,000. Two hundred and twenty-four of the bonds were cancelled, leaving 776. Of these 568 were placed in the Bank of England by order of the English Chancery, out of which he received, in June, 1878, 192. The remaining 376 are still in the Bank of England, held by order of the court. Folios 2518-23. Proves the letter of Littlefield and of Reed and his receipt for the bonds to Houstoun, and says that he did not receive any money on the bonds with which to execute the directions in the papers. Folio 2528.

Collins.—Was member of the firm of Hopkins, etc., and resided and did business in London. The firm became agents of the J. P. aad M. Co. by the agreement of the 13th of April, 1870. (Folio 2803.) Hopkins & Co. believed the bonds to be good and that the State had a mortgage security against the railroad for the benefit of the bondholders. It was represented by the president of the J. P. and M. Co. that it owned the line from Jacksonville west, and that, under an act of the Legislature, the company were to deliver to the State the first mortgage bonds of the company at the rate of $16,000 per mile as security for the State bonds. Folios 2674-7. It was represented that there were no prior liens. Each bond had an endorsement signed by the Governor, stating that the company had deposited their first mortgage bonds. The line of railroad west of Jacksonville supposed to be covered, as learned by statements made by the president of the company. Folio 2677. All these statements were relied upon by the firm and repeated in Europe. Folios 2678-9. Hopkins & Co. received 4,000 of the State bonds; 3,000 were delivered by the then Governor or the agents of the railroad company, and 1,000 by Coddington. Folio 2680. Hopkins sold 2,800 of the bonds to Collinson under certain contracts entered into with him, and commenced delivering the bonds on the 19th of November, 1870. These bonds were the only ones sold by Hopkins, though all had been contracted for. Folio 2681.

Hopkins & Co. repeated the representations that the buyer of the bonds would have both the security of the State and 250 miles of completed road. That the eastern terminus of the road was at Jacksonville. Folio 2681-2. In the latter part of December, 1870, just as Hopkins had commenced to deliver the bonds, doubts were suggested as to the legality of the issue, and the delivery was suspended and steps taken to inquire into the legality of the issue.

The judges of the Supreme Court of Florida gave it as their opinion that they were legally issued, which fact was cabled to Hopkins & Co., in London, on the 16th of February, 1871, and copy of opinion of each of the justices forwarded, and the delivery of the bonds was again commenced and continued until 2800 had been taken and paid for by Collinson. Folios 2682-5. At the time they accepted the agency, had no knowledge of the existence of the F. C. Co., or that any part of the line was claimed by it. Folio 2685. Had they known that the F. C. Co. claimed the road from Jacksonville to Lake City, they would not have attempted to act. Folio 2685. Did not know whether Collinson had any associates in the purchase, and was aware that Collinson resold the bonds in Holland and believes that he repeated the representations. Folio 2686. Hopkins & Co. had no interest in the resale by Collinson, but from time to time gave him such information as they could. Folio 2687. Governor of Florida had appointed Hopkins & Co. agents for the State to pay interest coupons on the bonds, and furnished them with various documents touching the validity of the bonds, all of which they passed over to Collinson. Folio 2688. Hopkins & Co. paid out large sums of money received from Collinson under directions of the president of the company, to various parties, as per accounts. Folio 2689. In Aug., 1870, Hopkins was notified by president of J. P. & M. Co. of the agreement between it and the N. C. commissioners, under date of April, 1870, and again on the 16th Nov., 1870, of another agreement between the same of 10th Nov., 1870. Folio 2690. Woodfin was in London in the fall and winter of 1870-71, and assisted Hopkins in the matter, and never denied the representations made by the authorities of Florida, or that the bonds covered the line west from Jacksonville. Folio 2690. Woodfin claimed large amount of the bonds on account of an agreement with Littlefield, and Hopkins & Co were to hold 800 of the bonds subject to the order of Woodfin, who authorized the firm to sell the 800 and account for the proceeds, and did all in his power to aid the firm in effecting the sale. Folio 2692-3.

Woodfin never denied the title of the company to the line west from Jacksonville, or that the bonds were a valid lien on the entire line. Folio 2694. Thinks the dispatch of the Governor of Florida about not providing for the interest, &c., was sent to one of the parties in Amsterdam, a member of the Bourse. Cannot state the time with reference to the sale of the bonds. Folio 2696-7. Thinks the notice from L'Engle to Boissevain was sent, and a copy delivered or shown to witness by Collinson. Does not know what publicity was given to the communication. Thinks it was known to the parties in Holland. Folio 2699. Recollects slightly the communication of Brevard to the London committee, and thinks the sale of the bonds had been suspended about that time. Folio 2699. The £38 difference between the price obtained from Collinson and the price to be allowed the company was for indemnity against extraordinary expenses, as might happen by reason of attacks that were being continually made upon the character of the bonds. Folio 2706. The sale to Collinson was in the form of an option, which extended through a year. Folio 2707. Counsel differed as to the constitutionality of the bonds, which led to the additional agreement with Collinson of the 28th Dec., 1870. Folio 2708. It was a part of the agreement with Collinson that a certain amount of the proceeds of the sale should be appropriated to pay interest to mature thereafter—the amount thus appropriated being about $350,000. Folio 2710. The first delivery of the bonds to Collinson was on 19th Nov., 1870, and the last on 21st July, 1871. Folio 2710. No bonds above No. 2800 were delivered to Collinson under the agreement Folio 2711. His firm has no information on the subject that was not accessible to everybody. Folio 2711. The bonds numbered from 3000 to 4000 were brought to England

and delivered to the firm by Coddington, who gave instructions as to the disposition of the proceeds. Folio 2713. Thinks they were received subject to some of the charges and conditions contained in Coddington's receipt to Houstoun. Folio 2714. 224 of the 1000 bonds were returned and cancelled—two were lost, 568 were tied up in English Chancery. Remainder passed into the hands of Collinson under some agreement made with him by the agent of the company to advance sufficient money to pay one or more of interest coupons of the 2800 bonds taken by him. Folio 2715-17.

Hopkins.—Corroborates Collins and proves exhibits. Says Littlefield, President of the J. P. & M. Co., made the representations as to the bonds being secured by the line west of Jacksonville, and that he delivered resolutions of the directors and stockholders of that company authorizing him to act. Folio 2723-4. A copy of the act of legislature of Florida and map of the line were delivered to the firm. Folio 2726. The firm believed in the validity and adequacy of the security. Folio 2727. His firm had no interest in the resale of the bonds by Collinson. Folio 2737. Has no recollection that L'Engle ever took part in any of the negotiations. Folio 2743. Remembers that before he sold any of the bonds, they were denounced by some parties as being fraudulent bonds illegal in their issue, and that some party alleged that the statute was unconstitutional. Remembers that these charges were published in some public journals in the United States, but he did not believe the charges. Folio 2758. In consequence of the illegality and fraud, his firm were embarrassed in their efforts to negotiate, and it was finally agreed with Littlefield, that they should sell the whole issue to Collinson for the price stated by Collinson, &c. Folio 2759-60. Collinson having received an adverse opinion as to the constitutionality of the act, the modified agreement of 28th Dec., 1870, was made. Folio 2763. Knew that the 1000 bonds were the subject of some kind o suit in one of the courts of Florida, and that they have ever since been the subject of litigation either in London, New York or Florida. Folio 2772. He attaches to his testimony the papers referred to by him. Folios 2803-3023.

Engler.—Proves his authority to act for certain Dutch bondholders as per paper produced. (Folio 3037–42.) Never owned any of the bonds. In his former testimony, stating himself to be trustee, he meant only that he held the bonds as custodian. Claims no power to institute suits, but recognizes the power of Wertheim and Willard to control the litigation. Folio 3026-28. Has in his possession 2,950 of the bonds, owned by about two or three hundred people in Holland. They were first delivered for the purpose of executing the "memorandum plan." Now held to follow the directions of Wertheim and Willard. Folio 3028-29. Interrogatories in Schutte case, sundry witnesses in Holland. Folio 3675-92. Cross interrogatories. Folio 3736-43 and Folio 3746-69. Under which,

The proceedings bringing the case to a hearing and sundry applications, motions and the filing of sundry papers, and the minutes of Mr. Justice Bradley of the hearing, May 19th, 1879, appear in Folios 3052 to 3067.

The cases were heard on the 31st of May, 1879, and the final decree entered, declaring: 1st, A first lien of the trustees of the internal improvement fund for the unpaid balance of the purchase money on the sale of the 20th of March, 1869, on each of the roads sold; 2d, Declaring a second lien in favor of Schutte, etc., on both the roads so sold, in respect of bonds numbered to 3,000; 3d, Declaring a first lien in favor of Schutte, etc., on the F. C. road for bonds held by them numbered 3,001 and upward—being 197 bonds.

The decree then makes provisions for satisfying these liens by sale, etc., etc.

No notice appears to have been taken in the decree, of the cross-bill of the F. C. Company. From this decree the F. C. and the North Carolina Companies appealed. Folio 1233.

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SUPREME COURT of the UNITED STATES,

OCTOBER TERM, 1880.

No. 667.

THE FLORIDA CENTRAL RAILROAD COMPANY,
Appellant,
vs.
J. FRED. SCHUTTE ET AL.,
Appellees.

No. 668.

THE JACKSONVILLE, PENSACOLA & MOBILE RAILROAD COMPANY,
Appellant,
vs.
J. FRED. SCHUTTE ET AL.,
Appellees.

No. 669.

THE WESTERN NORTH CAROLINA RAILROAD COMPANY,
Appellant,
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &c.; **THE JACKSONVILLE, PENSACOLA & MOBILE RAILROAD COMPANY** ET AL.,
Appellees.

Argument for Western Division of the Western N. C. R. R. Co., Appellant.

JOS. B. STEWART,
Of Counsel.

NEW YORK:
EVENING POST STEAM PRESSES, 208 BROADWAY, COR. FULTON STREET.
1880.

Supreme Court of the United States.

OCTOBER TERM, 1880.

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THE JACKSONVILLE, PENSACOLA, & MOBILE RAILROAD COMPANY, *Appellant*, *vs.* J. FRED. SCHUTTE, ET AL., *Appellees.*	No. 668.
THE WESTERN NORTH CAROLINA RAILROAD COMPANY, *Appellant*, *vs.* GEORGE F. DREW, GOVERNOR, TRUSTEE, &C.; THE JACKSONVILLE, PENSACOLA, & MOBILE RAILROAD COMPANY; ET AL., *Appellees.*	No. 669.

The docket entries of these several appeals are incorrect, and do not correspond with the pleadings and the issues

founded thereon. They should be amended so as to stand as follows:

The Western Division of the Western North Carolina Railroad Company,
Appellant,
vs.
George F. Drew, Governor, Trustee, &c.; The Florida Central Railroad Company; The Jacksonville, Pensacola, & Mobile Railroad Company; J. Fred. Shutte; Jans Prins; et al.,
Appellees.

No. 667.

The Florida Central Railroad Company, upon Answer and Cross-Bill,
Appellant,
vs.
J. Fred. Shutte, Jans Prins, et al.,
Appellees.

No. 668.

The Jacksonville, Pensacola, & Mobile Railroad Company, on Plea and Answer,
Appellant,
vs.
J. Fred. Shutte, Jans Prins, et al.,
Appellees.

No. 669.

Without any fault of the appellants, this record is made to contain much that is irrelevant and unnecessary. Such matter was put upon it at the hearing, by the appellees, by simple reference, without being read, or any opportunity upon the part of appellants to object or procure rulings of the court upon its admissibility. A brief allusion, therefore, to the origin of the litigation and the status of the parties, will be necessary to enable the court to enter upon an inspection of the record intelligibly.

The Western Division of the Western North Carolina Railroad Company filed two separate bills below—one against the Florida Central Railroad Company, George F. Drew, Governor, Trustee, &c., and several other individual defendants (Record, pp. 1 to 39); the other, against The Jacksonville, Pensacola, & Mobile Railroad Company and the same individual defendants (Record, pp. 39 to 78).

It was deemed necessary, under the peculiar circumstances existing, to file separate bills, though the parties were the same, and the wrong and injury complained of in both cases had their origin in the same fraud and breach of trust, as will be seen as we progress.

The gravamen of the suits presented by these two bills, is that of a corporate *cestui que trust* seeking to recover its assets or the proceeds thereof, to the amount of upwards of $1,287,000, which were fraudulently used and appropriated by its Trustees, agents, and fiduciaries who had them in charge.

The suits, though nominally between the several corporate appellants and J. Fred. Schutte, Jans Prins, and others, known in this litigation as the "Dutch Bondholders," are, in reality, a contest between the several appellants, and Frank R. Sherman, Charles D. Willard, Henry R. Jackson, Charles H. Simonton, and their associates, under a scheme known as the "Memorandum Plan," which will be found at page 219 of the record.

By this plan these persons, who were total strangers to the two Florida Railroad Companies, appellants, some time in the year 1876, undertook to seize and appropriate said companies' roads, by the use of certain bonds of the State of Florida, held by the so-called Dutch Bondholders, which, at the time this project was entered upon, and long before, had been declared unconstitutional and void, by the Supreme Court of the State of Florida. The *wreckers* were to appropriate to themselves upwards of two-thirds of the avails of these two railroads, paying all the expenses themselves, and to concede to the Dutch Bondholders less than one-third of the proceeds, for the use of their names, and their void and unconstitutional bonds, in carrying out the "plan."

Stripped of all disguise, this litigation, on the part of the *appellees*, is an application to this High Court of Equity for its aid in enforcing this monstrously corrupt, champertous, and wrecking contract, called the "Memorandum Plan," and so appears upon the face of the bill filed by Willard, Sherwin, and associates, in the names of J. Fred. Schutte, and others, as will be shown to this honorable court, as we further progress with our argument.

With these introductory and explanatory remarks as to the general nature, real parties in interest, and character and object of this extraordinary litigation, we will endeavor to present the facts. as shown by the pleadings, as nearly in their chronological and consecutive order, as is possible from the mixed and confused state of the record.

STATEMENT OF THE CASE.

And first, as to the matters and facts which are not disputed, and are common to both the bills filed by the Western Division of the Western North Carolina Railroad Company.

The following facts are not disputed:

First.—That the Western Division of the Western North Carolina Railroad Company (and which for brevity we will hereafter style the Western Division Company) was organized under the laws of North Carolina, previous to the year 1869. That George W. Swepson was president of said company, but, who being a citizen of North Carolina, could not be made a party to this suit. The defendant, Milton S. Littlefied was a director of said company, and succeeded Swepson as president thereof.

Second.—That said company owned upwards of $6,000,000 of bonds of the State of North Carolina, which were under the control of Swepson and Littlefied, as its agents and fiduciaries, who converted said bonds into cash, through the house of Soutter & Co., of New York, for the alleged purpose of constructing the road of said Western Division Company, and thereby became possessed of a large amount of money belonging to said company as the proceeds of its said bonds.

Third.—That at the same time (1869) there existed in Florida a body corporate, owning a railroad from Lake City westward to Quincy, a distance of about 138 miles, known as the Pensacola & Georgia Railroad Company; and also a company owning a railroad from Tallahassee to St. Marks, a distance of about 22 miles, called the Tallahassee Railroad Company. One Edward Houstoun, then of Florida (but since deceased) was president of the two last named companies. These two companies were subject to a bonded debt of about $1,420,000, on which they were in default in the payment of interest.

Fourth.—There was also, at the same time, a separate and distinct body corporate, known as the Florida Central Railroad Company, owning a railroad extending from Jacksonville westward to Lake City, about 60 miles, represented by a capital stock of about 5,500 shares, and free of debt, of which one William E. Jackson was President.

Fifth.—That in the early part of the year 1869, the said Swepson, Littlefield, and Houstoun, fraudulently used and appropriated upwards of $1,287,000 of the money and assets of the said Western Division Company in the purchase of $1,063,000 of the $1,420,000 bonds of the Pensacola & Georgia and Tallahassee Railroad Companies, and some $4,700 shares of the capital stock of the Florida Central Railroad Company.

These P. and G. bonds and the F. C. stock were purchased by said Houstoun, as agent, by drafts drawn upon Soutter & Co., of New York, and paid out of funds belonging to the Western Division Company (see list of P. & G. bonds purchased with the Western Division funds, fols. 1479 to 1486), and (see a portion of the drafts drawn in payment of said bonds, fols. 1510 to 1533).

Sixth.—That after the purchase of the P. & G. and Tallahasee bonds, the roads of the companies by which they they were issued, were sold by the Trustees of the Internal Improvement Fund of the State of Florida, on the 20th day of March, 1869, and purchased by Franklin Dibble and associates, at the price of $1,420,000, but which purchase could be discharged by the delivery of said P. & G. and Tallahasee bonds, at par.

Seventh.—That on the 26th day of March, 1869, the said Swepson agreed with the said Dibble and associates to advance about $960,300 of said P. & G. and Tallahasee bonds so purchased with the fraudulently appropriated funds of the said Western Division Company, in payment for said Pensacola & Georgia and Tallahasee Roads, the remaining $472,065, of which purchase moneys was to be paid by Dibble and associates upon the terms and conditions of a written agreement executed between said Swepson and Dibble and associates of that date (see Agreement, fols. 628 to 630).

Eighth.—The terms of this agreement were not complied with on the part of said Dibble and associates, who were to supply the means for paying for said roads over and above the said $963,000 (see clause *first* of the agreement page 212) so as to secure the execution and delivery of the deeds conveying said two railroads to said Dibble and associates.

Ninth.—That in consequence of the failure on the part of said Dibble and associate to pay the said $472,065, the remainder of said purchase money, for said two roads, it devolved upon said Swepson alone to consummate the said purchase, which was done by a modified agreement entered into between Swepson, Bibble, and associates, on the 8th day of April, 1869, when the deeds conveying said roads were duly executed (see Deeds, fols. 630 to 637), but were not delivered then or at any subsequent time to Dibble and associates, but were delivered to said Swepson, to be held until he was reimbursed according to the terms of a deed of trust executed by said Dibble and associates, as follows (pp. 62–3, R.):

WHEREAS, George W. Swepson, has paid to the Trustees of the Internal Improvement Fund of the State of Florida, for and on account of F. Dibble and his associates, in payment for the Pensacola & Georgia and the Tallahassee Railroads, sold to said F. Dibble and his associates by said Trustees on the 20th day of March last, bonds of said roads amounting at their face to nine hundred and sixty thousand and three hundred ($960,300) dollars, and has also paid to said Trustees for the same parties the sum of four hundred and seventy-two thousand and sixty-five ($472,065) dollars, being the full amount due said Trustee for said roads; and whereas said F. Dibble, for and on behalf of himself and his associates, has obligated himself and them, and does hereby obligate himself and them, to cause bonds upon said roads as now completed, as soon as further legislative authority from said State of Florida shall be obtained therefor, to be issued, the same to be secured and in every respect to be, as stated in an agreement executed and dated the twenty-sixth day of last March, between said F. Dibble, on behalf of himself and his associates, and said George W. Swepson, which bonds, when executed, are to be and shall be placed as provided in said agreement, for the purposes therein set forth and for the further purpose of enabling said Swepson to be reimbursed the said sum of four hundred and seventy-two thousand and sixty-five dollars.

Now, therefore, this indenture, made and entered into between F. Dibble, on behalf of himself and his associates, party of the first part, and George W. Swepson, party of the second part, Witnesseth, that said party of the first part, for and in consideration of the premises, has granted, bargained, conveyed and confirmed unto said party of the second part, all that property of whatever name, nature and description, conveyed to said party of the first part by said Trustees of the Internal Improvement Fund of the State of Florida by two separate deeds of conveyance, each dated April 8, A. D. 1869, which deeds for full description of property are hereby made part and portion of this instrument. The said property hereby conveyed, to be held by said party of the second part in trust for the express purpose of enabling said party of the second part—which he hereby agrees and binds himself to do—to convey the same to that incorporation, consisting, or to consist as incorporators of said F. Dibble and his associates. As soon as said Dibble and his associates shall have granted to them such a similar relief as the Legislature of the said State of Florida granted to Wm. E. Jackson and his associates by act for relief of William E. Jackson and his associates, approved July 29th, 1868, and also for the further purpose of securing said party of the second part in all advances made as specified and agreed upon in the said agreement between these parties, executed and dated March 26th, 1869, and the advancement, as aforesaid, of said sum of four hundred and seventy-two thousand and sixty-five dollars, *until such* time as said relief shall have been granted, and said party of the second part shall have conveyed said property to said incorporation, as hereinbefore prescribed.

To have and to hold said property to said party of the second part for the purposes and trusts herein declared.

In testimony whereof, said party of the first part has hereunto signed his name and affixed his seal this day of 22d April, A. D. 1869.

F. Dibble, [L. S.]
For himself and associates.

Signed, sealed and delivered }
in presence of us, }
W. J. Woodward,
Jesse Carter.

No stamp being present, Geo. W. Swepson is authorized to stamp.

F. D.

Tenth.—That, by the terms of this Trust Deed, the legal title to said Pensacola and Georgia, and Tallahassee Railroads was conveyed to and vested in said Swepson, and the terms of said deed of trust never having been complied with, the said Swepson never has conveyed the same to any person or company, or divested himself of the title thus acquired, except so far as he agreed to transfer the same to Milton S. Littlefield, for the use and benefit of the Western Division Company (see Deposition of Swepson, Questions and Answers, 16 to 21, fols. 1455 to 1460).

Eleventh.—That on the 24th June, 1869, a company was incorporated, composed of said Dibble and associates, called the Tallahassee Railroad Company (see Schedule 5, of Answer of Western Division Company to Shutte bill, fol. 640) which authorizes the said *new* Tallahassee Company to issue coupon bonds, secured by deed of trust—subject, however, to the deed of trust executed by said Dibble and associates to Swepson, on the 22d April, 1869, as provided, in these words:

"*Provided, that any deed of trust or mortgage, conveyance,* "*bond or bonds, or security, which may have been executed, made* "*or executed, or contracted for, as a lien on said railroads, or oth-* "*erwsiee, by said Franklin Dibble, on behalf of himself and asso-* "*ciates, prior to the passage of this Act, shall be valid and ef-* "*fectual to all intents, either at law or in equity, as a lien or mort-* "*gage, or security, as if the same had been made by virtue af this* "*Act, and shall in nowise be affected by the passage thereof.*"

Twelfth.—That the said Tallahassee Company duly organized, pursuant to the charter so granted, and as required by the terms of said agreement, of the 26th March, 1869, between Dibble and associates and Swepson (see clauses 2, 3, and 4, fols. 628 and 629); and further provided by the trust deed of 26th April, 1869 (*supra*), whereby the title of the said Pensacola and Georgia and Tallahassee roads was conveyed to Swepson, to secure him for the $960,300, so purchased with money of the Western Division Company, and paid to the Trustees of the Internal Improvement Fund of Florida, in the purchase of said two roads, as sold on the 20th March, 1869.

The said *new* Tallahassee Company, as soon as organized, in July, 1869, attempted to issue and deliver to Swepson its coupon bonds, to the amount of $1,500,000, secured by deed of trust to Stewart L. Woodford, Darius R. Mangam and B. G. Worth, of New York (see copy of Bond, fol. 641); but the same not being satisfactory to Swepson, he refused to accept this bond issue, and make the conveyance of the two roads to the new Tallahassee Company, and he still holds the title thereto (see Questions 16 to 21, Swepson's Deposition, fols. 1455 to 1460).

Thirteenth.—That by reason of such fraudulent use and appropriation of the assets of said Western Division Company by Swepson, Houstoun, and Littlefield in the purchase of said railroads, and the incorporating of the same into the said *new* Tallahassee Company, the latter became charged with a lien or trust in favor of said Western Division Company in the same manner that the bonds were before they were paid over to the Trustees of the Internal Improvement Fund, which prior lien and equity was *expressly* reserved by the proviso of the 6th section of the act of incorporation (*supra*), and being so reserved in a *public statute* was notice to all subsequent purchasers or incumbrancers, and still remains so.

Fourteenth.—That on the same 24th day of June, 1869, on which said Dibble and associates were incorporated into the *new* Tallahassee Company, the Legislature of Florida passed an act incorporating The Jacksonville, Pensacola, & Mobile

Railroad Company, with power to construct a railroad westward from Quincy, the terminus of the said Tallahassee Railroad, to Pensacola and Mobile. This company was wholly on paper, and possessed no property, assets, or estate whatsoever beyond its naked franchise, and never has had any.

Fifteenth.—That by the 9th and 10th sections of the act to incorporate the J. P. & M. R. R. Co. an attempt was made to create a statutory contract between the State of Florida and said company for the issue and exchange of state bonds for said company's bonds, at the rate of fourteen thousand dollars per mile for each mile of road built, said bonds to be dated July 1, 1869, and secured in the manner provided in the 11th and 12th sections of said act. However, no *such* bonds were ever issued.

Sixteenth.—That by the 14th section of this act it was declared to be lawful for certain companies owning railroads east of Quincy to consolidate with the said J. P. & M. Co. This privilege, if it was one, was extended "to the several companies, owning the roads or parts of roads from Quincy to Jacksonville, from Tallahassee to St. Marks, and the branch to Monticello, or either of said companies," but does not mention either by its corporate name, nor provide for any amendment of their charters, nor enlarge their powers in any respect whereby they could lawfully consolidate with any other company.

Seventeenth.—That this act was never utilized, except by the formal organization of the J. P. & M. Co., until it was in a great measure superceded by an amendatory act, passed January 28, 1870, by the 2d section of which a *new and altered statutory contract was created between the State of Florida and said J. P. & M. Co.* These several acts will be referred to more fully hereafter.

Eighteenth.—That at the time of the purchase of the Florida Central, Georgia & Pensacola, and Tallahassee Railroads as aforesaid, with the funds of said Western Division Company, it had no knowledge of such fraudulent use of its means, and it had no such knowledge until early in March or April, 1870, when its directors called for an accounting for its assets and money.

Nineteenth.—That on a failure to procure the accounting mentioned in the last paragraph, the Legislature of the State of North Carolina, on the 24th day of March, 1870, passed an act creating a commission, composed of five citizens and stockholders of the said Western Division Company, empowered to "examine and fully investigate the condition and "affairs of the Western Division of the Western North Carolina Railroad Company, as far as concerns the administration "of G. W. Swepson, late President thereof; and to make a "full and final settlement of all accounts and liabilities of said "president, G. W. Swepson, in connection with said company. "It shall be the duty of said commissioners hereby created, to "collect and receive the funds and other assets belonging to "the said company, and due from the said G. W. Swepson "and all other officers of said company elected or appointed "since its organization, and to place the same in some safe "bank, there to be held, and to be faithfully applied to the "construction of said road, the construction and work on which "shall remain as heretofore, under the supervision of the president and board of directors." &c. (fols. 2080 and 2081).

Twentieth.—That these commissioners and officers of the Western Division Company met said Swepson and Littlefield in the City of Washington, on the 16th day of April, 1870, when they, as such commissioners and officers of said Western Division Company, were, for the first time, advised of the embezzlement and fraudulent appropriation of the funds of said Western Division Company as aforesaid.

See Swepson's Dep., Ques. 22, fol. 1459.
Ditto W. W. Rollins, fol. 1410, Ques. 13.

Twenty-first.—That thereupon said commissioners, within their power, agreed to written terms of settlement with said Swepson and Littlefield, to be effective, and operate as a discharge of the delinquents, when the terms thereof were fully executed and performed, *and not otherwise.*

See Ex. W. W. R., No. 1, fols. 1417 to 1420, and particularly fol. 1419.

But these terms and conditions never were performed by said Swepson, or any one for him.

Dep. W. W. Rollins, Ques. 17, fol. 1411.
Ditto W. G. Candler, Ques. 15, fol. 1432.

Twenty-second.—That at the date of said conditional settlement, to wit: April 16, 1870, at the City of Washington, the said commissioners were not advised how or by what means the said Swepson and Littlefield were to become possessed of any Florida State Bonds; that they saw no bonds, nor any statutes authorizing their creation; that the commissioners were looking solely to the recovery of the embezzled funds, and stipulated for releases of the tort feasors, when the funds were so restored, which never has been done (fols. 1411, 1429, 1430, 1460 and 1630).

Twenty-third.—That after the making of said conditional agreement to settle, said Swepson, in good faith, sought to execute the same, and refused and still refuses to release his lien upon said Florida roads, because the funds, for the repayment of which such lien was created, have not been returned to him or said Western Division Company, whilst Littlefield and Houstoun have, without his knowledge or consent, sought to involve and alienate the estate, without repaying said Western Division Company (fols. 1457, 1458 and 3606 to 3630).

Twenty-fourth.—That previous to said settlement, and previous to the attempted consolidation of the Pensacola and Georgia and Tallahassee Railroads (fols. 3605 to 3630), the said Swepson and Littlefield had, of their own motion, and without the knowledge or consent of the officers or stockholders of the Florida Central Railroad Company, caused 1000 papers, called bonds of that company, of the par value of $1,000, to be issued, being about twice the amount of the capital stock of said company; that in order to conceal this transaction from said company, its stockholders and officers, said Swepson *assumed* to act as its president, and induced one H. H. Thompson to act as treasurer, though in no wise authorized so to do; and that they surreptitiously obtained possession of the seal of said company, and affixed it to said papers. (For a copy of these pretended bonds, which were illegal and void, see fol-

40. For other circumstances connected with them, see fols. 1501, and 1636 to 1645.)

Twenty-fifth.—That, with full knowledge of the said settlement of April 16, 1870, and the rights of the Western Division Company in the premises, and after the attempted consolidation of May 24, 1870 (*supra*), said Littlefield and Houstoun, assuming to own said 4,700 shares and upwards of the stock of the Florida Central Railroad Company, and $1,000,000 in Florida State bonds, brought the same to New York City, and attempted to sell them and divide the proceeds among certain parties, pursuant to the several agreements dated respeciively May 13, May 30th, and June 7th, 1870, and that the said sums of money so paid to the parties named in said agreements out of the proceeds of said bonds were to pay *private debts of the said Littlefield,* and not the debts or obligations of said company (folios 4 to 46).

Twenty-sixth.—That, upon information of the last-mentioned scheme communicated by said Swepson, an action was commenced in the Supreme Court of New York, October 3, 1870, wherin said Littlefield and Houstoun were enjoined from selling or disposing of said stock and bonds, *and such injunction has never yet been dissolved* (folios 36 to 41).

Twenty-seventh.—That said Houstoun never appeared in said action, but made default therein, and avoided arrest by flight from the State of New York, and never returned to said State during his life time; and that upon his return to the State of Florida, he returned said State bonds to the Governor of that State, and got possession of the forged and fraudulent bonds aforesaid, which had been exchanged for said State bonds (folios 46, 1,817, 1,818).

Twenty-eighth.—That while said Houstoun was thus dealing with these 1,000 State bonds, the said Littlefield caused 3,000 other bonds of the State of Florida, which had been illegaly exchanged for 3,000 bonds of the Jackson, Pensacola, & Mobile Railroad Company, under the statutory contract of January 28, 1870, to be sent to Europe for sale; that this action was in violation of the conditions of settlement (fols. 1,417 to 1,428, *supra*), whereupon said commission sent its president, Hon. N. W. Woodfin, to Europe to seek payment pursuant to such settlement, which resulted in *another* conditional settlement, dated London, November 10, 1870, whereby said Littlefield agreed to supply the Western Division Company some 4,000 tons of iron for its road, and the delivery as by sale of 800 of said bonds of the State of Florida, upon condition that said bonds should be left with said S. W. Hopkins & Co for sale (see fols. 1,422 to 1,425).

Twenty-ninth—That the conditions of the last-named settlement not being complied with, said commissioners, acting under advice of counsel, and upon information again furnished by said Swepson, brought another action in the Supreme Court of the State of New York against S. W. Hopkins & Co., to recover the value of said 800 bonds under the London terms of settlement; that to this action Hopkins & Co. appeared, and pleaded, among other things, in defense thereto *that said Florida State bonds were dedicated exclusively to the construction of the Jackson, Pensacola, & Mobile Company's road from Quincy westward, and could not lawfully be devoted to the payment of any money due the Western Division Company, and moved the court to be dismissed and discharged from further answering said complaint, and said motion was granted* (see fols. 128 to 130 and 2,277).

Thirtieth.—That, during the legal proceedings aforesaid, two suits were pending in the State of Florida to test the constitutionality of the said Acts of June 24, 1869, and January 28, 1870, creating the said statutory contracts for the exchange of bonds between the State of Florida and said Jackson, Pensacola, & Mobile Railroad Company; and that, upon said cases reaching the Supreme Court of the State of Florida, said acts were declared to be unconstitutional and void, and that said State bonds, so called, were not, and never were, the undertakings of the State of Florida.

See the State *v.* Jacksonville, Pensacola & Mobile Railroad Company, and Holland and others, 15 Fla. R.

State *v.* The Florida Central R. R. Co. and others *idem.*

Thirty-first.—That, whilst the Supreme Court of the State of Florida decided that the statutory contract created by the Act of January 28, 1870, for the exchange of State bonds, was unconstitutional and void as against the State of Florida; nevertheless, the bonds were a good and valid contract as against the company, which had agreed to exchange, and had exchanged, its bonds, in consideration of said void and unconstitutional State bonds.

15 Fla. R., *supra.*

Thirty-second.—That, though the matters involving the rights of all the parties respecting said Florida roads were pending in court, where the said Dutch bondholders were represented by the Governor of Florida, *as their Trustee, under the said Act of Jan.* 28, 1870, the said Sherwin, Jackson, Willard, and their associates, conspiring together for that purpose, formed the scheme called the "Memorandum Plan," for wrecking the said Florida railroads, and prepared a petition to the Governor, on said 22d day of September, 1876, sworn to by said Sherwin, whom they represented to be the duly accredited agent in this country of the committee of Dutch bondholders, having in charge the interests of Gideon M. Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, and others, alleged to be the holders of 3,200 of the so called Florida State bonds.

See Petition, fols. 144 to 146.

Thirty-third.—This petition was supported by the personal letters of Sherwin, Jackson, Simonton, and Willard, assuring the Governor that it was made by authority of the committee of foreign bondholders, in Amsterdam, and using the names of said Boissevain, Mildeus, Zaddock, Stoop, and others (see letters, fols. 147 to 185), when the fact was that no such authority had then been given by the said committee, Boissivain, or any other person or persons, but the object of said petition, supported by the letters, was to induce the seizure of the roads by the Governor, and then procure the authority and powers of attorney from the so-called Dutch bondholders, which were not procured until about the month of March, 1877. These facts are distinctly charged in the amended bill of the Western Division Company (fols. 136 to 144), were never denied, and are fully proven by the dates of the powers of attorney to Willard, Wertheim, and Engler, Trustee.

See Dep. of Engler, fols. 1710 to 1735.

Thirty-fourth.—That as part of the scheme to possess themselves of these Florida railroads, said Willard, Sherwin, and their associates, as early as October 15, 1876, organized a company, under the General Incorporation Laws of the State of Florida, called The Jacksonville & Mobile Railroad Company, to be composed solely of the Florida Central and Jacksonville, Pensacola, and Mobile railroads, when the same should be forced to sale under the said "memorandum plan," and owning no other road or property.

See Articles of Incorporation, Supplemental Record A.

Thirty-fifth.—That the formation of such a company as last above named was provided for, and constituted a part of said "memorandum plan." At folios 658 is the following:

"For the reorganization of Jacksonville, Pensacola, and "Mobile Railroad Company, and the Florida Central Railroad "Company of Florida *to be agreed upon* by and between "Frank R. Sherwin, agent of the owners and holders of "the bonds of the State of Florida, issued in aid of "said railroad companies of the first part, and the owners "and holders of the first mortgage bonds of the Pen-"sacola and Georgia and Tallahassee Railroad Companies "of said State, issued under the provisions of the act of Jan-"uary 6, 1855, generally known as the "Internal Improvement "'Act,' represented by Henry R. Jackson of Savannah, in the "State of Georgia, and Charles H. Simonton of Charleston, "in the State of South Corolina, of the second part," thus declaring the real object to be *not to secure payment of the Dutch bondholders*, but to place Sherwin, Jackson, Simonton, Willard, and their associates in possession of these Florida railroads.

The "Plan" next proceeds to to provide in what manner the Governor of Florida shall be used to perfect this huge speculation and adventure, by seizing upon the two roads, then *sub judice* before the courts, and sell the same at the shortest notice under the 3d section of the statute of January 28, 1870, *not for "lawful money of the United States, and for nothing else,"* as provided by said section, but, in direct violation thereof, to be paid for in these void and unconstitutional bonds of the State of Florida, and to make this operation, and free them from competing bids, the said Sherwin and sssociates were to be treated by the Governor as *preferred bidders* to the full extent of said void bonds and past due coupons, and when so purchased at such forced sale, to be conveyed to said *Jacksonville and Mobile Railroad Company* when formed.

The " plan" further provides that the funds necessary to consummate this forced sale were not to be a charge upon the so-called Dutch bondholders, but were to be provided by the promoters of the adventure (fol. 661).

Thirty-sixth.—That by the further provision to the " plan " it was provided that bonds at the rate of $12,000 per mile, for the whole line of said roads, say about $3,000,000, and stock of $3,000,000 were to be issued by the new company, and this stock and these bonds divided two-thirds of the bonds, or $2,000,000 and $2,500,000 of the stock to Sherwin and his associates, $1,000,000 in bonds and $500,000 in stock to the Dutch bondholders, but with the distinct provision, however, that no charge or expense should fall upon the Dutch bondholders (fol. 662),

Thirty-seventh.—That with the exact interests and profits of the respective parties to this wrecking adventure thus pre-arranged, though carefully concealed and excluded from the face of the petition, said Sherwin, as the accredited agent of said Dutch bondholders presented to the Governor (M. L. Stearns) as Ex-officio Trustee, under the 3d section of the Act of January 28, 1870, that document praying the seizure and sale of the Florida Central and Jacksonville, Pensacola, and Mobile Railroads as the next step to be taken in the execution of the " plan."

Thirty-eighth.—That the seizure thus prayed was made, and notice of sale thereof duly advertised on the 30th day of December, 1876, for the 2d day of April, 1877 (fol. 56); that this advertisement was ordered at the expiration of said Stearn's term of office; that his successor in office, Governor Drew, not deeming the petition of Sherwin sufficient authority to warrant the action of his predecessor in all respects, so advised said Sherwin by an official letter, dated January 10, 1877 (fol. 147), which was responded to by several letters from Sherwin, Willard, Jackson, and Simenton, to Governor Drew and Hon. Geo. P. Raney (fols. 148 to 162), seeking to justify the seizure as made, but desiring that the time of the sale should be so arranged as to suit the speculative conveniences of the promoters of the " plan.

Thirty-ninth.—That in consequence of Governor Drew not regarding the Sherwin petition supported by sufficient evidence of authority to represent anybody, another petition was prepared and presented in the name of J. Fred. Schutte, Jans, Prins, and others, by said Willard as their agent, on the 31st day of March, 1877, whereunto was attached the first power of attorney that was executed by any of the persons called Dutch bondholders to either Sherwin or Willard; and this bears date March 1st, 1877, thus showing that the Sherwin petition of September 22, 1876, was fabricated and presented without any authority whatsoever.

This last named petition, with its seven exhibits, was put in proof as part of the deposition of Hon. Geo. P. Raney (question 5, fol. 1389), but, being omitted from the printed record, is printed, document B, in *Supplemental Record.*

Fortieth.—That the seizure and advertisement of sale of said railroads at once terminated all judicial proceedings then being prosecuted by said Commissioners on behalf of the Western Division Company, and gave rise to the filing of the two bills in equity, on the part of the Western Division Company in February, March, and July, 1877 (fols. 1 to 151).

The foregoing somewhat lengthy but chronological statement, leading down to the origin of the two bills of the Western Division Company appellant, it is hoped will explain how it came that the parties defendant for years, or some of them, should turn up *almost* in possession of the subject of litigation, and how it became necessary, in order to maintain and test the rights of the appellant to said property, to cut under the whole previous litigation by these bills, and enjoin these wreckers from destroying the property, as prayed in and granted under said bills, until the rights of the parties could be tried.

It is also hoped that the foregoing statement, supported as it is, at all points from the record, makes it clear that the scheme which resulted in the petitions to the Governor of Florida (*supra*), and the J. Fred Schutte bill, had not its origin in any attempt to collect the bonds held by the Dutch bondholders, but had its origin in a corrupt conspiracy by Sherwin, Willard, and their associates to get wrongful and fraudulent possession the Florida railroads, without a dollar interest in either of them themselves; and that this High Court of Chancery, is besought to aid in the execution of this scheme.

A brief reference to the bills and the proceedings had thereon in court will enable us now, to present the issues of law and fact involved in these appeals.

I.

The bill in respect to the Florida Central road alleges that about 4,700 out of 5,500 shares of its capital stock were purchased with the funds of the complainant, and appellant, fraudulently misappropriated to that use by its officers; and seeks to reclaim the same through a Court of Equity.

II.

It contends that the Florida Central Company was not authorized by its charter to issue its bonds or charge its estate for the building of any other road.

III.

That said company never did agree to issue bonds to aid in the construction of the Jacksonville, Pensacola, & Mississippi road.

IV.

That its charter never contained any authority to issue such bonds; that it never accepted or adopted the provisions of said Acts of June 24th, 1869 and January 28th 1870; and that it never became bound to pay any of the bonds issued, or pretended to be issued, under said acts.

V.

That the 1,000 papers called bonds, signed by George W. Swepson, as President, and H. H. Thompson, as Treasurer, were not the acts or deeds of said company, but were fabrications and forgeries, binding on nobody. The only genuine thing about them being the impression of said companies seal, which was stolen from the Secretary's office for the purpose to be so used.

VI.

That said company never exchanged any bonds with the State of Florida; and that the pretended exchange of said forged and fabricated papers, with the Governor of the State for State bonds, was but the unauthorized act of Edward Houstoun and M. S. Littlefield, and in no manner bound said company.

VII.

That said Florida Central Company never received a dollar of the proceeds of any bonds issued by the State of Florida, and never was in law or in equity chargeable therewith.

VIII.

That the said papers called bonds of said company were fraudulently placed in the hands of Edward Houstoun by M. S. Littlefield on or before the 7th day of June, 1870, to be used in the payment of private debts, and were so attempted to be used in New York City, where a suit was brought by the Western Division Company against Houstoun and Littlefield on the 3d day of October, 1870, in the Supreme Court of New York, wherein an injunction order was granted, as follows:

"I do hereby order that the said defendants, and each of " them above named, and their agents, employees, and repre- " sentatives, do, all and each of them, until the further order " of this court, refrain from selling or offering to sell, assigning, " transferring, concealing, removing from this State, or in any " way transacting business about certain certificates of stock " (about three thousand shares) in the Florida Central Railroad " Company, and one million dollars in bonds of the State of

"Florida, all of which said stock and bonds were placed in the "hands of Houstoun, by or through the agency of Littlefield, "as collateral security" (fols. 38 and 39).

IX.

That, in disregard of this injunction order, said Houstoun fled the State ot New York, taking with him said stock and bonds, to Florida, where he and said Littlefield resumed the corrupt use of the same; and that, in Florida, they were again sued, this time by James D. Westcott and Robert H. Gamble, as stockholders of the Florida Central Railroad Company, for themselves and others, and again placed under like injunction from dealing with or disposing of said bonds, and Houstoun was duly served with said injunction (fol 2,097).

X.

That, after the granting of said last named injunction, and with full knowledge thereof, the Governor of the State of Florida, acting in his capacity as Trustee under said act of January 28, 1870, combined with said Houstoun and Littlefield and one Thomas B. Coddington, for the fraudulent use and appropriation of said forged Florida Central Bonds in the payment of private debts to an amount beyond the market value of the said bonds, even if they had been lawfully issued; that as a means of accomplishing this fraudulent object the said Houstoun, on the 11th day of January, 1871, passed the 1,000 papers called bonds of the Forida Central Company to said Coddington, who receipted for the same "in trust and for acount of Edward Houstoun," who, after paying said Houstoun $163,000, with interest, in payment for $103,000 Pensacola and Georgia Bonds, and $5,000 as an arbitrary charge for "costs and expenses incurred by said Houstoun in suits brought by parties against said Houstoun in relation to those bonds, or other bonds, and the stock of the Florida Central Railroad Company," was to pay other large sums for private debts, as scheduled at folio 46.

XI.

That, in further consummation of the fraudulent use of said forged bonds, and in violation of said injunction then just granted, and with full knowledge thereof, the Governor of

Florida accepted them back from said Coddington, and returned to him, in lieu thereof, the said Florida State Bonds numbered above 3,000, which the said Houstoun and Littlefield had been enjoined from handling (fols. 38 to 40).

XII.

That the Governor of Florida, having thus exchanged said bonds with said Coddington, on the 11th of January, 1871, the latter, in order to avoid the jurisdiction of the courts of Florida, taking said State Bonds with him, fled the State in a private conveyance that night to Georgia, and thence to London, England, where he delivered said bonds to S. W. Hopkins & Co., pursuant to the stipulation in his receipt (fol. 46).

See dep. Coddington, fols. 1,735 to 1,745.
See dep. S. W. Hopkins, fols. 1,747 to 1,749.

XIII.

That the said Boissevain, Mildeus, Stoop, and others, called Dutch bondholders, who purchased said State Bonds, had knowledge of the fact that the same were illegally and fraudulently issued, and sought to speculate in the same with a knowledge thereof, and acquired no right or title or equity as against the said Florida Central Railroad Company, or lien upon its property or estate, or if any such lien at all, it is subsequent and subject to the prior lien and equity of the said Western Division Company, appellant, whose money had been fraudulently used in the purchase of the stock of said company.

THE BILL RESPECTING THE JACKSONVILLE, PENSACOLA, AND MOBILE RAILROAD COMPANY.

This bill seeks to recover the $1,063,000 of the Pensacola and Georgia and Tallahassee Railroad bonds purchased with the fraudulent appropriation of that portion of the $1,287,000 of the Western Division Company's funds which were used in Florida, $960,300 of which were paid in the purchase of said two railroads, at the sale thereof, on the 20th day of March, 1869, as alleged in the bill.

The material and undisputed allegations of this bill are:

I.—That early in the year 1869, Swepson, Littlefield, and Houstoun, acting as the fiduciaries of the appellant, the Western Division Company, fraudulently used and appropriated $1,287,000 and upwards of its funds in the purchase, among other things, of $1,063,000 of the bonds of the said Pensacola and Georgia and Tallahassee Railroad Companies.

II.—That the said $1,063,000 of bonds, when so purchased with the funds of the Western Division Company, at once enured to, vested in, and became the property and estate of the said Western Division Company.

III.—That subsequently to such purchase of said bonds, which were paid for, owned, and held as aforesaid, and on the 20th of March, 1869, the railroads of the respective companies issuing said bonds were sold by the Trustees of the Internal Improvement Fund of the State of Florida, and purchased by Franklin Dibble and associates for $1,420,000, the sum of about $1,220,000 being bid for the Pensacola and Georgia road, and about $195,000 for the Tallahassee road. The terms of said sales were such that the whole of said purchases could be discharged and paid in said bonds so fraudulently purchased with the funds of the said Western Division Company.

IV.—That subsequent to said purchase by said Dibble and associates, the said Swepson became a party to said transaction by virtue of a written agreement, dated March 26, 1869 (fols. 628 to 630), by the terms of which agreement said Swepson undertook to advance $960,300 of the said Pensacola and Georgia and Tallahassee bonds, so fraudulently purchased by him, in payment for said two railroads, he to be secured for such advance by an agreed bond issue, and a certain portion of the stock of a company to be formed pursuant to legislation in that behalf to be obtained, as shown by the terms of said agreement; the remainder of said purchase money, amounting to about $472,065, to be paid by said Dibble and associates.

V.—That said Swepson paid the said $960,300 of bonds, but Dibble and associates did not pay $472,065, which was subsequently assumed by Swepson, which arrangement secured the conveyance of the two railroads to Dibble and associates on the 8th day of April, 1869; but that the said deeds conveying the same were not delivered to Dibble and associates, but were to be, and were in fact, delivered to said Swepson, and to him duly assigned in trust, by a deed executed by said Dibble and associates on the 22d day of April, 1869 (fols. 113 and 114), to be held by him until his said advances should be repaid, as well as the $472,065 which he had agreed to pay.

VI.—That, by the payment of said $960,300 of Pensacola and Georgia and Tallahassee bonds for said roads, they immediately became and remained the property and estate of said Western Division Company, and were so its property and estate on the 24th day of June, 1869, when the said act incorporating the *new* Tallahassee Company was passed (fols. 123 to 125), wherein, and in the 6th section of which, a special lien is reserved in favor of said Swepson to secure the repayment of said bonds to him, as well as the $472,065 which he had assumed for said Dibble and associates, as follows: "Provided *that any deed of trust, mortgage, conveyance, bond or bonds, or security, which may have been executed, made, created or contracted for, as a lien of said railroads, or otherwise, by said Dibble, in behalf of himself and his associates, prior to the passage of this act, shall be valid and effectual to all intents, either at law or in equity, as a lien or mortgage or security on said railroads, as if the same had been made by virtue of this act, and* SHALL IN NO WISE BE AFFECTED BY ANY PROVISIONS THEREOF."

NOTE.—We maintain that this reservation of the lien in favor of Swepson, our agent, in this puplic statute, was notice to all the world of our lien, and saves it so as to postpone to it any equities which the appellees may possibly have in those roads.

VII.—That, in obedience to the reserved right and lien in favor of said Swepson, provided for in the *sixth section* of the Act of June 24, 1869, incorporating said *new* Tallahassee Company above mentioned, and soon after the organization of said *new* company it issued and placed in the hands of said Swepson 1,500 of its First Mortgage Bonds of $1,000 each, secured by deed of trust from said *new* Tallahassee Company to Stewart

L. Woodford, Darius R. Mangam, and B. G. Worth, Trustees, but the said deed of trust and the said bonds not being satisfactory to said Swepson, he refused to accept the same and convey the said railroads so held by him to the *new* Tallahassee Company until the terms of the deed of conveyance of the 22d day of April, 1869 (fol. 113), were complied with by Dibble and associates. The conveyance never was made, and said Swepson still holds the title to said roads.

See Swepson's Dep., fols. 1451 to 1461.

VIII.—That in the month of November, 1869, said Swepson was succeeded by said Littlefield as president of said Western Division Company, who, by virtue of his office, assumed the performance of the trust previously devolving upon said Swepson, to secure the payment of the money due the said Western Division Company. Swepson delivered to Littlefield all the assets held by him for that purpose, but held the title to said two roads until the payment of the said $969,300 and the sum of $472,065 should be paid to the Trustees of the Internal Improvement Fund. But these respective sums never were paid, and said Swepson never conveyed said roads to said new Tallahassee Company.

See Swepson's Deposition, *supra*.

IX.—That the Legislature of North Carolina, by an act passed on the 24th day of March, 1870, created a commission clothed with special power to settle with said Swepson as late President of said Western Division Company, and collect its money and assets, and place the same in some safe bank (fols. 2080 and 2081); that pursuant to this power the conditional settlements of April 16, 1870, and November 10, 1870, were executed, showing that $1,287,000 and upwards of the Western Division Company's funds were used in the purchase of the said Florida roads, and an attempt was made to provide means to repay the same.

Folios 1417 to 1425.

X.—That after the settlement of the 16th April, 1870, was made, and after the said 1,500 bonds of the said *new* Tallahassee Company had been issued and tendered to said Swepson, and after said Swepson had ceased to have any connection with the Florida roads, to wit, on the 24th day of May, 1870, the said *new* Tallahassee Company, assuming to own said Pensacola and Georgia and Tallahasse roads, was assumed to have consolidated with the Jacksonville, Pensacola, and Mobile Railroad Company, which owned no property or estate whatsoever.

See Proceedings of Consolidation, fols. 3606 to 3620.

NOTE.—There was no power or authority granted to the Tallahassee Company by its charter (fols. 123 to 125) to consolidate with any other company. The 4th section of its charter expressly provides "That said Tallahassee Railroad "Company may, when they shall see fit, *rent, lease, farm out*, or "*sell* any part of said railroads to any person or persons, cor-"poration or corporations, upon such terms as may be agreed "on." We maintain that this careful *expression* of powers *excludes* the authority to consolidate, and therefore, that the attempted consolidation was *ultra vires* and *void*. But if the consolidation were fully authorized and affected, we still maintain that such consolidation did not and could not carry the Pensacola and Georgia and Tallahassee roads into the Jacksonville Pensacola, and Mobile Company, because the title to them remains in Swepson, and never was conveyed to the *new* Tallahassee Company.

Justice Bradley, in his opinion (fol. 1210), says: "It seems to me from a careful examination of this statute [the Tallahassee Charter], that it intends to clothe with corporate powers the said Dibble and associates as purchasers and owners of the roads, and that no further conveyance from them to the corporation into which they were constituted was contemplated. As a corporation, they are invested with the *rights* to hold, operate, and enjoy the said railroad, under the name of the Tallahassee Railroad Company," &c. But the record shows (fols. 3608-9), that Swepson, in *whom the title was before the act of incorporation*, was not a party to the organization *nor the holder of a share of its stock*. This subject, however, will be more fully considered in the assignment of errors and on argument.

XI.—That the $960,300 Pensacola and Georgia and Tallahassee bonds purchased with said Western Division Company's funds were delivered to the State of Florida (fols. 1479 to 1486), and were in existence and intact in June, 1871, when the litigation was begun in New York (fol. 2163), in which that court held and decided that the Western Division Company never acquired, and could not acquire any right to the proceeds of said Florida State bonds to pay the private obligations of Swepsen and Littlefield, or either of them, because said bonds were *specifically dedicated to the building of a railroad;* and that upon the rendering of this decision, and on the 26th day of February, 1872, the State of Florida *took said bonds from the Comptroller's office and burnt them.*

Rollins's Deposition, fol. 1414.

XII.—That such burning of said bonds did not impair or destroy the right of said Western Division Company as *cestui que trust* to pursue and claim the same from the State of Florida (fol. 78), or to treat them as subsisting, for the purposes of this litigation, and to enforce the same as against said Pensacola and Georgia and Tallahassee Railroads.

XIII.—That if, for any sufficient reason, the court should hold that said $960,300 of bonds were not subsisting, as above charged and claimed, that then, and in that event, the Western Division Company has the right to claim, adopt, and complete the purchase of said Pensacola and Georgia and Tallahassee Railroads, and pay to the Trustees of the Internal Improvement Fund the balance of $472,065, and take possession of said roads as the avails of the fraudulent use of its funds.

Fol. 79.

XIV.—That the act of January 28, 1870, assuming to authorize the exchange of Florida State bonds for bonds of the Jacksonville, Pensacola, and Mobile Railroad Company, was unconstitutional and void, and was so held by the Supreme Court of the State of Florida, being the court of last resort in said State, and therefore that the State of Florida never gave any consideration for the said 3,000 papers called bonds of the Jacksonville, Pensacola, and Mobile Railroad Company; and that said 3,000 papers were made payable to the State of

Florida *specifically*, and not to bearer or order, and so were not negotiable.

See fols. 79–80.

XV.—That by the express provision of said statute of January 28, 1870, it was made a *condition precedent* to any exchange of bonds between said company and the State, that "*the president thereof shall certify upon his oath that the road or parts of road for which he asks such exchange of bonds is completed and in good running order*," but that no such certificate upon oath was ever made by the president of said company.

Fol. 81.

XVI.—That the act purporting to authorize the exchange of the Jacksonville, Pensacola, and Mobile Railroad Company's bonds for State bonds is void because it tenders an impossible contract, for the reason that in the event of a sale of the roads for non-payment of interest to the State to meet the interest on its pretended bonds, the Governor, as *ex-officio* Trustee, may enter upon and sell the said roads "for lawful money of the United States, and for nothing else," except that the *State*, for its own protection, may become the purchaser at such sale, and may pay in said purchase any indebtedness the State may hold against said roads, which purchase money or evidence of indebtedness shall be paid on the day of sale or within ten days thereafter, "*and all moneys arising from said sale, and paid into the treasury as heretofore prescribed, shall be promptly and exclusively applied to the payment and satisfaction of the bonds issued by the State under this act*," but that, as the State of Florida never issued any bonds, for want of constitutional power so to do, no consideration ever passed to said company, and no bonds were ever issued to the payment of which the proceeds of the sale of said roads could be "promptly and exclusively applied," as proposed by said statute. This transaction cannot be carried out, and the whole scheme is impossible, and must fail *unless this court will undertake to make a contract for the parties, of which they were incapable themselves, and then execute it.*

XVII.—The bill charges that there is no privity of relation between the parties holding said State bonds and the Jacksonville, Pensacola, and Mobile Railroad Company; that such parties are the *creditor of the State of Florida* so far as they acquired any rights as the holders of said unconstitutional State bonds; that the defendants Schutte, Boissevain, and others never held any bonds of the Jacksonville, Pensacola, and Mobile Company, and can in no event claim or maintain any rights other than such as are vested in the State of Florida, which, by reason of its bonds being unconstitutional and void, was exactly nothing; and that the 3,000 papers called bonds of the Jacksonville, Pensacola, and Mobile Company held by the State should be held for nought, and be delivered up to said company to be canceled.

Fols. 86, 87.

XVIII.—The bill charges that the said Boissevain, Mildeus, Zoddock, Stoop, and others had full notice of the character of said State bonds; that the Governor of the State of Florida, as Trustee of the said parties, at all times had full notice of the character of said bonds, and the whole transaction; and that notice to such Trustee was good and sufficient notice to his *cestuis que trust*.

Fols. 88–89.

The bill prays that the sale of the Jacksonville, Pensacola, and Mobile Company's road may be enjoined, and for general and special relief.

The court is therefore advised, as matter of fact, not disputed by answer or proof, and indeed found by the court below, that the funds used in the purchase of over 4,700 shares of the capital stock of the Florida Central Railroad Company, and $960,300 of the Pensacola and Georgia and Tallahassee Railroad bonds, which were used in payment for said two last mentioned roads when they were sold on March 20, 1869, were the funds of the Western Division Company, fraudulently so used by its agents and fiduciaries Swepson, Littlefield, and Houstoun; that said $960,300 Pensacola and Georgia and Tallahassee bonds were all the payment that was in fact made upon said sale; and that this high court of equity is appealed to by the Western Division Company to restore to it its own stolen property, fully, completely, and specifically traced and identified, and which it has been diligently pursuing for these many years.

The court will also see that the real contest is between a set of railroad wreckers, under a most corrupt, champertous contract (and not the Dutch bondholders) on one side, and the Western Division Company on the other.

The origin of this scheme is well set up by Jacobus Wertheim, at folio 1774 of the record. He heads a document addressed to the Dutch bondholders: "*Propositions for a settlement tendered to the holders of* 8 *per cent. Florida bonds by Mr. J. Wertheim, attorney and counsellor, of Amsterdam.*"

Now, let it be noted that Wertheim does not pretend here to represent either the State of Florida or its railroad companies. Nor does he pretend to represent any one who has any real interest in either, beyond the scheme of wrecking called the "Memorandum Plan."

He says:

"Gentlemen,—Having been requested last year by certain "parties in the United States interested in the reorganization "of the railways in Florida to present plans, in the event of "certain contingencies, to holders of bonds in the Nether- "lands, I expressed my entire willingness to do so, on the "following conditions:

"1st. That Charles D. Willard, solicitor at the Supreme "Court at Washington, who for a long time had seemed to "me to be a man of extensive knowledge, and honorable and "punctual in attending to any business entrusted to him, "should be appointed, together with myself, as legal counsellor "in America.

"This desire was complied with.

"2d. That I should be permitted to submit all propositions "and plans through Messrs. Skreglinger & Co., to their cor- "respondents Messrs. Kremelberg & Co., of New York," &c.

He then sets out and tells them the truth about the invalidity and worthlessness of the Florida bonds, in order, so far as he and his clients were concerned, to enable them to make advantageous terms with the bondholders for the use of their position in the scheme they had devised for capturing the Florida railroads. He tells them plainly that the bonds have been declared unconstitutional and void, both by the Supreme Court and the Legislature of the State.

Fols. 1775 and 1776.

As previously stated, the seizure and notice of sale of the Florida Central and Jacksonville, Pennsacola, and Mobile Railroads by the Governor of Florida, as Trustee, &c., upon the petition of Sherwin, Willard, and their associates in the "Memorandum Plan" for "*reorganizing*" said roads, in the name of Schutte, Prius, Boissevain, and others, called Dutch bondholders, at once suspended all proceedings then pending in the courts on the part of the Western Division Company, and necessitated the filing of the two bills in equity involved in this appeal, praying for an injunction against such sales, and for general relief.

Upon the filing of these bills, the Governor of Florida, as *Trustee for said Dutch bondholders, appeared, and, in their name, demurred to the bills* (fols. 203 to 206). These demurrers were prepared by, or under the advice of, the special counsel of the Dutch bondholders, and, upon argument, were overruled, and judgment entered thereon for appellant.

NOTE.—These orders were entered at Tallahassee, and do not appear in the record as transferred to Jacksonville.

The motions for injunctions then coming on to be heard, the Governor of Florida, as Trustee for the Dutch bondholders, filed separate answers to the Western Division Company's bills (fols. 207 to 287), which were read as affidavits in opposition to the motions, by counsel for the Dutch bondholders, who prepared said answers and conducted the argument on said motions.

To show how completely and *exclusively* the defenses to the appellant's bills were conducted in the name, as well as *for the benefit*, of the Dutch bondholders, J. Fred. Schutte and others, we cite the following extracts from the answers as read and argued on the hearing of said motions :

"Respondent says that *J. Fred. Shutte and others*, of Amsterdam, Kingdom of the Netherlands, have presented a memorial to him, setting forth, on oath, that they are the *bona fide* holders of bonds issued by the Governor of the State of "Florida to the Jacksonville, Pensacola, and Mobile Railroad "Company, under the provisions of the Act of January 28, "1870, and by it sold, and that no interest has been paid on "such bonds *by said company* for more than twelve months "after a default in payment of interest, and praying that the "respondent would make such seizure and sale, and there "having been presented to respondent by said persons a list "giving the numbers of said bonds by them respectively held, "copies of which list are herewith filed, marked Exhibit E, "the respondent deems himself bound by the laws of the "State, and the decisions of the Supreme Court thereof, to "proceed in the manner and form as he has before stated, and "he is advised that it is his duty to proceed to make sale of "said franchise, railroad, and property, at the time before "specified."

Fol. 227.

By the answer of the Governor the court is advised that he was simply responding to the call of said *J. Fred. Schutte and others*, as their *recognized Trustee*, under the Act of January 28, 1870, when he undertook to seize and sell said roads, as therein provided. *The importance of keeping this fact in view will appear presently, when we come to speak of the filing of an original bill by Schutte and others.*

Another important ground alleged by the Dutch bondholders, in their answer by said Trustee, the Governor of Florida, may also be profitably borne in mind in this connection, showing that they wholly ignored the separate corporate existence of the Florida Central Railroad Company, and that they had had no dealings with said company. The part of their answer to which we refer is as follows:

"Respondent says that the said parties holding said bonds "do not admit that any specific bonds held by them are to "the exclusion of the others, a lien upon any particular portion of the line of railroad beginning at Jacksonville, and "running westward to the Apalachicola River, *but that the whole* "*of said line of said road is liable for each and every of said* "*bonds.*"

Fol. 228.

In other words, the Florida Central Company *was not known to the Dutch bondholders as a party to the issue of any of said bonds.*

Besides the special matters above cited, the answers of the Governor, as Trustee, &c., set up all the alleged rights and equities of the Dutch bondholders, as why should they not do? since they were both drawn and supported in argument by the counsel employed in the name of the Dutch bondholders, to promote and consummate the "Memorandum Plan" for appropriating those two railroads, as shown by the record.

We now arrive at the real grounds of contest in these remarkable suits—suits rendered remarkable by what follows. We have shown—

1st. That the Western Division Company, resorted to the courts as early as October 3, 1870, to assert its rights as *cestui que trust* to its fraudulently appropriated assets, and so continued down to December, 1876.

2d. That during the year 1876, the parties to the "Memorandum Plan," Sherwin, Willard, Jackson, Simonton, Allen, and others, sought the Dutch bondholders, and *purchased the use of their names and position* as holders of Florida State bonds, then declared unconstitutional and void, agreeing to give nearly one-third of the avails of the proposed wrecking of these roads, by what the wreckers called a "reorganization" of them—*they to hold the Dutch bondholders free from all expense.*

3d. That pursuant to this corrupt and champertous contract, Sherwin, Willard, and their associates, petitioned the Governor, as *ex-officio* Trustee, to seize and sell the roads, in such a manner as to make the wreckers *preferred bidders*, with leave to pay in these void and unconstitutional State bonds, notwithstanding the statute provided that such sale should be made for "*lawful money of the United States, and nothin, else.*"

4th. That to prevent this irreparable injury, the Western Division Company filed its two bills, praying injunctions until its rights could be heard and determined, and for general and special relief.

5th. That to these bills the Dutch bondholders, through the Governor, as their Trustee, appeared and demurred.

6th. That upon argument these demurrers were overruled, and judgment given for the complainant in the usual form.

7th. That the motions for injunctions on appellant's bills were then heard upon the bills, answers, and exhibits; the answer of the Dutch bondholders, through the Governor, as their Trustee, being read in their behalf, as an affidavit.

8th. That, upon consideration, the motions were granted and the sales, advertised at the instance of said Dutch bondholders, were enjoined May 22, 1877.

So far we say all was regular, but just here all regularity ceases, and just here the foundation was laid for all the confusion that appears in this record.

The said J. Fred. Schutte and others petitioned the Governor, as Trustee, &c., to seize and sell said roads; they appeared. through him, and by special counsel, to sustain their demurrer, then to resist the injunctions. But, when the injunctions, notwithstanding their resistance, were granted, what then? The very next day, May 23, 1877, the *same Sherwin, Willard, and their associates of the "Memorandum Plan," in the name of the same J. Fred. Schutte, Jans Prins, G. M. Boissevain, and others, Dutch bondholders, filed in the same court an original bill against the Western Division Company*, the Florida Central Company, the Jacksonville, Pensacola, and Mobile Company, and a multitude of other defendants.

Folios 536 to 581.

This bill, which we will hereafter call "The Schutte Bill," sets up and alleges affirmatively the same rights and equities which were set up in their elaborate answers to the Western Division Company's bills, through the Governor, as Trustee. The leading, distinguishing feature between these *answers*, filed through the *Governor as Trustee*, and their *bill* filed in their *own name*, being that they pretend to make the "Memorandum Plan" a part of their bill (par. xvi, fol. 548), and annex a part of it (Bijlage A) to their bill marked Schedule D (folios 563 to 570), but suppress the other part (Bijlage B), which will be found at folio 662, where the "Memorandum Plan" is set out in full, in the Western Division Company's answer to the Schutte bill.

THE SCHUTTE BILL.

The material allegations of this bill are:

I.—That on the 20th day of March, 1869, the Pensacola and Georgia and Tallahassee Railroads were sold by the Trustees of the Internal Improvement Fund.
Fol. 537.

II.—That F. Dibble and associates purchased said roads and paid the purchase money.
Fol. 538.

III.—That the roads were *not* paid for in money, but *partly* paid for in bonds of said companies, which they immediately cancelled; and that the balance was placed in the hands of said Swepson, as agent of said Trustees, with directions to purchase and deliver to them, for cancellation, the balance of the bonds of said company's bonds that were outstanding, and which were entitled to be paid out of said funds.
Par. IV., fol. 538.

IV.—That said Dibble and associates were incorporated as a body politic under the name and style of the Tallahassee Railroad Company.
Par. V., fol. 538.

V.—That afterward said Dibble and associates and the Tallahassee Company conveyed the said Pensacola and Georgia and Tallahassee Railroads to the Jacksonville, Pensacola, and Mobile Company, of which George W. Swepson and Milton S. Littlefield owned nearly all the capital stock.

Par. V., fol. 538.

VI.—That in the year 1870, the Jacksonville, Pensacola, and Mobile Company received from the Governor of Florida $4,000,000 in State bonds, in accordance with the law incorporating that company.

Par. VI., fol. 539.

VII.—That the Jacksonville, Pensacola, and Mobile Company delivered to the State of Florida $3,000,000 of its own bonds and $1,000,000 of the Florida Central Company's bonds.

Par. VII., fol. 539.

VIII.—That said $1,000,000 of Florida Central bonds were executed by said company, and that M. S. Littlefield owned a majority of its stock.

Par. VIII., fol. 539.

IX.—That Littlefield had contracted to purchase the stock of J. P. Sanderson and Edward Houstoun, for the purpose of making a consolidation of the Florida Central and Jacksonville, Pensacola, and Mobile Companies; and that 1,000 bonds of the Florida Central Company were to be delivered to the Governor of Florida in exchange for State bonds, which were to be sold and the proceeds applied to the payment for said stock, and that this was done.

Par. VIII., fols. 539, 540.

X.—That the complainants, Schutte and others, own said State bonds, numbered from one to 3,206; that said State bonds, so numbered, are on their way from Amsterdam to Adolph Engler, in New York City, as agent of the complainants, entrusted by them to do with said bonds as may be deemed best for the interest of complainants, by their agent, Charles D. Willard, and their counsel.

Par. XI., fol. 542.

XI.—That the interest from the 1st day of January, 1873, was due upon said State bonds, and that complainants (Schutte, Prins, Boissevain, and others) had applied to the Governor of Florida to seize and sell said roads for their benefit.

Par. XI., fol. 542.

XII.—That the interest paid on said bonds, up to January 1, 1873, was paid by a trust company in the City of New York; and that said interest was represented to be paid with money provided by the State of Florida.

Par. XI., fol. 542.

XIII.—That the Governor of the State of Florida has seized the whole line of railroad, and the property thereunto pertaining, which was formerly owned by the Florida Central Railroad Company, as well as that from Lake City to the Apalachicola River, &c., and has, *in the advertisement*, described the railroad from Lake City to Jacksonville as the property of the Florida Central Railroad Company, but complainants are advised that the road from Jacksonville to Lake City forms, with the road west of Lake City, one entire line and is the property of the Jacksonville, Pensacola, and Mobile Company.

Pars. XIV., XV., fol. 547.

XIV.—That the complainants, J. Fred. Schutte, Jans Prins, and others, had authorized one Frank R. Sherwin, as their agent, to make an arrangement with the holders of Pensacola and Georgia and Tallahassee bonds to join the "Memorandum Plan" for the sale of said roads; that "complainants are willing that a decree be made and entered in this cause, making "provision for the sale of said railroads and property upon the "basis in said plan contained," &c.

That is, the said Schutte and others ask that a decree be made carrying into effect the "Memorandum Plan," creating them preferred bidders, with the right to bid as CASH *the void and unconstitutional bonds of the State of Florida.*

Par. XVI., fol. 548.

XV.—The bill reiterates the allegation that the Florida Central Company was consolidated with the Jacksonville, Pensacola, and Mobile Company, and therefore dissolved.

Par. XVII., fol. 549.

XVI.—That the complainants set up and rely upon the decision of the Supreme Court of the State of Florida.
Par. XVIII., fol. 550.

XVII.—That the defendant, the Western Division Company, united with said Littlefield and Swepson, and S. W. Hopkins & Co., in procuring the Governor of Florida to issue and deliver to said Jacksonville, Pensacola, and Mobile Company the said State bonds (so called), and in all the acts done and representations made by said Jacksonville, Pensocola, and Mobile Company, its officers and agents in the sale of said bonds.
Par. XXII., fol. 552.

XVIII.—That the Western Division Company agreed to receive $600,000 of the proceed of said State bonds, and to assert its right thereto, brought a suit in the Supreme Court of the State of New York, against S. W. Hopkins & Co.
Par. XXII., fol. 550.

XIX.—That Edward Houstoun held 4,370 shares of the capital stock of the Florida Central Railroad Company at the time of his death; and that Littlefield has made a conveyance of said stock to the Western Division Company.
Par. XXVI., fol. 555.

There are many other allegations in this bill as to other defendants, and as to whom the bill has been dismissed; many that are irrelevant, multifarious, and immaterial, but we think we have extracted all that are material to this appeal.

The filing of this bill by Schutte, Prins, and others, as complainants, who were at the same time defendants to the Western Division Company's bills, the filing of which they had necessitated by the petition in their names to seize and sell the roads, and which bills said Schutte and others had just answered, through the Governor as their Trustee, was a violent infraction of the authoritative rules of equity procedure. The bill, as stated, is but a reiteration of their grounds of relief, as alleged in their said answer. The only difference being, as we have just seen (par. XVI, fol. 548), that the "memorandum plan" is set up, in express terms, as the basis of the relief demanded, though it was suppressed in their answer to the

Western Division Company's bills. In all other respects the Schutte bill is but a substantial restatement of their answer through the Governor as their Trustee.

ANSWER TO THE SCHUTTE BILL.

Instead of consuming time to correct the filing of the bill of Schutte *et al.*, and assuming that the causes would be tried as one, and the Schutte bill be treated as a cross-bill, it was answered by the Western Division Company as such.

Therefore, the Western Division Company, the principal and first named defendant against whom the Schutte bill was aimed, at once appeared to and answered it fully and completely. This answer (fols. 584 to 627) meets every allegation of the Schutte bill, and is supported by a schedule of documents numbered from 1 to 20 (fols. 628 to 677), which fully sustains every allegation and denial contained in the answer so completely as to overcome the bill, as matter of evidence, and justify its dismissal, if submitted upon bill, answer, and exhibits.

As the answer of the Western Division Company is but a substantial repetition of its two bills, somewhat amplified and supported by documentary evidence, we need not repeat its points here in detail, as the grounds of relief are presented as alleged, in the summary of said bills in the preceding statement.

The only material change is in the correction of a clause in the XVIth paragraph of the Jacksonville, Pensacola, and Mobile bill (fol. 71). "That at the time of such incorporation of the " said Jacksonville, Pensacola, and Mobile Railroad Company, " it was possessed of no railroad, property, or estate of any " kind, but was organized for the purpose of becoming the assignee and owner of the said Tallahassee Railroad, as incorporated by and created under the purchases by said F. Dibble " and associates, as aforesaid, and that pursuant to said acts " of incorporation, or one of them, the said Franklin Dibble " and associates did convey and transfer said Pensacola and " Georgia and Tallahassee Railroads, according to the terms

" of said trust agreement, when, and from and after which time " the said Pensacola and Georgia Railroad and the said Talla- " hassee Railroads as separate properties, and the said " Tallahassee Railroad Company as incorporated in the " name of said F. Dibbs and associates, on the 24th day of " June, 1869, became, and now are, the railroad owned by the " corporation defendant, the said Jacksonville, Pensacola and " Mobile Railroad Company, as aforesaid."

When this bill was drawn, the solicitor for the Western Division Company not being advised, supposed such to be the facts. But soon thereafter, and whilst the answer of the Western Division Company to the Schutte bill was being prepared, the counsel of said Swepson (Hon. T. C. Fuller, of Raleigh, N. C.) advised the said solicitor that the averment just quoted was incorrect, and did said Swepson great injustice, because, in truth and in fact, no conveyance had ever been made by Swepson of the said two railroads to the Tallahassee or the Jacksonville, Pensacola, and Mobile Companies; that the only deed or conveyance executed was said Dibble and associates to said Swepson on the 22d day of April, 1869, when the deeds of the 8th of April, from the Trustees of the Internal Improvement Fund, were delivered to Swepson also, to secure him for the $960,300 paid by him, and the $472,065 he had agreed to pay; and that he, Swepson, still held, and should continue to hold, the legal title to said roads until such payments were made.

The receipt of this information, substantiated as it was by the record, both as matter of truth and justice, demanded that the paragraph quoted should be corrected by amendment. This was done first, in answering the Schutte bill (par. V, fol. 538), which alleges:

" V.—That said Dibble and associates afterward became in- " corporated by an Act of the Legislature of Florida, under " the name and style of Tallahassee Railroad Company, for " the purpose of operating the said railroads to which they " had so acquired title. Afterwards the said Tallahassee Rail- " road Company, and said Dibble and associates conveyed the " said railroads to the Jacksonville, Pensacola, and Mobile " Railroad Company, of which George W. Swepson and Mil- " ton S. Littlefield owned nearly the entire stock."

In answering the paragraph just quoted, the Western Division Company, being better advised, set up the true transaction as follows:

" (*i.*) But this defendant further and especially answering " paragraph V, of complainants' bill, expressly denies the allegations therein contained, that 'Afterwards, the said Tallahassee Railroad Company and said Dibble and associates " conveyed the said railroads' (meaning the Pensacola and " Georgia, and Tallahassee Railroads) 'to the said Jacksonville, " Pensacola, and Mobile Railroad Company, of which George " W. Swepson owned nearly all the stock,' and denies that any " such conveyance ever was made at any time, and that the " statements in complainants' bill, in that behalf, are wholly " untrue.

" (*j.*) That the only conveyance ever attempted to be made " by said F. Dibble and associates was a conveyance, partially " executed, in the year 1870, in the shape of a deed of release " from said Dibble and associates to the said Tallahassee " Railroad Company, but which never was fully executed, as " will better appear by a copy of such conveyance, partially " executed, but not acknowledged, and without date, except " the words 'day of A. D. 1870,' and which was never recorded, as will be seen by a copy thereof, made part of answer, marked Schedule No. 7."

Fol. 589.

In view of the fact that Dibble and associates never acquired any title to said roads, except such as they forthwith conveyed to Swepson, who alone paid, with the Western Division Company's funds, all that was paid on said purchases, it is useless to say the attempted *quit-claim deed* of F. Dibble and associates, even if duly executed and delivered, *could* convey anything beyond a mere equity of redemption of the thinnest kind. For, *as their is no covenant for possession by Dibble and associates, in their deed to Swepson*, of April 22, 1869 (*supra*), both the legal and equitable title were thereby vested in him until absolutely reconveyed by him.

And this position is strengthened by the record that Swep-

son never held a share of stock in either the *new* Tallahassee Company or the Jacksonville, Pensacola, and Mobile Company.
Fols. 3606 to 3623.

We the more especially invite the attention of the court to these conclusive facts, as they will hereafter be referred to and relied upon, in discussing the assignment of errors, and seeking to correct serious mistakes in the findings of fact by the court.

The answer of the Western Division Company, as before stated, meets and denies every material allegation of the Schutte bill, and especially denies—

1st. That the sales of the Pensacola and Georgia and Tallahassee roads were honestly or legally conducted as alleged in Pars. I., II., and III. of said bill (fol. 538), but alleges that sales were bungles, frauds, shams, and swindles from their inception to their last act, and denies that there was a dollar paid thereon except the $960,300 Pensacola and Georgia and Tallahassee bonds equitably belonging to the Western Division Company.
Fols. 585 and 586.

2d. The answer avers that by the agreement of March 26 and the deed of April 22, 1869, from Dibble and associates to Swepson, the said roads, when purchased for said $960,300 of bonds, became the property and estate of the Western Division Company, to be held in trust for it until the said $960,300 of bonds, or their proceeds, with interest, were returned to it.
Fols. 587 and 588.

3d. That by the 6th section of the Act of June 24, 1869, incorporating F. Dibble and associates into the *new* Tallahassee Railroad Company, it was

"*Provided, that any deed of trust or mortgage, conveyance,*
"*bond or bonds, or security, which may have been executed, made*
"*or executed, or contracted for, as a lien on said railroads, or*
"*otherwise, by said Franklin Dibble, on behalf of himself and as-*
"*sociates, prior to the passage of this Act, shall be valid and ef-*

"*fectual to all intents, either at law or in equity, as a lien or mort-*
"*gage, or security, as if the same had been made by virtue of this*
"*Act, and shall in no wise be affected by the passage thereof.*"

Fol. 588.

This was designed to reserve, and did reserve, and vest in said Swepson, a *prior lien, right, and title* to the extent of said $960,300 of Pensacola and Georgia and Tallahassee bonds and the $472,065 of unpaid purchase money assumed by him. And and this reservation being in a public statute creating the *new* Tallahassee Company, *was notice to all the world of such lien.*

4th. The said answer further shows that, pursuant to said reserved lien in favor of said Swepson, the said *new* Tallahassee Company issued and tendered to said Swepson 1,500 bonds of $1,000 each, secured by a mortgage on said *new* Tallahassee Company's road; that said bonds and the mortgage were unsatisfactory to said Swepson; and that he therefore refused to treat them as a compliance with the agreement between Dibble and associates and himself, and refused to convey said roads to said company.

Fol. 588.

5th. The answer specifically denies the VIIth par. (fol. 539), of said bill, wherein it is alleged that the Jacksonville, Pensacola, and Mobile Company, in 1870, or at any other time, delivered 3,000 of its own bonds and 1,000 of the Florida Central Company's bonds to the Governor of Florida, and received 4,000 State bonds therefor; and denies that the Jacksonville, Pensacola, and Mobile Company ever, at any time, had in its possession, or in any manner handled any bonds of the Florida Central Company, for any purpose, or ever received any State bonds therefor, to be used in the extension of its road, or for any other purpose.

Fol. 593.

6th. The answer denies that the Florida Central Company ever issued any bonds for the benefit of the Jacksonville, Pensacola, and Mobile Company under the Acts of June 24, 1869, or January 28, 1870; but avers, on the contrary, that the Florida Central Company had no power or authority by its charter to issue any such bonds; that it never accepted the provisions of either of said acts; and that it never entered into any agreement to assume a debt for another company, of nearly double its capital stock, &c.

Fol. 594.

7th. The answer denies the allegations of the bill as respects the pretended bond issue of the Florida Central Company, and gives the true version thereof, as supported by the proofs of record.

Fol. 594 to 598.

8th. The answer admits that the interest was paid on the State bonds up to July 1, 1873, and avers that it was paid, *not* by the State of Florida, but out of the pooceeds of a portion of said State bonds; and that the statement that said Dutch bondholders were ignorant of this fact, as pretended, in the XIth paragraph (fol. 542) of the bill was wholly false and untrue.

9th. The answer specifically denies that the Florida Central Company ever was consolidated with the Jacksonville, Pensacola, and Mobile Company.

Par. XV., fol. 605.

10th. The answer denies that the said Dutch bondholders have any right to bring or maintain any suit on account of said State, Florida Central, or Jacksonville, Pensacola, and Mobile bonds, because the same being unconstitutional and void, cannot be enforced at law or in equity, &c.

Fol. 606.

11th. The answer denies that the decision in the said Florida suits concludes the Western Division Company, which was not a party to it.

Fol. 608–9.

12th. The answer denies that said Schutte and others were ignorant of the fraudulent, illegal, and unconstitutional character of said bonds, and avers that the fact thereof was of such general notoriety as to put the said Dutch bondholders upon inquiry. It also denies that there is or was any privity or relation between said railroad companies and said Dutch bondholders, who are creditors of the State, and *not* creditors of the said railroad companies, against which latter the said Dutch bondholders can have no better demand than the State can assert in its own behalf.

13th. The answer denies that the Western Division Company, in any manner, aided S. W. Hopkins & Co. to sell said State bonds, and avers that it only sought and agreed to accept money in return for its own, which had been embezzled and misappropriated, without knowing or having means to know, that it was not to be acquired honorably by its debtors.

Fols. 611 to 616.

14th. The answer denies that the $103,000 Pensacola and Georgia and Tallahassee bonds mentioned in par. XXV. of said Schutte bill, are in the court for cancellation, but avers that they are so in court as the property of the said Western Division Company, the same having been purchased with its funds, as aforesaid.

Fols. 616 to 619.

15th. The answer cites the statutory contract, as tendered in the 2d and 4th sections of the Act of January 28, 1870, and charges that the same is wholly unconstitutional and void, and cannot be enforced for any purpose.

Fols. 621 to 626.

16th. The answer charges full knowledge to the purchasers of said bonds of the fraudulent character thereof, and states the means of such notice.

Fol. 626.

The foregoing are the material grounds set up in the answer of the Western Division Company to the bill of Schutte and others.

PLEA OF THE JACKSONVILLE, PENSACOLA, AND MOBILE RAILROAD COMPANY.

The Jacksonville, Pensacola, and Mobile Company interposed a plea in bar to that portion of said Schutte bill which alleged that the complainants were holders of any bonds of the State of Florida, as alleged in their bill, and supported its plea with an answer denying each and every allegation of said bill as to other matters.

Fols. 689 to 703.

ANSWER OF THE FLORIDA CENTRAL COMPANY.

The Florida Central Campany also answered this bill (fols. 784 to 822), and filed its cross-bill to the same, supported by exhibits.

Fols. 822 to 887.

The Trustees of the Internal Improvement Fund also answered this bill in detail, supporting the answer by exhibits.

Fols. 897 to 968.

These several answers meet and deny all the material allegations of the Schutte bill, and fully expose its false and fraudulent character, and show that the complainants are not entitled to the relief they seek.

The Directors of the Florida Central Company, who were made defendants, also filed their joint and several answers.

Fols. 677 to 688.

To these several answers the complainants filed their replications.

Fols. 1037 to 1042.

The plea of the Jacksonville, Pensacola, and Mobile Company not having been set down for argument, an order was entered April 6, 1878, dismissing this bill as to said company. That order was subsequently vacated by consent, on June 11, 1878, reserving the argument of the plea until the final hearing of the cause.

Fols. 1067 to 1074.

Upon the issues thus closed, the parties went to their proofs.

THE TAKING OF TESTIMONY.

The Western Division Company gave notice that it demanded that all the testimony be taken orally according to the 67th Rule of Equity Procedure. It commenced the taking of its testimony, giving notice to all the parties, and concluded it in due season.

The testimony of the complainants was taken upon interrogatories, notwithstanding the demand of said Western Division Company. The taking of their testimony was delayed until the last moment, and then conducted in a manner showing conclusively, the tampering with the witnesses, suppression of facts, and fraud. These suggestions will be more fully considered when discussing the evidence.

THE TRIAL.

The trial of the suit, or suits, if there be more than one, was set for the 19th day of May, 1879, to suit the convenience of the Hon. Circuit Justice who presided at the trial.

When the case as prepared was called for trial, the Western Division Company—the complainant in the original bills—was ready to proceed, at which time the counsel for Schutte *et al.* commenced a series of motions and manœuvers upon the record which so radically disturbed the status of the suits as to create the greatest possible confusion. Notwithstanding the Western Division cases were prior in point of time, the counsel for Schutte *et al.* attempted to usurp the control of the docket, and try their case, irrespective of the right of precedence of the Western Division Company; and for that purpose attempted to prevent any hearing on the part of the Western Division Company, and thus get rid of the objections to the irregular and corrupt manner in which the testimony on the part of Schutte and others was taken. This attempt produced the utmost confusion, and embarrassed the trial from that time forward. As the notes of the learned justice who tried the cause are admitted as part of the record (fols. 3052 to 3065), we reproduce them as the best evidence of the manner in which the trial was conducted.

MINUTES TAKEN BY THE COURT AT THE HEARING.

"May 19, 1879.

"Gen. Davis moves to dismiss bill as to Western Division "Western North Carolina Railroad, as to the directors of the "Jacksonville, Pensacola and Mobile Railroad Company, and "of Central Railroad Company, and as to Littlefield and "Washington.

"Stewart objects, at this late stage. Unfair after their de-"fense is developed, and they are all ready for argument.

"Carpenter replies. (Held over.)

"Stewart moves to suppress certain testimony; also moves "to examine a witness under Rule 67.

"Affidavit of J. B. Stewart that Jacobus Wertheim, who is "now present, and could not have been examined before, &c."

"May 20, 1879.

"Ordered bill dismissed as applied for, without prejudice as "to any evidence that may have been taken in the cause affect-"ing the rights of the parties still remaining parties in the "cause.

"Stewart applies for leave to amend his bill in cases No. 1 "and No. 2.

"Adjourned to Wednesday, May 21, 1879, at 12 noon, to see "amendment proposed.

"After hearing application for attachment against Dr. "Wertheim for not attending according to subpœna. Appli-"cation refused because no tender of mileage. Adjourned to "May 21st, 12 M.

"Judge Settle held separate court to try case of United States *vs.* Hull and Gauldin."

"May 21, 1879.

"12 m. Court met and a discussion ensued as to the status "of the causes.

"Mr. Stewart offers to amend his bills, presents the proposed amendments.

"Carpenter speaks adversely.

"Stewart replies.

"Withdraws amendment to bill against Florida Central "No. 1.

"Court refused leave to amend as proposed; suggested "striking out evidence and argument.

"Recess to 4 P. M."

"Stewart reads his proposed amendment as modified.

"Ordered, that amendment as proposed and read to the "court be made to the bill upon terms. Defendants need not "answer under oath. No further evidence unless defendants "elect.

"Carpenter applies to strike out Schutte, Prins, and others "from record in Nos. 1 and 2, because not served with process "according to law. Refers to Revised Statutes, § 738.

"Stewart replies. The Dutch bondholders were here applying to the Governor to sell the road. They contested our "application for injunction. Mr. Engler, their trustee, is here."

"May 22, 1879.

"Decided Schutte & Co. must appear to North Carolina "bills for reasons expressed in order.

"Motion to suppress depositions made and argued.

"Davis in opposition.

"Walker in favor.

"Depositions overruled on the ground that the answers "were prepared in writing.

"Carpenter moves to suppress the depositions taken in New "York, because not taken by a commissioner properly authorized; the objection being that the oral examination pointed "out in rule 67 must be taken by an examiner appointed by "the court, but within the jurisdiction of the court.

"Davis refers to section 868, Revised Statutes.

"Motion is denied. I think the rule intended to authorize "the court to appoint an examiner as well outside as within "the jurisdiction of the court,so as to dispense with the necessity of a commission, and have an open examination."

"May 23, 1879.

"Carpenter presents answers in Nos. 1 and 2; order to be "filed. The answer is filed by all the bondholders in the

"Schutte bill. Carpenter also presents and files a suggestion " of an act of Legislature of North Carolina, passed February, 1879, repealing the charter of the Western Division of " Western North Carolina Railroad Company, and declaring "said company extinct, and moves the cases of the " company be declared abated. The act transfers to Western " North Carolina Railroad Company all the property and " rights of action of the extinguished company, with power to " conduct all suits in North Carolina, or elsewhere.

"Also to constitution of North Carolina adopted in 1868, de- " claring that all general laws and special acts forming cor- "poration may altered or repealed. Article 8, section 1.

" The charter of Western Division Western North Carolina "Railroad Company was created by special act in August, "1868, under this constitution.

"Moves that the causes of said company be declared abated.

" Court intimates that the causes are abated, but gives the "complainants time until to-morrow morning to elect whether " they will abide by the motion or file a bill of revivor.

" Stewart says, they will not risk the abatement, but will "seek authority from Western North Carolina Railroad Com- " pany to file a bill of revivor, and asks the time allowed.

" McLeod, of North Carolina, states he is a director of " Western Division, and that said company is not prepared to "accept the act of extinction. Matter stands over.

" Stewart refers to Code of North Carolina, 1854, p. 134, §§ " 5, 6—allowing a company whose charter is repealed 3 years " to wind up its affairs.

" Carpenter refers to act of North Carolina, 1870, also re- " pealing same charter.

" Matter stands over (Acts of 1869-70, p. 84).

" (N. B. Original charter of Western North Carolina Rail- "road Company, passed February 15, 1855." Private Laws North Carolina, 1854-5, p. 257).

" May 24, 1879.

"Stewart announce that by telegram he is informed au- " thority to revive suits will be forthcoming. Asks further " time until Monday morning, which is granted.

" Carpenter proposes to proceed with No. 3; court declines.

" Jackson (H. R.) calls on Trustees of Internal Improvement "fund and the Dutch bondholders in suit No. 3, to declare "their position with regard to the original bonds of Pensacola "and Georgia Railroad Company, it being provided in the "memorandum plan that they should have preference.

"Court adjourned to Monday, May 26th.

"May 26, 1879.

"Stewart files bill of revivor in Nos. 1 and 2.

"Carpenter appears and files confession of the bills.

"Order of revivor made.

"Stewart files replication to defendants' answer.

"(Answers, replication and order considered as in).

"Carpenter offers record in New York Supreme Court, "John Collinson *vs.* S. W. Hopkins, and *als.*, Jacksonville "Pensacola and Mobile Western Divisions, &c., J. B. Stewart, "bill dismissed 17th March, 1879.

"Also transcript of record in Supreme Court, New York, "Western Division North Carolina Railroad *vs.* S. W. Hopkins "and *als.*

"Also certified copies of six papers in same case.

"Also answer of Florida Central Railroad Company in case "of the State and Trustees, &c., *vs.* Jacksonville, Pensacola "and Mobile Company, &c., Circuit Court, Duval County.

"Also fraud, com. report, North Carolina.

"Also the bonds in the case now exhibited.

"Stewart offers record in Gamble & Westcott *vs.* Houstoun "& Littlefield, Circuit Court of Leon County. (Objected to "by Dutch bondholders).

"Also, certified certificate of register as to the recordation "of certain deeds, received subject to objection.

"Also, charter Western Division of Western North Carolina "Company.

"Also, act 24th March, 1870, appointing the Woodville "(Woodfin) commission.

"Also, the original contract between F. W. Dibble and "associates, 26th March, 1869. (Objected to.) Deed of conveyance from Dibble and associates to Swepson, dated April "22, 1869. (Objected to.)

"Also, original drafts drawn by Houstoun, as agent for "Swepson on Sutor & Co. in New York, dated February 18, "1869, to March 23, 1869, fifty drafts. (Objected to).

"Rainey offers stipulation between Western Division Western North Carolina and Trustees recognizing priority of lien, "for purchase money, June 7th, '78, in Nos. 1 and 2, and dismissing the bill as to money in hands of treasurer.

"Also, stipulation in No. 3, withdrawing demurrer to cross-bill of Trustees, and that they shall have some relief upon "cross-bill, as if it had been answered, and testimony taken."

Mr. Walker offers the Acts of Florida, as to the Central Railroad.

Both parties agree to regard the books of both companies and Tallahasse Company as in evidence, to be referred as "occasion requires.

"4 h. 7 m., p. m.—Stewart commences his argument."

"May 27, 1879.

"Carpenter files answers to the bills of revivor, and confesses the same.

"Orders made reviving suits Nos. 1 and 2 in name of Western North Carolina Railroad Company, complainant, dated "May 26, 1879.

"General Jackson presents an agreed statement of facts, "raising a question between the holders of Pensacola and "Georgia Railroad Company and the Dutch bondholders. "Jackson explains the matter. Some of the Pensacola and "Georgia holders might stand out. The Trustees contested "them.

"Agreement of January 29, 1879. One Dutch, two Trustees, three Pensacola and Georgia bondholders. One agree "to prosecute against the companies and North Carolina Railroad Company, and to sell the road—all holders of Pensacola "and Georgia bonds to be allowed to come in.

"Rainey states that the Trustees take their position because "a minority of the Pensacola and Georgia holders do not "enter into the memorandum plan, and insist upon their full priority of lien.

"Carpenter presents a list of the State bonds held by plaintiffs in No. 3—2,946 in all, viz. (below 3,000), 2,749; (above "3,000), 197—2,946 (see New York testimony, No.).

"Davis presents answers of Jacksonville, Pensacola, and "Mobile *vs.* State and *als.*, in Duval Circuit Court.

"Newspaper published in Amsterdam, dated ,

" giving prices current; daily issue December 19, 1870, to April
" 30, 1872. One of the exhibits presented proposes to prove
" it by Dr. Wertheim.

" Overruled.

" Deed from Dibble and associates to Tallahassee received,
" subject to objection.

" Two deeds of Trustees of Internal Improvement Com-
" pany to F. Dibble and *als.*, 1869.

" Agreement of June 7th, 1870, modifying agreement of
" May 13, 1870.

" (Report of fraud commission, 1871, North Carolina, so far
" as relates to Western Division Western North Carolina.
" Volume of legislative documents, 1870, 1871, not admitted).

" Two agreements of April 16th, 1870 (already in).

" Stewart calls Littlefield to produce documents, and offers
" five letters, dated respectfully, London, September 6, 1870,
" September 6, 1870, September 7, 1870, September 8, 1870,
" September 10, 1870, from S. W. Hopkins & Co. to M. S.
" Littlefield; presented for the purpose of contradicting Hop-
" kins and Collins, as witnesses.

" Overruled.

" Stephens offers to file his points in support of the plea
" and answer of Jacksonville, Pensacola, and Mobile Railroad
" Company.

" Bisbie states that he has given notice to intervene; files
" petition; ordered to intervene.

" Walker, for Florida Central, commences 11.30 A. M.

" Davis commences 12.30.

" Carpenter commences 3.34; has 2¾ hours."

" May 28th, 1879.

" Carpenter resumes.

" Stewart commences at 10.30 A. M.

" Finley, in the case of Holland, who intervenes by petition
" in the Schutte case, notices having been served.

" Rainey, Application for Trustees to be paid out of the
" fund; their expenses of litigation to recover the unpaid
" purchase.

" Stewart again commences at 10.50 (has 1½ hours).

" Walker."

"May 31.

"Court, Bradley, *J.*, delivered opinion."
Fols. 3054 to 3065.

The dismissing of the Schutte bill as to the Western Division Company, was objected to as disturbing the pleadings and proofs after the trial had commenced, and depriving the Western Division Company of the benefit of one of its best and most important pleadings, which was intended to operate as an answer to the Schutte bill, treated as a cross-bill. The court, however, granted the dismissal as applied for, without prejudice to any evidence that may have been taken in the cause affecting the rights of parties still remaining parties in the cause.

Fol. 3055.

This order of dismissal rendered it necessary for the Western Division Company to ask leave to file an amended and supplemental bill so as to cover its testimony taken in support of said answer to the Schutte bill, which it had treated as a cross-bill. Its solicitor prepared such amendment as he thought proper, but he was restricted by the court to merely transferring from said answer the allegations correcting the original bill respecting the statement (par. XVI., fol. 71) that the Pensacola and Georgia and Tallahassee Railroads had been conveyed by Dibble and associates to the new Tallahassee Company, and finally to the Jacksonville, Pensacola, and Mobile Company, which the solicitor believed to be the case when he verified said answer. The order was as follows:

"The complainant in the above cause having asked leave to " amend the bill filed therein as read to the court in the pres- " ence of the defendants' counsel, now in consideration of the " fact that the complainants in the case of J. F. Schutte and " others *vs.* The Jacksonville, Pensacola, and Mobile Railroad " Company and others have dismissed their bill as against The " Western Division of the Western North Carolina Railroad " Company, whereby the said last named company is deprived " of the benefit of certain matters set up in its answer in said " cause. It is, therefore, ordered that the complainant in this " case have leave, upon terms hereinafter stated, to amend its

" said bill in the matter proposed by the amendment now read " to the court as revised thereby, but that it shall not be necessary for the defendants to answer the said amendment under " oath or affirmation unless they choose so to do, and no further evidence shall be taken in the cause unless the defendants shall desire to take further evidence therein, in which " case both parties shall have leave to take evidence on the " matters stated in said amendment."

Fols. 1168, 1169.

But, as before stated, when advised by counsel for Swepson that no such conveyance ever had been made, and that the legal title to said Pensacola and Georgia and Tallahassee roads vested in said Swepson by his deed of April 22d, 1869, and was still held by him to the use of the Western Division Company, the proper correction was made in its answer to said Schutte's bill (Subdivs. *i* and *j*, fol. 589), which said answer was verified by the oath of the president of said company and its seal, July 14, 1877.

Fol. 627.

The averment of the amended and supplemental bill correcting said mistake is as follows:

"That since filing your orator's said original bill, it first came " to its knowledge, and it so charges the fact to be, that no " conveyance or transfer of the franchises, properties, or estates " of said Pensacola and Georgia and Tallahassee Railroad " Companies, which were sold on the 20th day of March, 1869, " by the Trustees of the Internal Improvement Fund of the " State of Florida, and purchased by F. Dibble and associates, " as in your orator's said original bill set forth, ever was made " or executed to the said Tallahassee Company, or the Jacksonville, Pensacola, and Mobile Railroad Company, or either " of them; and that no title to said roads ever vested in said " companies last named, or either of them; on the contrary, " your orator alleges and charges the fact to be, that by a deed " executed by said F. Dibble and associates, on the 22d day of " April, 1869, the said Pensacola and Georgia and Tallahassee " Railroads, together with the two deeds conveying said roads " by the Trustees of the Internal Improvement Fund to said

" Dibble and associates, dated April, 1869, were conveyed,
" transferred, and delivered to Geo. W. Swepson, the Trustee of
" your orator; and that the said Tallahassee Railroad Company
" or the Jacksonville, Pensacola, and Mobile Railroad Company
" have not now, and never had, any title or estate which could
" be charged with the bonds alleged to have been exchanged
" by said last named company for the alleged bonds of the
" State of Florida set forth and described in your orator's
" original bill, and claimed to be held or owned by the defend-
" ants, or some of them."

Fols. 410, 411.

Upon the filing of this amended and supplemental bill, the counsel for the Dutch bondholders again sought to avoid the issue thus kept before them, by moving to strike the names of Schutte, Prins, and others from the record, because not served with process according to law.

See judge's notes, fol. 3056.

Counsel for the Western Division Company resisted this motion, upon the ground that the Dutch bondholders were applying to the Governor to sell these roads, and had appeared and contested the motion for an injunction, and were also represented by their Trustee, Adolph Engler, who was made a party defendant by a special order of court.

Fol. 1073.

After hearing argument upon this motion, the court took the matter under advisement and adjourned.

Fol. 3057.

The next day, May 22, 1879, the court, of its own motion, made the following order:

" Whereas, the bill of J. Fred. Schutte and others, though in
" form an original bill, is in fact in the nature of a cross-bill,
" relating to the same subject matter of litigation, and setting
" up the same rights which the Western Division of the West-
" ern North Carolina Railroad Company by its bill seeks to
" overthrow; and as the controversy, as a whole, cannot be

" adjudicated without considering the cases involved in both " bills; and, whereas, all the suits have really been prosecuted as " one litigation, and as the complainants in the bill of Schutte " and others do not reside in the United States, and cannot be " served with process, and yet the complainants are seeking to " dispose of the same matter in controversy, the court is of " opinion that the complainants in the Schutte bill be required, " *as a condition of obtaining the relief they seek*, to make themselves " selves parties to the bills of the Western Division of the " Western North Carolina Railroad Company, so that the " whole matter may be settled together.

"Wherefore, it is ordered that the complainants in the " Schutte bill, who are defendants in the other bills, be *required*, " *as a condition of obtaining the relief they seek*, to enter appearance " ance to the bills of the Western Division of the Western " North Carolina Railroad Company, or to adopt the defense " of the parties situated in like case with them, who are defendants " fendants to those bills.

" It is further ordered, that the said J. Fred. Schutte and " others shall have the option whether they will put in answers " to the bills of the Western Division of the Western North " Carolina Railroad Company, and proceed to take testimony " therein, or whether they will adopt the litigation in its present " ent state and go to a hearing at the present time."

Fols. 1172, 1173.

The making of this order by the court, of its own motion, restored the status of the parties substantially as they stood upon the record, and as they had been treated by counsel in the preparation of the suits before the dismissal of the Schutte bill as to the Western Division Company. That is to say, the court recognized the right of the Western Division Company to proceed with the trial of its suits as complainant therein against the Governor of Florida, as Trustee, and the Dutch bondholders, as represented by the Governor, according to their petition to him to seize and sell the roads. That the position of Schutte and others was that of defendants, and must be heard upon their answers and cross-bill if they sought affirmative relief.

The only further act necessary was to vacate the order dismissing the Schutte bill as to the Western Division Company, which the court, after seeing the confusion that had resulted from the premature dismissal as to said company, was pleased to suggest to the counsel for Schutte *et al.* had better be done.

But the advice of the court was declined. The court adjourned until the next day, May 23d, to give the counsel for Schutte and others opportunity to determine upon their answer to the Western Division Company's amended bills.

The next day Schutte and others filed separate answers to the two bills.

Fols. 413 to 468.

The court will perceive that these answers are merely a reproduction of their original bill, filed May 23, 1877.

Fols. 413 to 485.

To these answers the Western Division Company filed replications, which again placed the suits at issue.

Fols. 510 to 513.

This state of the cases remained but a moment, as counsel for Schutte and others, still determined to defeat a contest with the Western Division Company if possible, moved the abatement of said suits upon the ground of an alleged act of the Legislature of North Carolina repealing the charter of the Western Division Company. (See judge's minutes, fols. 3058–9.) The court intimated that the causes were abated, but gave the Western Division Company until the next day to elect whether it would abide by the abatement or file bills of revivor.

Judge's notes *supra.*

The bills of revivor above mentioned referred to the 2d and 3d sections of the act repealing the charter of the Western Division Company, which, besides repealing the charter, attempted to donate all its property, estate, and rights of action to the Western North Carolina Railroad Company, an adjoining and rival corporation.

Fols. 2073 to 2075.

Bills of revivor were filed (fols. 490 to 496); they were confessed by Schutte and others (fols. 497–8), and orders were made reviving both suits in the name of the Western North Carolina Railroad Company.

Fols. 1174 to 1178.

But no order or judgment was made or entered of record abating said suits of the Western Division Company, and none ever has been made or entered, so that technically that company remains as the complainant in the record.

NOTE.—No advantage is sought from this fact, but it is simply mentioned here to save any prejudice to the causes, because no appeal was taken from such alleged dismissal. No judgment was ever entered from which an appeal could be taken.

We have labored thus far to advise the court of the facts which underlie this peculiar litigation, and the origin of the interests of the respective parties thereto. As the record presents three suits tried as one cause, each involving, in many respects, the same facts, a repetition of these facts, to some extent, in our tripple-headed narrative, was unavoidable.

It is shown by the facts, as developed in the record, that the money of the Western Division Company was fraudulently used by its agents and fiduciaries.

1st. In the purchase of about 4,700 of the 5,500 shares, constituting the capital stock of the Florida Central Railroad Company.

2d. In purchasing $1,063,000 of the Pensacola and Georgia and Tallahassee bonds.

3d. That $960,300 of these Pensacola and Georgia and Tallahassee bonds were fraudulently used in the purchase of those roads, and that no other consideration was ever paid on said purchases.

4th. That said Western Division Company, as such *cestui que trust*, filed its two bills in equity, seeking to recover its property, so fully traced and identified.

5th. That this claim is resisted by a class of persons holding or representing bonds of the State of Florida, which they allege are a superior lien and equity on these several railroads.

These conflicting interests were tried in the court below, upon the two bills of the Western Division Company, and the answer and cross-bill of Schutte and others. That is to say:

1st. The Western Division bill to enforce its lien upon the 4,700 shares of the Florida Central stock.

2d. Its bill to enforce its lien upon the $960,300 Pensacola and Georgia, and Tallahassee bonds, used in the purchase of the two roads now known as the Jacksonville, Pensacola, and Mobile road.

3d. The answer and cross-bill of J. Fred. Schutte and others, claiming under said State bonds, issued under the Act of January 28, 1870.

Upon the hearing of these suits, tried as one cause, in the order stated, in the court below, the court, though finding the fact to be that the funds of the Western Division Company were fraudulently used in the purchase of the stock of the Florida Central (fol. 1202), and that the $960,300 Pensacola and Georgia and Tallahasse bonds, were the only payment made on the purchase of the said Pensacola and Georgia and Tallahassee roads (fol. 1206), nevertheless, held that the holders of the Florida State bonds had the prior equity, and so decreed. And this, though pleadings and proofs, as well as the findings of the court thereon, showed that these bonds were fraudulently procured and used, and had been decided to be unconstitutional and void, by the court of last resort in Florida. And though so finding the facts, dismissed the Western Division Company's bills, without granting any relief at all.

This decision, and decree the founded thereon, we respectfully contend are erroneous, and contrary to the merits, as shown by the pleadings and proofs, and the principles of law and equity applicable thereto; and, among other things, for the errors which we now proceed to assign.

ASSIGNMENT OF ERRORS,

I.

It was error not to dismiss the bill of Schutte and others for want of merits upon its face, and among others, in the following respects:

(*a.*) It asks the enforcement of the statutory contract of January 28, 1870, between the State of Florida and the Jacksonville, Pensacola, and Mobile Railroad Company, to which said Schutte and others were neither parties nor privies.

(*b.*) It asks the enforcement of the provisions of a pretended statute declared unconstitutional and void by the court of last resort in said State.

(*c.*) It asks the enforcement of a statute incapable of execution, on its face.

(*d.*) The bill, upon its face, sets up and relies upon a corrupt and champertous contract and adventure called the "Memorandum Plan," whereby the Florida Central and Jacksonville, Pensacola, and Mobile Railroad Companies were to be "reorganized" by strangers who had no interest in the affairs of said companies.

II.

It was error to permit Schutte and others to file their original bill against the Western Division Company after having appeared to and answered its bills; whereas it should have compelled them to seek the same relief by cross-bills in the original litigation.

III.

It was error to grant any relief upon the Schutte bill as an original bill, or a cross-bill because of the multifariousness, contradiction, and inconsistency of its allegations, and because it asks contradictory, impossible, and inequitable relief.

IV.

It was error not to dismiss the Schutte bill after finding, as the court did, that the Florida Central always maintained an independent existence, and never consolidated with the Jacksonville, Pensacola, and Mobile Company, instead of decreeing that it should pay 197 of said void and unconstitutional State bonds, with interest.

V.

It was error to find that said Florida Central Company ever issued any bonds to aid the Jacksonville, Pensacola, and Mobile Company in extending its road; whereas it should have found that said company never did, and never had the power or authority, to issue any such bonds for any such purpose.

VI.

The court erred in finding that the 1,000 papers, called bonds of the Florida Central Company, purporting upon their face to have been issued in aid of the construction of the Jacksonville, Pensacola, and Mobile Road, were the act and deed of said Central Company; whereas, it should have found that they were not its act or deed, but fabrications and forgeries.

VII.

The court erred in finding that the Florida Central Road, or more than 100 miles of road *east* of Quincy were subject to the provisions of the act of January 28, 1870 in any event; whereas, it should have found that no more than 100 miles of road east of Quincy were subject to the provisions of said statute, and therefore that all the bonds claimed in this cause, above 1600, are an over issue, and utterly wortheless and void, and especially all the bonds attempted to be laid upon said Florida Central Road by said decree, (Act Jan. 28, 1870, sec. 4.)

VIII.

The court erred in not finding that Edward Houstoun parted with posession of said 1,000 so-called Florida Central bonds

January 11, 1871, in contempt of an injunction order of the Circuit Court of Leon County, in the State of Florida, obtained at the suit of Robert H. Gamble and James D. Westcott, which, being a public proceeding, was notice to all the world that said bonds were unlawfully and fraudulently issued.

IX.

The court erred in finding that the Florida Central Company, by its stockholders or directors, ever authorized, or directed, or ratified, the issuing of said one thousand so-called bonds; whereas it should have found that the pretended meetings of stockholders and directors at which it was sought to authorize or ratify the issuing of said bonds were illegal, collusive, and fraudulent, and that the record of what was done was notice to any one whose duty it was to inquire, that they were issued in violation of the statute, to pay private debts, and not to extend the Jacksonville, Pensacola, and Mobile road, as provided in the statute pretending to authorize the issue and exchange of bonds of that company.

X.

The court erred in finding the fact only, that on the 25th day of May and the 2d day of June, 1870, the stockholders and directors of the Florida Central Company had authorized the issue of said bonds; whereas it should have found that at a regular meeting of its board of directors, held on the 21st of November, 1870, *and before any of said bonds had been delivered or exchanged,* said resolution of June 2d, was rescinded and said bonds ordered to be destroyed.

XI.

The court erred in decreeing any lien upon the Florida Central road, in favor of the State of Florida or the holders of its void and unconstitutional bonds; whereas it should have found that no such lien was reserved in favor of the State or said bondholders, either in the statute of June 24, 1869, or that of January 28, 1870; and that no mortgage or deed of trust creating any such lien was ever made or executed by said company.

XII.

The court erred in adopting decision of the Supreme Court of Florida, wherein that court held "that the State bonds which these parties hold were created and issued in violation of the Constitution of the State, and that they are for that reason absolutely void," but that the *bona fide* holders of the Jacksonville, Pensacola, and Mobile Company's bonds issued *under the same statute* are a valid lien upon that road; whereas it should have held that the purpose of the statute was to accomplish a *single object* only, to wit: this exchange of bonds, and being void in part, was void *in toto*, and could authorize or create no valid lien upon anything.

XIII.

The court further erred in adopting the decision of said State Court, which attempted to make a contract between the Florida Central and Jacksonville, Pensacola, and Mobile Companies, wherein the former is assumed to have agreed with the latter to issue and deliver to it $1,000,000 in bonds, payable to the State of Florida, to aid in the construction of its road west of Quincy; whereas the court should have held that it was not competent for said court, or any court, to make a contract for the parties to which they had not themselves assented, and that *no such contract was made by the parties.*

XIV.

The court further erred in adopting the *dictum* of said Supreme Court of Florida that it was *competent* for the Florida Central Company to contract to issue, and to issue such bonds; whereas it should have followed the finding of said court in the same cause that, as matter of fact, *no such contract was made and no such bonds issued*, and the decree in favor of said company denying any such lien or charge upon the road of said company. This being a judgment in favor of said company wherein Schutte and others, by the Governor as their Trustee, were parties, was therefore *res judicata* as to them.

XV.

The court erred in finding that there was any lien created by the statute of January 28, 1870, in favor of said Schutte and others, as holders of said State bonds, prior to that of the Western Division Company, as *cestui que trust ;* whereas it should have held that, by the proviso of the 6th section of the Act of June 24, 1869 (being the charter of the Tallahassee Company), a prior lien in favor of said Western Division Company was expressly reserved upon the Pensacola and Georgia and Tallahassee roads.

XVI.

It was error in the court to find that the Florida Central Company aided in placing said one thousand bonds in the hands of Houstoun, and that the Western Division Company acquiesced therein, or aided in placing said bonds in the hands of T. B. Coddington, in January, 1871, upon substantially the same trust as Houstoun held them ; whereas the court should have found, as shown by the pleadings and proofs, to be true ;

(*a.*) That as soon as the Western Division Company learned that Houstoun was in possession of said one thousand bonds, to wit: on the 3d day of October, 1870, it brought its suit, in the Supreme Court of the State of New York against Houstoun and Littlefield, enjoining them from in any manner using or disposing of said bonds, which said injunction order thereafter remained in force, and in contempt of which said Houstoun fled from the jurisdiction of said court, taking with him said bonds, and was pursued with an order of arrest for contempt of court, to escape the execution of which he never again dared to be found within the jurisdiction of said court, or to visit the State of New York.

(*b.*) The court should further have found that, upon the return of Houstoun to the State of Florida, with said bonds, he was also enjoined from using them, at the suit of the stockholders of the Florida Central Company ; and that the Florida Central Company, on the 21st day of November, 1870, by its Board of Directors, revoked and declared said bonds canceled and annulled.

(*c.*) The court should further have found that as Houstoun evaded the courts of New York, and disregarded the demands of the Florida Central Company, as expressed by the resolution canceling said bonds, and to prevent further use thereof, James D. Westcott and Robert H. Gamble, the latter at the time the Comptroller and an executive officer of the State of Florida, brought a suit in equity in behalf of themselves and all others interested in the stock of the Florida Central Company in the Circuit Court for Leon County, Florida, against said Houstoun, Littlefield, the Governor of Florida, and others, charging the fact that said one thousand bonds were fraudulent, null, and void, and prayed, and were granted, an order of injunction against Houstoun, Littlefield, and the Governor, restraining them from in any manner dealing in or parting with said bonds, which said order was served on the 9th day of January, 1871, and was in full force and effect on the 11th day of January, 1871.

(*d.*) The court should further have found that notwithstanding this order of injunction, the Governor of Florida (Harrison Reed), said Houstoun, M. S. Littlefield, and T. B. Coddington, in wilful contempt thereof, did, just two days later, to wit, on the 11th day of January, 1871, conspire together, when Houstoun handed the one thousand forged and fabricated Florida Central bonds to Coddington, who receipted for them as the agent and Trustee of Houstoun, pledged to the payment of the $620,000 private debts and obligations, including the State of Florida, the Trustee created by the statute under which the bonds are claimed to have been issued; that the Governor of Florida, as such Trustee, and with a knowledge of the facts, took the said Florida Central papers from said Coddington and handed to him, in exchange, the one thousand State bonds numbered from 3,000 to 4,000; and that Coddington, to escape the injunction of the courts of Florida, secretly departed from the State before daylight on the morning of the 12th of January, 1871, and delivered the one thousand State bonds to Hopkins & Co., in London, on the 18th day of April, 1871.

(*e.*) The court, instead of finding that "*on the* 13*th of April,* "1871, *at a stockholders meeting of the Florida Central* "*Company, he* (Coddington) *was authorized to place the bonds* "in the hands of S. W. Hopkins & Co., subject *to the same* "*trusts as to the proceeds thereof,*" should have found that said pretended stockholders' meeting was illegally convened by Houstoun and Littlefield; and that the pretended resolution was a sham and fraudulent trick, gotten up by Houstoun three months after he parted with the 1,000 papers called bonds, in contempt of the injunction orders of two courts, and in disregard of the resolution of the Florida Central Company, declaring the said bonds canceled.

These are the facts, verified by the pleadings and proofs, without even a contradiction in the record, and certainly do not show either complicity or sanction on the part of either the Western Division Company or the Florida Central in the outgoing of said bonds.

XVII.

That when the court found that it was "conceded by Swep-"son and Littlefield, that the stock of the Florida Central "Company was purchased by the fraudulent use of the West-"ern Division Company's money, and that the stock is now "understood to be held for the use and benefit of the Western "Division Company, and that in view of such admitted fact, "there is no contoversy which calls for the adjudication of the "court," thereby establishing the right of the Western Divison Company as a *cestui que trust* to the possession of its property, thus fraudulently appropriated by its fiduciaries, its was error in the court not to perpetuate the injunction, and grant the relief prayed in the bill respecting the Florida Central Company.

XVIII.

That when the court found and decided that, "It is estab-"lished beyond controversy that the bonds which were used "by F. Dibble and associates in payment of the bid for the "two railroads in question, namely, that of the Pensacola and "Georgia Railroad Company, and that of the Tallahassee "Railroad Company, were furnished to them by George W.

"Swepson, and that Swepson procured the same by a fraudu-"lent use of money in his hands, produced by the sale of "North Carolina State bonds belonging to the Western Divi-"sion of the Western North Carolina Railroad Company, of "which he, Swepson, was President," it was error not to further find, decide. and decree that the Western Division Company, as such *cestui que trust*, had a right to recover and possess its money, or the property which it had been used to purchase, and which it had traced, identified, and brought to the knowledge of the court; and for that purpose to have perpetuated the injunction, and granted the other relief prayed in the bill in respect to the Jacksonville, Pensacola, and Mobile Railroad Company.

XIX.

It was error in the court, after finding that the money of the Western Division Campany was used by Swepson to supply the $960,300 Pensacola & Georgia and Tallahassee bonds used in payment for said two railroads, and that Dibble and associates assigned the deeds from the Trustees of the Internal Improvement Fund, dated April 8th, 1869, to said Swepson as security, by their deed of trust, dated April 22d, 1869, not to further find, as the proofs show the fact to be, that said Swepson still holds the legal title to said two roads as Trustee for, and to the use and benefit of, the said Western Division Company.

XX.

It was error in the court, after finding that Dibble and associates did not pay a dollar of the purchase money for said two roads, that the $960,300 of Pensacola and Georgia and Tallahassee bonds which were paid were purchased with the funds of the Western Division Company, fraudulently used for that purpose by Swepson; and that, to secure this advance said Dibble and associates, on the 22d day of April, 1869, deeded both of said roads to Swepson (who, at the same time, assumed the payment of the $472,065 remaining of the purchase money), to be held by him until his advances so made and assumed, were repaid, to *assume*, as the court did, that Swepson ever conveyed or parted with his said lien, or transferred his title to those two roads, when the fact is proven positively to the contrary.

XXI.

It was error in the court to find that the deed of trust to Swepson, from Dibble and associates, of April 22d, 1869, "was "never recorded and never heard of by any of the parties to "these suits since the commencement thereof;" whereas it should have found, as the fact is, that for the purpose of preserving the right and title of Swepson, as between himself and Dibble and associates, the recording of said deed was not essential; and that as between Swepson and all others the prior lien in his favor was preserved by the statute, or act of the Legislature, passed only 63 days after the date of said deed, and before any one claims to have acquired any adverse title, to wit: on the 24th day of June, 1869, wherein it was "Provided *that any "deed of trust, mortgage, conveyance, bond or bonds, or security, "which may have been executed, made, created or contracted for as "a lien of said railroads, or otherwise, by said Dibble, in behalf of "himself and his associates, prior to the passage of this act, shall "be valid and effectual to all intents, either at law or in equity, as "a lien or mortgage or security on said railroads, as if the same "had been made by virtue of this act, and* SHALL IN NO WISE BE "AFFECTED BY ANY PROVISIONS THEREOF;" which statute, and the publication of said lien, was designed to, and did in fact, supercede the necessity, if any ever existed, for recording said deed.

XXII.

The court erred in finding that the "deed (of trust to Swep-"son) is not mentioned, and the provision itself is a proper "one to prevent the operation of the act in transferring the "title to a new personality from affecting the previous convey-"ances or mortgages, which it might be thought to do;" whereas it should have found, as the language of the statute is, that Dibble and associates were incorporated into a body corporate, called the Tallahassee Railroad Company, with certain specified powers, and among others, by section 6, were empowered to contract obligations to pay money by the issue of bonds, *subject, however*, not only to "*any deed of trust*," or "*conveyance*," or "*bond or bonds*," or "*security which may have been executed*," but also went further, and provided for any such "*bond*," or "*security*" that had been "CONTRACTED FOR *as a lien*

" *upon said railroads* or OTHERWISE by said Dibble in behalf of " himself and associates, prior to the passage of this *act,*" etc.; and that this law was recorded and proclaimed notice to *all* " *personalities* " who might acquire subsequent liens upon said roads through any act of said Dibble and associates, or any one else.

XXIII.

It was error in the court, after finding that the bill of the Western Division Company respecting the new Tallahassee Company recites the conveyance of the two roads by Dibble and associates to said company, reciting that part of said bill, and conceding that leave was granted at the time to amend the bill (as before stated), correcting this mistake, by averring in the amended bill, as the truth is, that no such conveyance by Dibble and associates was ever made, thus tending to show that the Western Division did not discover or seek to correct this error of its solicitor until the time leave was asked on the trial; whereas the court should have found, as the record shows, that the Western Division Company, when answering the Schutte bill, only a short time after filing the original bill, to wit, on the 14th day of July, 1877, did, over its corporate seal, verified by the oath of its president, correct this mistake of its solicitor (see Par. 6, sub-divs. *i* and *j*, fol. 589) by distinctly averring that the title to said Pensacola and Georgia and Tallahassee roads *never* was conveyed by said Dibble and associates to said *new* Tallahassee Company, or to said Jacksonville, Pensacola, and Mobile Company; but, on the contrary, that the only conveyance of said roads was to Swepson, on the 22d day of April, 1869, who still held the same as security for the $960,300 Pensacola and Georgia and Tallahassee bonds he did pay, and the $472,065 he had agreed to pay to the Trustees of the Internal Improvement Fund; and that said Shutte *et al.* joined issue with the Western Division Company upon its said allegations at that date (July 14, 1877), and not on the trial, as assumed in the finding of the court.

XXIV.

The court erred in finding that any deed of conveyance or transfer of the Pensacola and Georgia and Tallahassee Roads ever was made, executed, and delivered by Dibble and associates to the *new* Tallahassee Company, or the Jacksonville, Pensacola and Mobile Company; and the court further erred in finding that the paper, marked Schedule 7, made part of the answer of the Western Division Company to the Schutte bill, constituted a deed; whereas the court should have found that no such conveyance has been made, and that said paper was not a deed because neither signed, dated, nor acknowledged in such manner as to make it a deed; and that it never was delivered, but was simply an *attempt* to make a *quit* claim conveyance, which was abandoned, and which, had it been duly executed and delivered could not have conveyed more than a mere *equity of redemption*, subject to the $960,300, and the additional $472,065 secured to Swepson by by the deed of April 22, 1869, conveying both roads.

NOTE.—The attention of the court is called to the fact that by some means there has been a material alteration made in the said paper, Schedule 7, as it in fact is, and as it appears in the record (fols. 643 to 645), as to the frame of the paper and the signatory parties, which alters its character.

The original paper concludes, and is partially executed, as follows:

" In witness whereof, the said Franklin Dibble, Alonzo Hu-
" ling, Lucy E. Huling, John L. Requa, Helen Requa, Edward
" M. Cheney, Maria J. Cheney, Wilkinson Call, James M.
" Baker, Fanny G. Baker, Silas L. Niblack, and Atalie N. Ni-
" black, have hereunto set their hands and seals this
" day of A. D. 1870.

" F. DIBBLE. [SEAL.]
" ALONZO HULING. [SEAL.]
[SEAL.]
" J. L. REQUA. [SEAL.]
[SEAL.]
" ED. M. CHENEY. [SEAL.]
[SEAL.]
" WILKINSON CALL. [SEAL.]
" JAMES M. BAKER. [SEAL.]
[SEAL.]
" SILAS L. NIBLACK. [SEAL.]
[SEAL.]

" Signed, sealed and delivered
in the presence of

" J. P. SANDERSON,
" A. B. HAWKINS,
" J. H. H. BOURS.

"STATE OF FLORIDA, } ss.:
Duval County, }

"Before me, , came, in person, Lucy E. "Huling, Helen Requa, wife of John L. Requa; Maria. J. "Cheney, wife of Edward Cheney; and Fanny G. Baker, wife "of James M. Baker, whose names appear to the foregoing "deed of conveyance, who, being by me personally examined, "separate and apart from their said husbands, severally ac"knowledged that they executed the same freely and volun"tarily, without any fear, compulsion, or restraint of, from, or "by their said husbands. In testimony whereof, they have "hereunto set their hands and seals this day "of , A. D. 1870.

[LEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

"Witness my hand and seal,
this day of ,
A. D. 1870."

Such is the exact condition of said paper, which never was completed or delivered by anybody to anybody. But the paper as shown in the record (fols. 643 to 645) is in this condition:

"In testimony whereof, the said Franklin Dibble, Alonzo "Huling, Lucy E. Huling, John L. Requa, Helen Requa, Ed"ward M. Cheney, Wilkinson Call, James M. Baker, Fanny G.

"Baker, Silas L. Niblack and Atalie N. Niblack have hereunto "set their hands and seals, this day of A. D. 1870.

"F. DIBBLE. [SEAL.]
"ALONZO HULING. [SEAL.]
"J. L. REQUA. [SEAL.]
"ED. M. HULING. [SEAL.]
"WILKINSON CALL. [SEAL.]
"JAMES M. BAKER. [SEAL.]
"SILAS L. NIBLACK. [SEAL.]

"Signed, sealed and delivered in the presence of

"J. P. SANDERSON,
"A. B. HAWKINS,
"J. H. H. BOURS.

"Before me, , came in person Lucy E. "Huling, wife of Alonzo Huling, Helen Requa, wife of John "L. Requa, Maria J. Cheney, wife of Edmund M. Cheney, and "Fanny G. Baker, wife of James M. Baker, whose names appear to the foregoing deed of conveyance, who, being by me "personally examined, separate and apart from their said husbands, severally acknowledged that they executed the same, "freely and voluntarily, without any fear, compulsion or restraint of, from or by their said husbands.

"In testimony whereof, they have hereunto set their hands "and seals, this day of , A. D. 1870

"Witness my hand and seal, this day of A. D. 1870,

In this partial execution the court will see that *five signatures and nine seals* are omitted, which imparts to the paper a far more finished appearance than is shown by the genuine paper. Whether the omission is one of design or accident we have no means of knowing.

But the paper never was executed and delivered for any purpose. It shows upon its face, by the character of the blanks, that it was prepared, not by the grantors, but by some one who discovered the want of title in the Tallahassee Company, and attempted to secure a title of record in this way, but failed to do so, as the deed of Swepson was in full force, and he refused to convey until he was paid. It is quite certain that if the Tallahassee Company had considered it had a title to the two roads, when chartered and organized in 1869, they would not have sought this attempted conveyance in 1870.

The court will take notice that this attempt at a deed is *not produced from the custody of the new Tallahassee Company nor the Jacksonville, Pensacola, and Mobile Comyany;* but is introduced by the Western Division Company in answer to the Schutte bill, to show, as it certainly does show, that at the time, some such conveyance was conceived by the parties to *necessary*, and that it never was completed or delivered.

Fols. 589 and 643.

XXV.

The court, when finding, as the fact is, that the *new* Tallahassee Company did, pursuant to the said deed of conveyance to Swepson, soon after said company was organized in 1869, issue $1,500,000 first mortgage bonds, secured by deed of trust, and delivered the same to Swepson, should also have found, as the record shows, that Swepson still holds said bonds to the use of the Western Division Company, but that because the agreement in said deed was not complied with, he refused to accept the bonds as a discharge of the $960,000, and the additional $472,065 lien in his favor on said two roads, and therefore declined to convey the same to said new company, but still holds the title thereto to the use of the Western Division Company, and in failing to so find the court erred.

NOTE.—If the money due to Swepson was paid, and his title divested and conveyed to the new Tallahassee Company by virtue of the act of incorporation, why did the company thereafter issue and deliver to Swepson the $1,500,000 first mortgage bonds?

XXVI.

The court erred in finding that "the fact is, an act was soon " after procured similar to the act passed in behalf of William

" E. Jackson and his associates in relation to the Florida Central Railroad, and bonds were given and stock was disposed " of amongst the parties, in accordance with the agreement of " March 26, 1869;" whereas it should have found that bonds and stock were not issued and delivered to Swepson, or any one else, in accordance with said agreement of March 26, 1869, or the deed of trust to Swepson, of April 22, 1869; and that no stock whatever in said Tallahassee Company, or said Jacksonville, Pensacola, and Mobile Company, was at any time issued to or owned by said Swepson.

XXVII.

The record shows that the court should have found that the president of the Jacksonville, Pensacola, and Mobile Company *never* did " certify upon his oath that the roads or parts of roads" of said company, on which said State bonds were pretended to be issued, were completed and in good running order, as positively required by the statute of January 28, 1870, creating the statutory contract between the State and said company, and no such certificate, upon oath or otherwise, ever was made or attempted to be made or signed by the president of the Florida Central Company, and it was error in the court not to so find.

XXVIII.

The court finding that the 11th section of the Act of June 24, 1869, and the 3d section of the Act of January 28, 1870, created a valid lien upon the franchise and estate of the Jacksonville, Pensacola, and Mobile Company in favor of the State of Florida, it was a contradiction and an error not to find, as the court should have found, that the equally distinct and positive provision and reservation in the 6th section of the act of the same date, incorporating the said Dibble and associates into a body corporate and politic called the Tallahassee Railroad Company, created a good, valid, and subsisting lien in favor of the deed and conveyance to Swepson, of April 22, 1869, as security for the $960,300 paid, and the $472,065 agreed to be paid by him in purchase of said two roads.

XXIX.

The court erred in finding that the Commission created by the act of the Legislature of North Carolina, March 24, 1870, participated in, or in any manner aided in procuring the issuing of said bonds by the railroad companies, or their exchange for the bonds of the State; whereas the facts and proofs show, and the court should have found that the said Commission created by said act, wherein it was provided that "it shall be the duty "of said Commmission hereby created to collect and receive the "funds and other assets belonging to said company, and due "from George W. Swepson, and all other officers of said company elected or appointed since its organization, and place "the same in some good bank" (fol. 956), did not do otherwise than perform their duty as specified by said act, and tried to collect the money due the said company, and had nothing whatever to do with the issue and sale of bonds, either company or State.

XXX.

The court erred in finding that said Commission ever handled or sold, or attempted to sell, a bond of the State of Florida; whereas it should have found, as the truth is, that when said Commissioners agreed to accept the said $1,287,000 so fraudulently used, in the manner provided in the conditional settlement of the 16th of April, 1870, had no knowledge whatever of the bond issue from which said money was to be derived, and never knew until they derived it from the suits they were compelled to institute in the Supreme Court of the State of New York to enforce the terms of said settlement which they had in good faith agreed to, when, and *not* until when, they were advised by the affidavit of Swepson, and other facts put in evidence, of the illegal and fraudulent character, issue, and use of said bonds.

XXXI.

The court erred in finding that the Western Division Company not only acquiesced in the sale of said State bonds, but urged and promoted the sale thereof; whereas it should have found, as the proof shows, that the Western Division Company never saw one of said bonds, or had any of them in its possession, or under its control; that 2,800 of them were disposed of by S. W. Hopkins & Co., without even the knowledge of the agents of the Western Division Company; that upon the order given to Woodfin for the 800 bonds in London November 10, 1870, not a single bond was delivered to him, or ever was intended to be; that the pretended order for 800 bonds was a mere sham and fraudulent trick imposed upon Mr. Woodfin, to be supplied from the State bonds numbered above 3,000, which at that time were pledged by Houstoun and the State, through its Governor, to the payment of private debts to an amount beyond their value; that at the time the order was given in London (November 10, 1870), the said 1,000 bonds were in the hands of the State of Florida under an injunction restraining their use; and that Woodfin left London and returned to the United States long before the bonds he is alleged to have aided in or urged the sale of reached London, or Hopkins & Co. to be offered for sale, and that they were in fact never sold, all of which is fully shown by the pleadings and proofs, and the court should have so found.

XXXII.

The court erred in finding that the settlement of the 16th of April, 1870, in Washington, and the supplemental settlement in London on the 10th of November, 1870, between Swepson and Littlefield, jointly and severally, and said Commissioners were not *conditional* settlements, and branding the same as a "*new thought, the result of new light*," and that "no such language is used in the original bill;" whereas it should have found, as the fact is, that the said settlements are made part of the original bill, containing their own terms which show them to be conditional, and that to state or swear that they are *not conditional* would not be correct; and that the paper set out *in extenso* in the finding of the court (fols. 1216, 1217) was not the settlement, but the mode of providing the means to carry the settlement into effect (see the three papers made part of the depositions of Rollins and Candler, fols. 1471 to 1425, marked Schedules 1, 2 and 3).

XXXIII.

The court erred in adopting as law the decision of the Florida State court, that the use of the plural word "roads," in the 16th section of the Act of June 24, 1869, incorporating the Jacksonville, Pensacola, and Mobile Company, in which the Florida Central is not mentioned, nevertheless authorized the Jacksonville, Pensacola, and Mobile Company to *exact* and *receive* of the Florida Central Company, and conferred upon the latter the right to issue $1,000,000 bonds paying eight per cent. interest, amounting to $80,000 per annum, a sum beyond its utmost capacity to earn, and which must bankrupt the Florida Central Campany at the end of the first six months; and all this to give effect to the verbiage (the word "roads") in a fraudulent and void act of the Legislature, and thereby *creating a contract* between two railroad companies which never was entered into, either written or verbal, under seal or by parol, between the companies, and denied by both under the oath of their offices, attested by their corporate seals, ever to have existed.

XXXIV.

The court erred in finding that the Florida Central Company was estopped from pleading that the 1,000 forged and fabricated papers called bonds were illegal and created for an unlawful purpose; whereas it should have found, as the law is, that said company had the right to plead the illegality of said so-called bonds, not only because the same were fraudulently fabricated by Swepson, Littlefield, and Houstoun for an unlawful purpose, but also because their issue was *ultra vires*, against the pleading of which there is no estoppel known to the law.

XXXV.

The court erred in finding that the North Carolina Company either aided or acquiesced in the issue of bonds by either the Florida Central or the Jacksonville, Pensacola, and Mobile Company; whereas it should have found, as the uncontradicted proof shows, that said company never saw or handled a bond of either of the Florida companies or knew aught of their issue, or the manner thereof, until long after it was done, and then promptly sought the aid of the courts to restrain the use of said bonds.

XXXVI.

The record shows that the Florida State bonds, being upon their face dedicated to the building of a railroad, could not, either as bonds or their proceeds, become the property or money of the Western Division Company, in the discharge of its claim for the said $1,287,000 so fraudulently appropriated, and besides, these said pretended bonds, being unconstitutional, were no bond at all, and could not be treated as consideration for said compromise and settlement, and it was error in the court not to so hold and decide.

XXXVII.

The court erred in finding that the Western Division Company received any proceeds of said 800 bonds covered by the order of November 10, 1870, on S. W. Hopkins & Co.; whereas it should have found, as the proof shows, that the £10,000 was asked as an advance, and that Hopkins proves *it was an advance*, and not a payment.

XXXVIII.

The court erred in finding that the said Schutte, Prins, Boissevain, Mildens, and others, called Dutch bondholders, were innocent purchasers of said State bonds, even had the same not been declared unconstitutional, fraudulent, and void; whereas, it should have found, as the evidence clearly proves, that said Schutte, Boissevain, Mildens, Prins, and others were not innocent purchasers without notice, but had notice of the illegal and fraudulent character of said bonds; that the same were procured by fraud and issued in violation of the Constitution of the State of Florida, and having such notice, were put upon inquiry, and did inquire and cause inquiry to be made as to the truth of such charges of fraud and illegality, and for that purpose did, on the 18th day of December, 1870, when only a few bonds had been sold, send a cable dispatch from Amsterdam to the Governor of Florida, saying, "Being "negotiating four million bonds issued by *your State, the* "*Jacksonville, Pensacola, and Mobile Railroad Company beg to* "*know by telegraph from you whether provision for payment* "*interest*; whatever result of railroad traffic; financial posi-

"tion of State really sound, and bonds undoubted security," to which broad inquiry the Governor of Florida gave this significant reply, information, and warning, "*Bonds recently* "*recalled by the company; no provision will therefore be* "*made for interest,*" which notice, with other notices, writings, and publications in England and Amsterdam caused the suspension of the dealings in said bonds from the 24th of December, 1870, at which time only 480 bonds had been parted with, until the 20th of February, 1871, on which last named day the Dutch syndicate received such reply from the Governor of Florida, Collinson, and Hopkins & Co., and others interested in speculating in said bonds, as to cause them to publish the result of their inquiries (fol. 3938) to the public, and on that day resume the sale of said bonds, all of which is shown by the testimony of the defendants, and it was error in the court not to so find and decide.

XXXIX.

There was no evidence before the court proving the *bona fide* ownership of any of said State bonds, and especially the 197 bonds numbered above 3,000, claimed and decided to be a lien upon the Florida Central Road, as to which bonds the court should have found, as the testimony proves, that they were never sold, but taken to account for money advanced to Houstoun to meet Littlefield's drafts held by him for $163,000 in payment for the $103,000 Pensacola and Georgia and Tallahassee bonds, and to provide funds to pay the interest on the first of January, 1873, as shown by the proceedings in the Court of Chancery in England, in August, 1872, and it was error in the court not to so find and decide.

XL.

It was error in the court to give any credit to the testimony of the witness Wertheim, who, as the record shows, was examined by the North Carolina Company only as to the authenticity of three papers bearing his own signature, or supported by his previous *ex parte* oath, but in giving which testimony he evaded the questions, falsified and refused to answer, to such an extent, and so flatly contradicted his own written statement as to his relation to the suit as to justly deprive his testimony of all credibility or weight, and it was error in the court not to so find and decide.

XLI.

Both the deposition of said Wertheim and his *ex parte* affidavit, made in May, 1877, referred to by the court, are false upon their face, and show that said Wertheim was not of counsel for the said Dutch bondholders, but was the special agent and solicitor of Sherwin, Willard, Jackson, Allen, and others by whom he was employed to *impose upon the Dutch bondholders* the "Memorandum Plan," and it was error in the court not to so find and decide.

XLII.

The court erred in refusing leave to the Western Division Company to put in evidence the five letters written by Hopkins & Co. to M. S. Littlefield, mentioned in the minutes of the court (fol. 3064), covering the period during which Hopkins and Collins testify that Woodfin was aiding them to sell said bonds, and showing that Woodfin never saw one of said bonds, or offered one of them for sale to anybody.

XLIII.

The court having found the fact that the stock of the Florida Central Company, and the $960,300 bonds paid in the purchase of the Pensacola and Georgia and Tallahasse roads were purchased with funds of the Western Division Company, fraudulently used for that purpose, erred in dismissing its bills without any relief, or giving a day to redeem said roads or either of them, if it elected so to do.

XLIV.

The court erred in entering a final decree in the name of J. Fred. Schutte *et al.*, as if they were the original complainants in the suit; whereas, the decree should have been entered in the name and style of the Western Division Company's suits to which Schutte *et al.* were defendants by answer and cross-bill; or if not in the cause by answer and cross-bill, then the court further erred in granting affirmative relief upon the answer alone, without a cross-bill.

XLV.

The court having found that Schutte *et al.* did not stand upon equity, but upon the statutes, erred in not dismissing their bill and cross-bill, on the ground that their remedy was at law and not in equity.

XLVI.

The decree is erroneous, in that it adjudges more than is due, even upon the theory of the facts and law as found by the court, by many thousand dollars, and must, for this reason, be reversed or amended.

XLVII.

The court erred in decreeing that Schulte *et al.* should have the right to pay said State bonds in satisfaction of any bid they might make upon the sale of said roads; whereas, it should have found and decreed that said bonds were void, and could constitute no consideration for anything; and that the statute provided that such bids should be paid in "lawful money of the United States, *and for nothing else.*"

XLVIII.

The court erred in failing to find and decree that the bonds of said companies held by the State, were payable to the State only, and not negotiable; that whatever debt or lien they created was in favor of the State alone; and that, since the State parted with no value for them, they should be delivered up to said companies and canceled.

XLIX.

The court erred in not decreeing the perpetuation of the injunction granted to the Western Division Company on the 22d day of May, 1877, and granting it the general and special relief prayed in its bills.

THE TESTIMONY.

Before proceeding with our argument and presentation of the law and facts in support of our assignment of errors, we ask leave to make a few statements about the depositions and proofs introduced into the case, and the manner of the taking and presentation of the same.

As soon as the cases were at issue, the Western Division Company gave notice that it desired the testimony to be taken orally, as provided in the 67th Rule of Equity Procedure, the taking of testimony for this appellant commenced, due notice being at all times given, and full opportunity for cross-examination afforded to all parties.

In the taking of depositions by the Western Division Company, the bill of Schutte and others was treated as a cross-bill, as it had been in the pleadings after its being filed on the 23d day of May, 1877, and notice was given as well to the counsel appearing for Schutte *et al.*, as to the counsel of the Governor of Florida, *their recognized Trustee.*

The taking of testimony on the part of Schutte *et al.* was conducted differently. Notwithstanding said notice to take the testimony *orally*, they, after waiting until the early part of the year 1879, filed interrogatories to take their depositions in Amsterdam, and got their commissions off *ex parte*, without affording opportunity to except to their interrogatories, or cross them. The matter being brought to the attention of the court, this irregularity was in part corrected by allowing the Western Division Company to file exceptions to their interrogatories, and forward cross-interrogatories. The argument of the exceptions was necessarily deferred until the final hearing.

The Western Division Company's depositions were not only taken orally, but were all printed as taken, and copies furnished to all parties. But the depositions of Schutte *et al.* were not completed until on the eve of the trial, and copies of them were not attainable until after the trial had commenced, on the 19th day of May, 1879.

Motions were made to suppress all the depositions taken on behalf of Schutte *et al.*, at Amsterdam, Holland, and New York, because of manifest fraud and illegality in the mode of taking them. Upon argument of the motion as to the Amsterdam depositions, the court suppressed them, because it appeared upon their face that they were prepared beforehand, and written out in English for all except two witnesses, and in that condition read before the Examiner; and that the witness G. M. Boissevain was not named as one of the witnesses to be examined in the interrogations and notice.

The motion to suppress the depositions of Hopkins, Collins, and Collinson, taken in New York, was deferred to their reading before the court on the trial. But as the court declined to hear the testimony read by counsel, the trial proceeded without an opportunity being afforded to consider or insist upon the exceptions to the interrogatories and answers in said depositions. For this reason we ask the court, on the hearing of this appeal, to take into consideration our exceptions to these New York depositions taken on behalf of Schutte *et al.*, Hopkins (fol. 1197), Collins (fol. 1187), and Collinson (fol. 1130). Our reasons for this statement will be more fully set forth when we have occasion to refer to the depositions of these witnesses.

DEPOSITIONS TAKEN BY THE WESTERN DIVISION COMPANY.

The witnesses examined on the part of the Western Division Company were:

	Page.
Harrison Reed (Ex-Gov. of Fla., who issued the bonds)..	581
George R. Foster (Ex-Sec. F. C. C.)......................	591
F. W. Ely (Sec. J., P. & M. Co.)........................	593
J. B. Stewart (Sol. W. D. Co.).........................	595
S. B. Stephens (Sol. J., P. & M. Co.).....................	597
George P. Raney (Att'y-Gen. Fla.)........................	598
W. W. Rollins (Pres. W. D. Co.)........................	606
Wm. G. Candler (Ex-Com. and Director).................	619
C. M. McLoud (Director W. D. Co.).....................	629
Geo. W. Swepson (Ex-Pres. F. C. Co.).....................	631
L. P. Bayne (Banker, who visited Europe in relation to bonds)..	656

H. H. Thompson (who signed the bogus F. C. bonds as Treasurer)	658
T. H. Porter (Banker, who paid W. D. Co.'s funds for F. C. stock, and P. & G. and T. bonds)	662
Thomas E. Wilson, City Editor N. Y. *World*	680
Sam. M. Chapman (firm of Hopkins & Co.)	683
C. L. Chase (Agent sent to Europe about said bonds)	689
M. S. Littlefield (Pres. J. P. & M. Co.)	724
Aaron Barnett (Ex-Pres. F. C. Co., who visited Europe about the bonds)	763
Adolph Engler (Trustee of Schutte, *et al.*)	769
Thomas B. Coddington (who took the 1000 T. C. bonds secretly from Florida to London	783
S. W. Hopkins, (firm of Hopkins & Co., who sold the bonds)	792
John L. Requa, (Director F. C. Co.)	795
Jacobus Wertheim (Agent of Sherwin, Willard, and other promoters of the "Mem. Plan.")	803

These several witnesses were orally and openly examined by the Western Division Company, upon notice to all parties, touching matters in issue in the suits, of which they had personal, and some of them official knowledge.

There were two other witnesses examined by the Western Division Coompany, to wit, Ephriam D. Slater (p. 652) and Moritz Hertzberg (p. 654), mainly in reference to the removal of C. H. Allen as Receiver, but which, being no longer a material matter, were not referred to on the trial, and might have been omitted from the record.

Several witnesses were examined on the part of the Florida Central Company which will be referred to.

Papers Put in on the Trial.

When the pleadings had meandered their way through the *legal legerdemain* practiced by the learned counsel of Schutte *et al.* in their adroit efforts to deprive the Western Division Company of a hearing in its own original suits, which resulted in the court finding it necessary, of its own motion, to make the important order (fols. 1172 to 1174), placing Schutte *et al.* back in their rightful position of defendants to the Western Division Company's bills, and the trial sought to be avoided, at last proceeded.

The counsel for Schutte *et al.* offered in evidence a large amount of printed matter, which might as well have been offered before the trial commenced, or the publication of testimony passed, so that proper objections made as to the competency or admissibility of such evidence could be heard beforehand. But this was not done, and the confusion incident to such contentions in court, subject to the intensely hot weather, allowed persistent irregularity to prevail in the putting in of unverified papers as proofs. Many of these papers constitute the last 155 pages of the concluding part of the record.

With this explanation to the court as to the method of taking and putting in the testimony, our want of opportunity to pursue and take rulings upon our exceptions to the depositions taken for Schutte *et al.*, as above, we will now go to our argument in support of the errors assigned.

ARGUMENT

The court having found and decided as to the Florida Central stock claimed in the bill respecting that company, that it was shown by the proofs, as well as conceded by the parties (fols. 1202-3), that it was purchased with the funds of the Western Division Company, fraudulently used for that purpose, and, " therefore, required no adjudication of this court."

And the court also having decided that—

" It is established beyond controversy that the ($960,300) " bonds which were used by F. Dibble and associates in the " payment for the two roads in question, namely, that of the " Pensacola & Georgia Railroad Company, and the Tallahassee " Company, were furnished by George W. Swepson, and that " Swepson procured the same by a fraudulent use of money in " his hands, produced by the sale of North Carolina State " bonds belonging to the western division of the Western " North Carolina Railroad Company, of which he, Swepson, " was president."

We say, these important and comprehensive findings of fact by the court below, and which are not appealed from or contradicted by any party to the record, relieve us from the necessity of marshalling the proofs to sustain the allegations of the Western Division Company's bills averring these important propositions.

In the event that the court should desire to inspect the proofs, we refer it to the depositions of Swepson (fols. 1451 to 1461), M. S. Littlefield (fols. 1646-7), T. H. Porter (fols. 1507 to 1510), together with the drafts drawn by Houstoun, as the agent of Swepson, upon the funds of the Western Division Company in the hands of Soutter & Co. (fols. 1510 to 1534).

In arguing the errors assigned, we will take them up in their order, and handle them singly, or several together, as their subject matter may admit, and will condense our remarks as much as possible.

Sections 2 and 4 of the act of the 28th of January, 1870, creating the statutory contract for the exchange of bonds between the State and the Jacksonville, Pensacola, and Mobile Railroad Company, is a contract purely between the State and the company, and especially so far as the matter of obligation or security, from the one to the other, is involved. The purchasers of the State bonds, after they went into the market, became the creditors of the State only, and not the creditors of the company. The undertaking of the State was to give the company a bond to be sold in the market for a specified purpose expressed in the statute. The State bound itself to pay the interest on its bonds, at stated times, and also to pay the principal when due. The obligation of the State did not depend upon any contingency or condition. It did not depend upon anything to be done or performed by the company, and was neither better nor worse, though the road of the company never should be built.

The fact that it was no part of the attempted contract to secure the State by the delivery to it of the company's bonds, to an equal amount and rate of interest, in no manner alters the State's obligation to the holder of its bonds, or lessens or shifts its liability or responsibility. The statute does not so provide, and the bond does not so state (fol. 5693). The only thing beyond a positive obligation to pay to the bearer is "*issued in accordance with the Act of the Legislature of Florida, approved, January 28th,* 1870."

The bonds of the company are made payable to the State, and to no one else. No other payee or beneficiary is named in the statute, or on the face of the company's bond; being payable to the State alone, it is not negotiable, and shows upon its face that it never was intended or designed to be the property of any other holder, and could not be, unless made so by further legislation, creating a new contract between the parties.

See J., P. and M. Bond, p. 218.

Or, in other words, the State, by the terms of its bond, became in and of itself the debtor, and the sole debtor, to the holder, whoever and wherever he may be, while the company, by the terms of its bond, made itself solely and exclusively the debtor of the State.

Hence it follows that there is no privity between the company and the holder of the State bonds, in the creation of the contract for exchange of bonds.

And the same is true of the security created by the statutory contract. It is nowhere provided in the statute that the holder of the State bonds is empowered to seek redress against the company. To the State is this right reserved, by the third section of the statute; and if this statute is to be enforced by this decree, and not the general principles of equity in the marshalling of securities, it is the *State*, and not the holder of the State's bonds, that can do it.

Chamberlain *vs.* Minnesota, 2 Otto, 299.

It is clear, therefore, that there is no privity of relation between the holders of said State bonds and the company.

Besides the fact that there is no privity of relation created by the terms of this statutory contract between the State and the company, whereby the bonds proposed to be issued by the company to the State in any manner, or for any purpose, became the property of Schutte *et al.*, *none is alleged or claimed in their bill or cross-bill*, which they seek to enforce. Their bill alleges title to the State bonds, and *not* to the company bonds, and claims no relation on the part of Schutte *et al.* to the company or its bonds (fol. 419). And without such allegation it was erroneous to grant such relief.

The issue and exchange of the company bonds for the State bonds is alleged in paragraphs VI., VII.. VIII. of the Schutte bill; that the State bonds are made payable to bearer, and the company bonds to the State; and avers that the execution and delivery of said bonds was done by said companies in order to comply with the terms of laws incorporating said Jacksonville, Pensacola, and Mobile Company, but does not allege any relation thereto on the part of Schutte *et al.*

By paragraphs IX. and X., the bill alleges the manner of sending the State bonds to Europe for sale, and the sale thereof (fol. 421), and by the XI. paragraph of their bill (fol. 422), Schutte *et al.* distinctly allege:

"That complainants are the owners of a large number of the "said bonds issued by Governor Harrison Reed to the Jack-"sonville, Pensacola, & Mobile Company, and sold by its "agents as before set forth, which bonds are numbered "between number one and number three thousand two hun-"dred."

Such are the allegations, and the only allegations of title in Schutte *et al.* to bonds—*State* bonds and not *company's* bonds.

And in their prayer for relief they conform to these allegations. See 2d prayer, (fol. 436):

"2d. That the entire line of railroad from Jacksonville to "the Apilachicola river, with the branches to Monticello and "St. Marks, and all the property, real and personal, thereto "pertaining, may be decreed to be subject to a lien for the "payment of complainants' bonds, superior to the claim of all "persons whatsoever, and expressly said defendants."

The court will therefore see that no privity of relation between Schutte *et al.* and the companies is alleged in their bill, or that they are the holders or owners of any of the companies' bonds, or ask that the companies' bonds be enforced for their benefit; but do allege, and *only* allege, that they are holders of the *State* bonds, and pray that the Jacksonville, Pensacola, and Mobile Company's line of railroad, extending from Jacksonville to the Apilachicola river, be decreed to be sold to pay their *State* bonds. And this relief is asked, though the bill shows on its face that the bonds and the statute under which they were issued are admitted to be void, and the bonds thus sought to be enforced in a court of equity are styled "so-called bonds."

Again:

The bill upon its face seeks to enforce the provisions of the Statute of January 28, 1870, attempting to create a contract between the State and the Jacksonville, Pensacola, and Mobile Company, declared by the Supreme Court of the State to be *unconstitutional and void.*

The contract attempted to be created by the Statute is embraced in the 2d, 3d, and 4th sections of the act. The contracting provisions being in the 2d and 4th sections, the 3d section is devoted to the creating of a statutory mortgage lien in favor of the State, and stipulating the manner of enforcing the lien so created by the statute.

In order, therefore, to set forth definitely the terms of these statutory contracts, we will present them as they are, before being declared *unconstitutional* and *void;* and then as they exist after purging out the unconstitutional and void portions of them.

Section 2 of the Act of January 28, 1869, attempting to create this statutory contract, provides that:

"In order to aid the Jacksonville, Pensacola & Mobile Rail-"road Company to complete, equip and maintain its road, and "to aid in perfecting one of the public works embraced in the "internal improvements of the State, the Governor of the "State is hereby directed to deliver to the President of said "company coupon bonds of the State to an amount equal to "sixteen thousand dollars per mile for the whole line of road "and length of railroad owned by or belonging to said Jack-"sonville, Pensacola & Mobile Railroad Company in exchange "for first mortgage bonds of said railroad company, of the "denomination of one thousand dollars, when the President "thereof shall certify upon his oath, that the road or parts of

"road for which he asks for an exchange of bonds is com-
"pleted and in running order. The said bonds shall be of
"the denomination of one thousand dollars, signed by the
"Governor, countersigned by the Treasurer, sealed with the
"great seal of the State; shall bear eight per cent. interest,
"payable semi-annually to bearer. They shall be dated on
"the first day of January, A. D. 1870, and shall be due thirty
"years thereafter, and principal and interest shall be payable
"at such place in the City of New York as the Governor shall
"designate. The coupons for interest shall be payable to
"bearer, and shall be authenticated by the written or engraved
"signature of the Treasurer."

The court here sees a contract proposed as distinct and complete between the State and the Jacksonville, Pensacola, and Mobile Company, as *sole parties*, as ever was drawn up or worded between contracting parties, public or private.

This statutory contract rests upon three arbitrarily positive conditions:

1st. The State must issue and deliver its bonds to the company.

2d. The company must thereupon deliver its bonds to the State.

3d. And this can only be done by the company "when the
"President thereof shall certify, upon his oath, that the road
"or parts road for which he asks for exchange is completed
"and in good running order."

Either of these conditions failing or being disregarded, the contract is broken,—the statute disobeyed. The court will see, further along, that the "certifying upon his oath by the "President of the Company" was never complied with.

Passing, for the present, the 3d section of the statute creating a lien in favor of the State for the bonds it agreed to issue to the company, we will present to the court the very peculiar and obscurely worded contract proposed by the 4th section of the statute, because it is by this section that the Florida Central Company is to be burdened with a debt of $1,000,000, bearing an interest debt of $80,000 per annum—a sum wholly beyond its capacity to earn, and that, too, by *mere implication*, to create a covering for the plural word "roads," as we shall hereafter see, if this monstrous transaction is to be enforced against the franchises and property of the Florida Central Company. The contract proposed by the 4th section is as follows:

> "Section 4. That the Governor shall, for the purpose of "further aiding the Jacksonville, Pensacola & Mobile Rail- "road Company in the speedy construction of its road, deliver "to the President of said company coupon bonds of this State "of the same character as those above described in this act "to the amount of sixteen thousand dollars per mile, upon "receiving for and from the President of said company first "mortgage bonds of like amount on any part or portion of "the road between Quincy and Jacksonville; *provided, how- "ever*, the State bonds under this section *shall not be ex- "changed for first mortgage bonds for a greater length than "one hundred miles of any part of railroad between Quincy and "Jacksonville. Provided*, the said railroad company or com- "panies shall not issue first mortgage bonds to a greater "amount than sixteen thousand dollars per mile."

The court, by looking at the commencement of other sections of the Act of January 28, 1870, say the 2d, 3d, 5th, and 6th, will see that this 4th section was not intended as an amendment of the 14th section of the Act of June 14, 1869, but as a complete supercession of it. The other sections named, commence by naming the sections of the former act which they are intended to amend.

The 14th section of the Act of June 14, 1869, authorizes the company to issue and vend its own bonds at $14,000 per mile, and says nothing about State bonds; whilst this new 4th section authorizes the issuing of bonds to the State at $16,000 per mile, in exchange, &c., and says nothing about vending its own bonds. It is unquestionably new legislation entirely, and supercedes the old 14th section. They are utterly diverse and inconsistent, and the latter, of course, supercedes and repeals the former.

We invite the especial attention of the court to this matter, as it utterly repels and destroys the whole theory of the disquisition of the learned justice at pages 700 to 710 of 15 Florida R., to which we shall have occasion hereafter to pay some attention.

But, to resume the line of our argument.

The proposed contract of the 4th section of the Act of January 28, 1869, for the exchange of State bonds for company bonds, the court will observe, mentions the name of *no* company authorized to accept its provisions as the other contracting party, or whose franchise or road was to be burdened with the charge, and it *certainly* does not mention the Florida Central Company. It refers to the bonds of the State to be issued as "*of the same character as those above described in this act,*" meaning, of course, in the 2d section, and like which it is a transaction with the State to which no one but the State and such company are or can become parties or privies.

In the suit of Holland *vs.* The State of Florida, these bonds, issued by the State and held by Schutte *et al.*, became the subject of litigation as to their constitutionality. The Supreme Court of the State, in disposing of that case (15 Fla., p. 533), held and adjudged that the Act of January 28, 1870, under the provisions of which the State bonds were issued and exchanged for company's bonds, is unconstitutional and void.

The bill of Schutte *et al.*, nevertheless sets up this unconstitutional statute, and these void bonds as a ground of relief, and the court below has decreed accordingly, by adopting the decision of the State court in that behalf, which we insist was erroneous, and respectfully contend that no relief at law or in equity can be founded upon or result from a statute declared unconstitutional.

It is therefore laid down as axiomatic law, that

"When a statute is adjudged to be unconstitutional, it is as "if it had never been. Rights cannot be built up under it; "contracts which depend upon it for their consideration are "void; it constitutes a protection to no one who has acted "under it, and no one can be punished for having refused obedience to it before the decision was made. And what is true "of an act void *in toto* is true also as to any part of an act "which is found to be unconstitutional, and which, conse-

" quently, is to be regarded as having never, at any time, been " possessed of any legal force."

Cooley on Con. Lim., p. 187.
Att'y-Gen. *vs.* Brown, 1 Wis., 522.
Wright *vs.* Defrees, 8 Ind., 308.
Strong *vs.* Daniels, 5 " 348.
Astram *vs.* Hammond, 3 McLean, 107.
Meagher *vs.* Story Co., 5 Nevada.

This case is precisely on a par in principle with the case of Craig *vs*, Missouri, 4 Peters, 425.

That case, like the present, was founded upon a *statutory contract* created by the Legislature, between the State of Missouri and her people by the issuing and exchanging of what were called "*Loan certificates,*" for the promissory notes of her citizens who chose to avail themselves of the privelege, instead of the exchange of bonds of the State for bonds of corporations, as in this case. In that case also, like the present, the statute creating the attempted contract specified the exact form and terms of the State certificates, and the terms of the citizens notes therefor.

The contracting sections of the statute were as follows (4 Pet., 430):

"Section the third enacts: 'That the Auditor of the " 'Public Accounts and Treasurer, under the direction " 'of the Governor, shall, and they are hereby required " 'to, issue certificates, signed by said Auditor and Treasurer, " 'to the amount of $200,000, of denominations not exceeding " 'ten dollars, nor less than fifty cents (to bear such devices as " 'they may deem most safe) in the following form,' to wit: " 'This certificate shall be receivable at the treasury, or any of " 'the loan offices of the State of Missouri in the discharge of " 'taxes or debts due the State for the sum of $—— with in- " 'terest for the same at the rate of *two per cent.* per annum " 'from this date, day of , 182 .'"

" Section thirteen declares: That the certificates of the said " loan office shall be receivable at the treasury of the State, and " by all tax-gatherers and other public officers in payment of

" taxes or other moneys now due the State, or to any county
" or town therein, and the said certificates shall also be receiv-
" able by all officers, civil and military, in the State, in dis-
" charge of salaries and fees of officers."

The statute proceeds to direct how the certificates shall be issued by districts, among the people.

These State certificates were issued to a large amount, and went into general circulation in exchange for the notes of the citizens, as provided by the statute; and, among others, of the defendant Craig, who, failing to pay his notes at maturity, was sued by the State thereon, and the defense interposed was that the State certificates were "bills of credit" within the meaning of, and hence forbidden by the Constitution of the United States, Art. I., sec. 10, and, consequently, that the notes given by Craig to the State were void in its hands, and could not be enforced in any court of law or equity; and that, too, notwithstanding the admitted fact the maker of the notes had received the stipulated consideration therefor, and had appropriated the same to his own use for its full value.

The State courts, both at circuit and on appeal, in that case, as in this, construed this statute and their own Constition, and also the Constitution of the United States, and decided that the State certificates were not "bills of credit," and that Craig was estopped from interposing the plea of no consideration. In due course of time and proceeding the case was brought to this court on writ of error, where the decisions of the State courts were reversed.

Chief Justice Marshall, delivering the opinion of the Court, after deciding that the "*State certificates*" were "bills of credit," then proceeded to announce the legal effect of that conclusion upon the validity of the *notes* given in exchange for them, as follows: (p. 436.)

"The certificates for which this note was given, being in
" truth 'bills of credit,' in the sense of the Constitution, we
" are brought to the inquiry:

" Is the note valid for which they form the consideration?

" It has been long settled that a promise made in considera-
" tion of an act which is forbidden by law is void. * * *
" The consideration of this note is the *emission* of bills of
" credit by the State. The very act which constitutes *the*

"*consideration* is the act of emitting bills of credit in the mode "prescribed by the law of Missouri, which act is prohibited "by the Constitution of the United States. * * * * * "Had the note been made in consideration of these bills, instead of being made payable in them, it would *not* have been "less repugnant to the Constitution, and *consequently have been* "*equally void.* * * * *It has never been doubted that a* "*note given on a consideration which is prohibited by law* IS VOID."

The Court, then citing a number of cases in point, concludes its opinion by saying:

"A majority of the court feel constrained to say that the *consideration* on which the note in this case was given, is against "the highest law of the land, and that *the note itself is utterly* "*void.*"

Mr. Justice Johnson, though holding that the State certificates were not bills of credit, but concurring in the opinion of the court as to the note given for them being *void*, if the certificates *were* bills of credit, stated (p. 441):

* * * "In the argument of counsel, the objections to "this *contract* were presented in the form of objections to its "*consideration.* But this was unneccessary to his argument, "*since even a valuable cansideration will not make good a contract* "*in itself illegal.* These notes originate directly under the law "of Missouri; they are taken in pursuance of its provisions, "have their origin in it; and rest for their validity upon it, "and if that law be void, must fall with it. *Whether, therefore,* "*the bills for which they were given, be* VOID *or* VALID, *if the law be* "*void, the notes would be so.* * * * * *

"It follows, that when the officers of a State undertake to "act upon such a law, *they act without authority;* and that the "*contracts entered into,* direct or incidental to such, their illegal "proceedings *are mere nullities.*"

The State of Missouri not being satisfied with this decision, and encouraged, no doubt, by the difference of opinion in the court as to the certificates being "bills of credit," hoping to avert the heavy loss devolving upon her, brought another one of the cases to this court for review, namely, Byrne *vs.* The State of Missouri (8 Peters, 39), which was again argued by

Mr. Benton for the State, no counsel appearing for Byrne. But the court unanimously affirmed its former decision.

Now, the Florida State bonds at bar, take the place of the Missouri State certificates, and the railroad company's bonds at bar, take the place of Craig's note in the Missouri case. All depend upon the void State statute, and all must fail alike upon the doctrine just cited.

Nor is this doctrine new. Chitty lays it down in his text, older than Craig *vs.* Missouri:

"Whenever the contract which a party seeks to enforce, be "it express or implied, is expressly or by implication forbidden by the common or statute law, no court will lend its "assistance to give it effect. For although, in general, the "agreements into which parties enter have the force of law, "because *modus et conventio vincunt legum.* Yet, this, even, "does not apply where the interests of the public or morality "are affected by the agreement, or may be injured by the observance of its terms.

"*And the test as to whether a demand connected with an illegal "contract be capable of being enforced at law, is whether the plaintiff requires to rely upon such transaction in order to establish his "case.*"

Chitty on Con., 729-30, and cases cited.

Again:

"*As the benefit of the public and not the advantage of the defendant,* is the principle upon which a contract is allowed to be "impeached on the ground of illegality; so this exception can "be taken by either of parties to such contract. 'The objection,' says Lord Mansfield, 'that a contract is immoral or "illegal as between plaintiff and defendant, sounds at all times "very ill in the mouth of the defendant. *It is not for* HIS *sake,* "however, that the objection is allowed; but it is founded on "general principles of policy, which the defendant has the advantage of, contrary to real justice as between him and the "defendant; *not for the sake* of the *defendant,* but because the "courts will not *lend their aid to such a plaintiff.*

Chitty on Con., pp. 731-2.

And later in this court:

"In such cases (illegal contracts) *there can be no waiver*. The "defense is allowed; *not for the sake of the defendant, but of the* "*law itself*. The principle is indispensable to the purity of its "administration. It will not enforce what it has forbidden and "denounced. The maxim *ex dolo malo non oritur actio* is limited "by no such qualification. The proposition to the contrary "strikes us as hardly worthy of serious refutation. Whenever "the illegality appears, whether the evidence comes from one "side or the other, this disclosure is fatal to the case. *No con-* "*sent of the defendant can neutralize its effect.* A stipulation in "the most solemn form to waive the objection would be "tainted with the vice of the original contract, and void for "the same reasons. Wherever the contamination reaches it "destroys. The principle to be extracted from all the cases "is, that the law will not lend its support to a claim "founded upon its own violation."

Coppell *vs.* Hall, 7 Wall., 558.

Still later, in

United States *vs.* Macon, 9 Otto, 590.

"While there has undoubtedly been great recklessness on "the part of the municipal authorities in the creation of "bonded indebtedness, there has *not unfrequently been gross* "*carelessness* on the part of *the purchasers, when investing in* "*such securities. Every purchaser of a municipal bond is* "*chargeable with notice of the statute under which the bond was is-* "*sued. If the statute gives no power to make the bond the munici-* "*pality is not bound.*"

DID THE STATUTE OF THE 28TH OF JANUARY, 1870, CREATING THE PRETENDED CONTRACT FOR THE EXCHANGE OF STATE BONDS FOR COMPANY BONDS, CONTEMPLATE A DOUBLE OBJECT, AND IF IT DID, WHAT WERE THE TWO PURPOSES EMBRACED IN THE STATUTE?

The Florida State court, while deciding that the Statute of the 28th of January, the *second* and *fourth* sections of which created the pretended contract for the exchange of State bonds for Company bonds, was unconstitutional and void, and in no manner bound the State, though *one* of, and the *first* named, contracting party, and "*that neither the State, nor her people,* "*are bound for the bonds now in the hands of those who hold* "*them,*" next proceeded to hold and decide that the company, the *other* contracting party to this statutory contract, *was* bound by it. Or, in other words, that the statute, VOID as to the *State*, was VALID as to the *company—one* party *bound*, the *other* party *not bound*.

To arrive at this remarkable result, so new to the law of contracts, the State court *assumed* that the second, third, and fourth sections of the Statute of the 28th of January, 1870 (the statute referred to in the face of both State and Company bonds as the authority for their issue), contemplated a *double* purpose.

In assuming this position, the State court defined that double purpose to be in fact a *double relation of the State to the bondholders and the company*, and states the grounds for this assumption as follows (see 15 Fla., 534):

"A careful and strict examination of this statute will show "that the State of Florida was to occupy *two* distinct and "different relations *to the holders of the State bonds and to the* "*company*. The *first* relation was that of a *primary debtor to* "*the holders of the State bonds, under and by virtue of its bond,* "and also of a *mortgage creditor of the company by virtue of the* "*bond of the company.*"

Such are "*the two distinct and different relations* of the State "to the holders of the State bonds and the company," as described by the State court to have been created by the Statute of January 28, 1870.

For the sake of the argument, concede the statute to have created *twenty* separate, distinct, and different relations between the State, its bondholders, and the company, that fact would not show, or tend to show, that *the statute its lf was passed to accomplish a double purpose*—that is, two such separate and distinct purposes, that *one* might be *valid* and the other *void;* that the *void* part of the statute could be *stricken out,* and still leave a *valid purpose* capable of being executed. And this, may it please the court, is the only material question for consideration, and which is not touched by the decision of the State court.

The subject of the effect of *valid* and *void* purposes or provisions occurring in statutes, or any portion of a statute, has been most carefully considered by the courts because of their well maintained indisposition to interfere with the legislative will when resolved into law. To avoid this as much as possible, this court, and the courts of the States, have accepted and recognized certain well defined rules of discrimination, which are most carefully and clearly expressed by Judge COOLEY in his work on Constitutional Limitations, under title of "*Statutes Unconstitutional in Part.*"

That learned author says:

"It will sometimes be found that an Act of the Legislature
" is opposed in some of its provisions to the Constitution,
" while others, standing by themselves, would be objection-
" able. So the forms observed in passing it, may be sufficient
" for some of the purposes sought to be accomplished by it,
" but insufficient for others. In any such case, the portion
" which conflicts with the Constitution, or in regard to which
" the necessary conditions have not been observed, must be
" treated as a nullity. Whether the other parts of the statute
" must also be adjudged void, because of the association, must
" depend upon a consideration of the object of the law, and in
" what manner, and to what extent, the unconstitutional por-
" tion affects the remainder. A statute, it has been said, is
" judically held to be unconstitutional, because it is not in the
" scope of legislative authority; it may either propose to ac-
" complish something prohibited by the Constitution, or to
" accomplish some lawful, and even laudable object, by means
" repugnant to the Constitution of the United States or of the
" State. A statute may contain some such provisions, and yet
" the same act, having received the sanction of all branches of
" the Legislature, and, being in the form of law, may contain
" other useful and salutary provisions, not obnoxious to any
" just constitutional exception. It would be inconsistent with
" all just principles of constitutional law to adjudge these en-
" actments void, because they are associated in the same act,
" but not connected with or dependent on others, which are un-
" constitutional. Where, therefore, a part of the statute is
" unconstitutional, the fact does not authorize the courts to
" declare the remainder void also, unless all the provisions are

“connected in subject matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning, that it cannot be presumed the Legislature would have passed the one without the other. The constitutional and unconstitutional provisions may even be contained in the same section, and yet be perfectly distinct and separable, so that the first may stand, though the last fall. The point is not whether they are contained in the same section, for the distribution into sections is purely artificial; but whether they are essentially and inseparably connected in substance. *If when the unconstitutional portion is stricken out, that, which remains, is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained.* The difficulty is in determining whether the good and bad parts of the statute are capable of being separated within the meaning of this rule. If a statute attempts to accomplish two or more objects, and is void as to one, it may still be in every respect complete and valid as to the other. *But if its purpose is to accomplish a single object only, and some of its provisions are void, the whole must fail, unless sufficient cause remains to effect the object, without the aid of the invalid portion.* And if they were so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other, as to warrant the belief that the Legislature intended them as a whole, and if all could not be carried into effect, the Legislature would not pass the residue independently; then, if some parts are unconstitutional, all the provisions which are thus dependent, conditional, or connected, must fall with them.”

Cooley, Con. Lim., p. 177.

In support of the rule of interpretation here stated, the author recites a multitude of cases, embracing most of the States of the Union. The test, then, is whether the statute is intended to accomplish—

(*a*.) A single purpose.

(*b*.) Or is capable of being separated so as to leave a valid law, capable of being executed.

(*c*.) Or whether the Legislature could or would pass such an act, *omitting the void part?*

In the case at bar we have to deal with the 2d and 4th sections of the Statute of January 28, 1870, for, by these two sections, the remainder of the act must stand or fall. We will therefore present these two sections in parallel columns. The *left* column presenting them as enacted; the *right* presenting them with *the unconstitutional portions expunged.*

Act of January 28, 1870.

"Sec. 2. That section 9 of said act (June 24, 1869), entitled, 'An Act to perfect the Public Works of the State,' * * * * be altered and amended so as to read as follows:	"Sec. 2. That section 9 of said act (June 24, 1869), entitled, 'An Act to perfect the Public Works of the State,' * * * * be altered and amended so as to read as follows:
"In order to aid the Jacksonville, Pensacola and Mobile Railroad Company to complete, equip and maintain its road, and to aid in perfecting one of the Public Works embraced in the internal improvements of the State, the Governor of the State is hereby directed to deliver to the President of the said Company coupon bonds of the State to an amount equal to sixteen thousand dollars per mile for the whole line of road and length of railroad owned by or belonging to said Jacksonville, Pensacola and Mobile Railroad Company, in exchange for first mortgage bonds of said Railroad Company, of the denomination of one thousand dollars, when the President thereof shall certify, upon his oath, that the road or parts of road for which he asks for an exchange of bonds is completed, and is in good running order. The said bonds shall be of the denomination of one thousand dollars, signed by the Governor, countersigned by the Treasurer, sealed with the great seal of the State, shall bear eight per cent. interest, payable semi-annually, and shall be payable to bearer. They shall be	"In order to aid the Jacksonville, Pensacola and Mobile Railroad Company to complete, equip and maintain its road, and to aid in perfecting one of the Public Works embraced in the internal improvements of the State * when the President thereof shall certify, upon his oath, that the road or parts of road for which he asks for an exchange of bonds is completed, and is in good running order. *

" dated on the first day of January, " A. D. 1870, and shall be due thirty " years thereafter, and principal and " interest shall be payable at such place " in the City of New York as the Gov- " enor shall designate. The coupons " for interest shall be payable to bearer, " and shall be authenticated by the " written or engraved signature of the " Treasurer. *Provided, however,* That " when the Jacksonville, Pensacola and " Mobile Railroad Company shall or " may determine to pay the interest in " gold for or upon their bonds, or the " bonds designated in the tenth section " of an act entitled, 'An Act to perfect " the Public Works of the State,' ap- " proved June 24, 1869, upon giving " notice to the Governor of such inten- " tions, then the State bonds aforesaid, " and the coupons for interest on said " bonds shall be payable in gold, notice " of which shall be given by the Gov- " ernor in some paper published in the " City of New York, and at the capital " of this State, to be designated by the " Governor.

" SEC. 4. That the Governor shall, for " the purpose of further aiding said " Jacksonville, Pensacola and Mobile " Railroad Company in the speedy con- " struction of its road, deliver to the " President of said Company coupon " bonds of this State, of the same " character as those above described in " this act, to the amount of sixteen " thousand dollars per mile, upon re- " ceiving for and from the President of " said Company first mortgage bonds " of like amount on any part or portion " of the said road between Quincy and " Jacksonville. *Provided, however,* The " State bonds under this section shall " not be exchanged for first mortgage " bonds for a greater length than one " hundred miles of any part of said " railroad, between Quincy and Jack- " sonville. *Provided,* The said Rail- " road Company or Companies shall not " issue first mortgage bonds to a greater " amount than sixteen thousand dollars " per mile."

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" * *Provided,* The said Rail- " road Company or Companies shall not " issue first mortgage bonds to a greater " amount than sixteen thousand dollars " per mile."

With this exhibition of this statute before the court, it certainly requires no *argument* to show that these sections were not designed to accomplish more than the single purpose of creating a contract between the State and these companies, for the exchange of bonds—a statutory contract for a single object.

The Supreme Court of Florida has decided that the Constitution did not confer the power on the State, one of the contracting parties, to exchange its bonds, and, not having the power, had never done so; that its act was null and void, and no bond or obligation by which the State could be charged had passed into the hands of J. Fred. Shutte *et al.*, or any one else. Therefore, all that attempted to express or import the right to issue its pretended State bonds being expunged, because never having existed or been enacted, leaves nothing in the shape of language or law capable of being applied or enforced for any purpose.

The 2d and 4th sections of the statute being thus inoperative the 3d section, which creates the trust, so elaborated by the State court, is rendered equally nugatory, and incapable of performing any practical result or utility, because it has no subject upon which to operate. The State could not be a "primary debtor," or any other debtor, on account of a bond that was *no* bond, or be in debt where it had *not* contracted, because what it attempted to do was *unconstitutional and void.*

It is hardly necessary to argue, as a proposition of either law or fact, that the Legislature would or could have passed a law requiring the railroad company to hand over its bonds, payable to the State for $4,000,000, or any other amount, without the precedent condition of handing over to the company bonds of the State in exchange therefor; and furthermore, that the *State obligation must be a valid bond*, and not a mere worthless piece of paper, such as the Supreme Court of Florida have adjudged the State bonds in this case to be. No such absurdity was intended or attempted.

It is difficult to see why the State court devoted nearly the fourth of a volume to discussing the act of June 24, 1869, to determine what was the effect of the 2d, 3d, and 4th sections of the statute of January 28, 1870, and the validity of the bonds issued thereunder. It is too plain for question that the 9th and 10th sections of the act of June 24, 1869, attempting to authorize the issue of State bonds for company bonds, were altered, amended, and superceded, by the 2d section of the act of January 28, 1870, merging the 9th and 10th sections of the former into the 2d section of the latter.

It is equally clear that the 3d section of the act of January 28, 1870, alters, amends, and supercedes the 11th section of the statute of June 24, 1869, creating the statutory lien in favor of the State, adding thereto the mode of sale, "for lawful money of the United States, and for nothing else," and appropriating the same by the Governor as *Trustee*, the same being new and additional legislation.

Nor can it be mistaken that the 4th section, conferring the right to issue state bonds on a *hundred miles of road* "between Quincy and Jacksonville," is totally new and independent. Besides, the State, in the issue of its pretended bonds, clearly so understood the statute of January 28, 1870, because it alludes to that act alone in the face of its bonds. Treated in this light the statute is simple and plain. It is a contract between the State and the company for the exchange of bonds, entered into by sections 2 and 4, in which the State is to be secured by the statutory lien provided in section 3 of the statute of January 28, 1870, the three sections being blended together to accomplish *one object.* And when the Supreme Court of Florida decided that this statutory contract was unconstitutional and void, it left nothing having either the form or substance of law, capable of being enforced or executed for any purpose, either single or double.

Such is the origin and condition of the statutory contract sought to be enforced by the bill of Schutte, *et al.*

THE STATUTE NOT CAPABLE OF BEING EXECUTED.

The said State bonds, or, as they are styled in the bill of Schutte *et al.*, the "so-called" bonds of the State, being declared unconstitutional and void, are, in contemplation of law, *no* bond– never existed—and, of course, could not be the subject matter of any trust, as a trust cannot be based on nothing; being nothing they could not be a consideration for anything. It follows that the State holds the papers called company's bonds for no consideration, that it issued *no* bonds; and that no State bonds were delivered to the people called Dutch bondholders, or held by them for any purpose known to the law.

Such being the case how can that statutory contract which requires the State, as Trustee, to sell the roads, upon certain contingencies, "*for lawful money* of the United States, and for nothing else," and "which *purchase money shall on the day of sale be* "*deposited in the Treasury of the State, or within ten days thereafter*, and all money arising from said sale and paid into the "Treasury of the State as heretofore prescribed, *shall be* "*promptly and exclusively applied to the payment and satisfaction* "*of the bonds issued by the State of Florida under this Act*" be executed, or a sale be made according to its provisions? How can a sale be made for "*lawful money of the United States,* "*and for nothing else*" and the money received at such sale be applied in payment of "*the bonds of the State of Florida issued* "*under this act*" when the State court has decided that no such bonds were ever issued under said act, and that no such bonds are held by any one for such payment and liquidation? Such a contract cannot be executed according to its positive terms and provisions, and there is no process known to the law whereby it can be executed by any judicial tribunal. The bill or cross-bill (whatever it is), of Schutte *et al.*, asks for relief that is thus *impossible*—for the execution of a statute that cannot be executed.

And again:

The bill of Schutte *et al.* upon its face (Par. XVI., fol. 465), discloses the fact, as a ground of relief, that it is really *not* the "Dutch bondholders," so called, who are prosecuting the suit in the name of Schutte *et al.*, but, on he contrary, that it is the promoters of the scheme and adventure called the "Memorandum Plan," described as Exhibit D, made part of the Schutte bill. This paper or "plan" was prepared during the summer and fall of 1876, in the City of Washington and Savannah, Ga., by Sherwin, Willard, Jackson, Simonton, Allen, Hart, Walker, and others, whose names appear therein. It was executed in two parts or provisions, described, when translated into the Dutch language and appended to a statement of Wertheim as "Bilage A" and Bilage B." In the Exhibit D, made part of the Schutte bill (fols. 481 to 485), the first part "A" is set up, but the second part "B" is omitted or suppressed.

The bill shows that the parties named, or some of them, convened in Washington City, on the 15th of October, 1876, and formed themselves into a body corporate under the general incorporation laws of the State of Florida, called the "Jacksonville and Mobile Railroad Company." The articles of incorporation are Appendix A, Supplemental Record. The line of this new corporation was made to cover the roads of the Florida Central and Jacksonville, Pensacola, and Mobile Companies, from Jacksonville to the Chattahooche river, and claimed no other road, property, or estate.

With this organization so arranged, a paper was designed to become the recipient and owner of the two roads named. This ownership was to be acquired through the "Memorandum Plan," in the manner described in the second clause thereof (fols. 481–2), and was to be paid for in the said bonds of the State of Florida, then recently declared unconstitutional and void by the Supreme Court of that State.

When title to the Florida Central and Jacksonville, Pensacola, and Mobile Railroads was secured by the forced sale to be made by the Governor (fol. 48), and vested in the "reorganizers," under the name of the new Jacksonville and Mobile Company, created in Washington City, October 15th, 1876, as aforesaid, then a bond issue was to be put upon the whole line of both roads to the amount of $12,000 per mile, or say about $2,850,000 (fols. 482–3), covered by a mortgage on both roads according to provisions made therefor in the "plan" (fols. 483–4). This part of the "plan" ("A") was set up in the Schutte bill, but, as stated, the other and more significant part ("B") was suppressed. The reason of this omission is quite apparent. The court will find the whole paper set forth in the answer of the Western Division Company to the Schutte bill (fols. 658 to 663), wherein it is seen (fol. 662) that the parties who convened at Washington and Savannah, for the disinterested and benevolent purpose of the "reorganization of the Jacksonville, Pensacola, and Mobile Railroad Company, and the Florida Central Railroad Company," in the summer and autumn of 1876, in which the names of the so-called Dutch bondholders were to be used, that the latter were allowed a little less than *one-third* of the new stock and bonds for the use of their void State bonds and their names, whilst the "reorganizers," Sherwin, Willard, Allen, and others, were to have over *two-thirds* of said stock and bonds as their plunder, for the use of their wits and skill in wrecking these roads, to which, as elsewhere stated, they were total strangers.

With the "plan" thus completed, the petition of Sherwin, sworn to on the 22d of September, 1876 (fols. 814 to 817) was presented to the then Governor of Florida (M. L. Stearns), and the roads seized on the 30th day of December, 1876 (fol. 56).

During this preparation the people called Dutch bondholders had not the least knowledge of the character of the benefit being prepared for them by the "reorganizers" in America, or that their names were being used for that purpose. The only person privy to this scheme and "plan," in Amsterdam, was was one Jacobus Wertheim, the local attorney and agent of Sherwin, Willard, Allen, Walker, and others, residing at that place, whose duty it was to secure the approbation of the Dutch bondholders to this "plan," when it should be perfected. This work was commenced by him in the latter part of February or early in March, 1877, when the seizure made by the Governor of Florida was availed of to secure the first power or authority of any of the Dutch bondholders, which formed the basis of Willard's petition to the Governor, in the name of J. Fred. Schutte, Prins, Boissevain, and others, sworn to on the 31st of March, 1877 (see deposition of Geo. P. Raney, folios 1389 to 1390, and appendix B, Supplemental Record), previous to which date the said "plan," or the work of the "reorganizers," had not been heard of in Holland.

The "memorandum plan" being thus matured in all its parts, only required the acceptance of the Dutch bondholders, whose names had been usurped by its authors in its preparation, to put it into operation. This last requirement was accomplished by the agency of said Jacobus Wertheim, who, as the agent of Sherwin, Willard, Clarke, Allen, Dodge, and others, authors of the "plan," under date of April 10th, 1877, addressed over his signature, in the Dutch language, what was termed and styled "A proposition for a settlement tendered to the holders 8 per cent., Florida bonds, by Mr. J. Wertheim, attorney and counsellor, of Amsterdam," (fols. 1774 to 1786).

By the *facts* shown upon the face of the record the court is advised that it was not the Dutch bondholders whose names were used by Sherwin, Willard, Allen, and others, who conceived the scheme of wrecking these two Florida railroads, and for that purpose convened and co-operated during the year 1876, and early in 1877, organized a railroad company over the line of the two roads, providing for a capital stock of $3,000,000, and a bond issue of $2,850,000, to be apportioned so that about $2,000,000 of the bonds, and $2,500,000 of the stock should be their share of the wrecking, and only about $900,000 of the bonds, and $500,000 of the stock be allowed to the Dutch bondholders as the price of the use of their names, they, however, being protected from all costs and expenses of any litigation that might occur, in both the papers "A" and "B" as follows:

"It is also further stipulated and agreed, that all funds "necessary to meet the costs and expenses in such sale or "sales, and in perfecting said title thereafter, shall be supplied "by the said party of the first part," that is, Willard, Sherwin, Allen, and others.

Fols. 484, 661 and 602.

This champertous and corrupt contract and adventure, under this "memorandum plan," is the foundation of this litigation, and constitutes the relief prayed in the Schutte bill or cross bill.

Champerty is an offense to the laws of Florida, and no such contract or adventure as the "memorandum plan" could be enforced by the courts of that State, and it was error not to dismiss the bill of Schutte *et al.* below.

By the IId and IIId assignments of error it is maintained that it was error to grant affirmative relief on the bill of Schutte *et al.* in any event. The ground of this objection is, that they were already before the court through the Governor of the State of Florida, as their Trustee. They petitioned the

Governor, as such Trustee, by Sherwin and Willard, their agents and attorneys, to seize and sell the roads (fol. 814, and Appendix "B," Supplemental Record).

The Governor thereupon seized the roads and advertised them for sale (fol. 56), when the Western Division Company filed its two bills against the Governor, as such Trustee, and others, to restrain said sale. The Governor, by the special counsel of said Schutte, Prins, Boissevain, and others, appeared and demurred to said bills (fols. 203 to 206). Upon argument, by the same counel, the demurrers were overruled.

The demurrers being overruled, the Governor, as their Trustee, again, by their special counsel, answered the Western Division Company's bills, (fols. 206 to 283), and these answers, together with the petition and affidavits of Schutte, Prins, and others, were read in opposition to the motion for injunctions. These motions were likewise argued and resisted, by the same special counsel of Schutte *et al.* But upon the decision of the court, granting said injunctions May 22, 1877, (fols. 1116 to 1126) the said Schutte *et al.*, whose petition to the Governor, as such Trustee, had occasioned the filing of said bills, without leave of the court, filed their original bill against the Western Division Company and others, and thus, without right or authority, changed their position from defendants to complainants. Under these circumstances, we contend it was error to treat them otherwise than as defendant *cestuis que trust*, regularly in court, by the Governor, as their Trustee, and that they had no right to go out of the case and bring their original bill.

Perry on Trusts, sec. 328, *et seq.*, and cases cited.

For these reasons we contend it was error not to dismiss the Schutte bill, or to treat it otherwise than as a cross-bill, in any event.

That the bill of Schutte *et al.* should have been dismissed for multifariousness, we leave for the court to determine, upon an inspection of the bill itself. It is true an attempt was made to correct much of this by wholesale dismissals at the hearing of the causes; this, however, was after the publication of the testimony, and could not correct the inherent defects of the bill.

By the IV. assignment of error we contend that it was error not to dismiss the bill of Schutte *et al.*, either as an original bill or cross-bill, when it was found, and decided by the court, that the Florida Central Company was not consolidated with the Jacksonville, Pensacola, and Mobile Company, but was a separate and distinct body corporate, owning and operating its own road. This ruling at once decided against the allegations (par. XIV. and XV., fols. 547–8) of the Schutte bill, and the prayer for relief founded thereon (2d prayer, fols. 556–7).

This court has ever enforced the *axiomatic* rule that allegations and proofs must agree, and relief be granted accordingly.

Railroad *vs.* Bradley, 10 Wall., 303.

In the case at bar the bill of Schutte *et al.* alleges title to bonds issued upon a railroad extending from Jacksonville to the Chatihoochee (or Apalachicola) river, owned by the Jacksonville, Pensacola, and Mobile Railroad Company. To this bill answers were filed and issue joined by replications. The proofs taken were addressed to this issue. Schutte *et al.* contending that there was a consolidation, and the Western Division Company, denying the allegations of the bill, labored to prove, and *did* prove, that the Florida Central never was consolidated with the Jacksonville, Pensacola, and Mobile Company, as alleged in the bill, but had always maintained a separate corporate existence. The court below found this important issue in favor of the Western Division Company, and should thereupon have dismissed the bill as to the Florida Central, instead of granting, as it did grant, such relief as could only have been lawfully granted *if the court had found exactly the reverse of what it did find.*

This, we contend, was error, and should be reversed, with an order to enter a decree below dismissing the Schutte bill as to the Florida Central, with costs.

By the V. and VI. assignments, we contend that it was error for the court to decide that the Florida Central Company ever issued 1,000 bonds to aid in the construction of the Jacksonvilla, Pensacola, and Mobile road, or for any other purpose; and that the court further erred in finding that said bonds were the act and deed of said company, whereas the proof shows that they were *not* its act or deed, *but were fabrications* and *forgeries.*

The first essential to the issuing of a bond by a chartered company is that it should have been granted the power by law to do so; or, if issued under the implied power incident to corporations, it must be for necessary purposes, and *not for the ruin and bankruptcy of the corporation to serve an alien interest.* The charter of the Florida Central Company (fol. 57 to 59) does not contain a word authorizing the issue of $1,000,000, or any other amount of bonds, for any purpose. The charter was not altered or amended by any act of the Legislature in which the Florida Central Company is named, or necessarily included. Its records do not show that it ever accepted the provisions of the acts of June 24, 1869, or January 28, 1870, or either of them. Without such action by its stockholders, no modification of its charter could become operative.

"It is the concurrence and acceptance that gives force to the charter of the crown."

3 Burr., 1661.
King *vs.* Passmore, 3 T. R.
Bailey *vs.* Mayor of N. Y., 3 Hill, 531.

"A charter or act of incorporation from the Government is "in the nature of a contract, and, therefore, in order to com-"plete their creation, something more than the mere *grant* of "a charter is required; that is, *in order to give the charter the* "*full force and effect of an executed contract, it must be accepted.*"

Angell & Ames on Cor., sec. 81.
Falconer *vs.* Higgins, 3 McLean, 196.

The Florida Central Company never did accept these acts of the Legislature, and certainly the acts of Houstoun and Littlefield, who had fraudulent possession of its stock, purchased with the Western Division Company's funds, and which they had, on the 16th of April, 1870, delivered over to the use of their defrauded *cestui que trust,* will not be held by this court to have bound that company for a debt far beyond its capacity to pay, and that, too, for the benefit of an alien corporation. To so hold will be to say that the $550,000 of the capital stock of this little company, owning sixty miles of road, and worth par on the night of June 1, 1870, could be lawfully rendered worthless by the acts of Houstoun and Littlefield, before the sun went down on the 2d day of June, without any sanction or approval of its real owners, and without even being afforded an opportunity to object to such an act of destruction. We suppose the law to be that the holder of a single share of stock could lawfully defeat this sort of action. But no notice was given of any meeting to consider the question—the records of the company contain no such history. We insist, therefore, that this monstrous debt of $1,000,000, with an annual interest of $80,000—at least $30,000 beyond the earning capacity of the road—cannot thus be lawfully laid upon it.

But absence of any authority in the charter of the Florida Central Company to create such a ruinous debt, and the silence of the records of the company that any such thing was ever done, or attempted, in the manner required by law, is by no means the only evidence addressed to this court upon this part of the case. All the testimony, without exception, tends to establish the same facts.

The by-laws of the Florida Central Company provide for the holding of stockholders' meetings, as follows:

"Article 5. *That an annual meeting of stockholders shall be held* " *on the second Wednesday of August of each year. Other meet*-" *ings may be called by the President or any three stockholders, by* " *giving ten days public notice thereof through the newspapers.*"

The proof is positive that no such notice was given, or attempted to be given. On the contrary, it is positively proven that Houstoun and Littlefield *assumed to be a stockholders' meeting*, and for that purpose transferred ten shares of stock to each of three other persons, and then proceeded to perpetrate the fraud disclosed in the record.

The witness Littlefield, whose testimony commences at page 724 of the record, after proving how this $1,000,000 of bonds were concocted, and for what purpose, that they were issued for the purpose of paying private debts, and *not* to aid in the building of the Jacksonville, Pensacola, and Mobile Road, answering from Questions 34 to 49, testifies as follows:

" Q. 34. Were or were not the stockholders consulted and " their consent obtained to the issuing of said bonds before " the same were signed and placed in the hands of said " Houstoun, as you have testified?

" A. Only two or three stockholders were consulted, the " rest were not; those that were consulted did not give their " consent.

" Q. 35. Who, if any one, in the month of April, 1870, was " the duly elected Treasurer of the Florida Central Railroad " Company?

" A. Francis H. Flagg.

" Q. 36. Please look at pages 9 and 10 of the book which " you have testified was and is the original record of the pro- " ceedings of the stockholders and Directors of the Florida " Central Railroad Company, now shown you, at certain " proceedings of September 21, 1868, and state whether or " not you know what the same are, and if so, what the same " are?

" A. I do know what these proceedings are; they are the " By-Laws of the Florida Central Railroad Company.

" Q. 37. Were or were not said by-laws in force in and " during the year 1870?

" A. They were.

" Q. 38. Please look again at said records at pages 22, 23, " 24, and 25, which commences on page 22, under date of 'Tal- " 'lahassee, June 2. 1870,' headed 'The stockholders of the " 'Florida Central Railroad Company convened this day pur- " 'suant to call of the Chairman at the last meeting,' and at " page 24 under same date, which reads 'The Directors of the " 'Florida Central Railroad Company met this day at the call " 'of the President,' &c., and state what, if anything, you know " about said meeting, and the origin thereof, and whether " the same was convened in the manner required by the by- " laws?

" A. I have examined said record at said places; the stock- " holders convened on the 2d day of June, 1870, as stated in " said record, no previous notice was given as the by-laws " required for said meeting; there were present but two stock-

" holders; they were Edward Houstoun and myself; stock " was transferred temporarily to A. Huling, ten shares, G. R. " Foster, ten shares, and M. D. Papy, ten shares of Mr. " Houstoun's stock, to make up a meeting; the object of the " meeting was to bring into use the bonds mentioned in " Schedule 'B,' as provided in Schedule 'D.'

" Q. 39. The fifth article of said by-laws at page 10 of said " record, to which you have testified, reads as follows: '5th. " 'That an annual meeting of stockholders shall be held on " 'the second Wednesday in August of each year; other meet- " 'ings may be called by the president or any three stockhold- " 'ers, by giving public notice for ten days through the news- " 'papers;' will you please state if either the president or any " three stockholders of said Florida Central Railroad Com- " pany made a call for the said meeting of the 2d of June, 1870, " and published the same in any newspaper as required by " said by-law?

" A. They did not.

" Q. 40. Now, please look again at said record, on page 24, " purporting to be a meeting of the directors of said Florida " Central Railroad Company, and state whether or not you " were present at said meeting, and if yea, state in what man- " ner that meeting was called?

" A. I was present at said meeting; the record purports to " say that the directors met at the call of the president; this " certainly was a mistake, as John P. Sanderson, the president " of the company, was not in Tallahassee at the time when said " meeting purports to have been called; in fact the meeting " was not called at all; Directors Huling, Houstoun, Foster, " Papy, and Littlefield met and passed resolutions which had " just been passed at the meeting of stockholders above testi- " fied about; the above named directors converted themselves " from a stockholders' meeting into a directors' meeting; the " meeting was not held at the office of the company, but at the " office of M. D. Papy.

" Q. 41. The resolutions purporting to have been passed and " adopted at said stockholders' and directors' meetings, as re- " corded at pages 23 and 24 respectively of said record, direct " that the Florida Central Railroad bonds, purporting to have " been signed by George W. Swepson and H. H. Thompson, " 'as therein described, shall be placed in the hands of Edward

" 'Houstoun, for the purposes agreed upon by an arrangement " 'between himself and M. S. Littlefield;' do you or do you " not know, and if yea, please state, what agreement was re- " ferred to between yourself and said Houstoun as therein " mentioned?

"A. Agreements Schedules 'C' and 'D'; principally Sche- " dule 'D,' dated May 13th and 30th, 1870.

"Q. 42. You have stated that besides being a stockholder " and director of the Florida Central Railroad Company, you " were likewise a director, stockholder, and president of the " Jacksonville, Pensacola, and Mobile Railroad Company; will " you please state whether there was or was not any agree- " ment or contract of any kind entered into between said com- " panies, verbal or written, whereby the Florida Central Rail- " road Company agreed to issue and deliver a thousand, or " other number, of its bonds to the Jacksonville, Pensacola, " and Mobile Railroad Company, and whereby the last named " company agreed and bound itself to receive and apply said " Florida Central Railroad bonds, in any manner or for any pur- " pose, and if yea, please state when, how, and in what manner " such agreement was made between the said two companies, " and produce the record thereof, if any such exists?

"A. No such contract was ever entered into between the " said companies, or between any persons for them, or either " of them, written or verbal.

"Q. 43. Did or did not the Florida Central Railroad Com- " pany ever at any time, and if yea, please state when and " in what manner, issue, seal, sign, and deliver a thousand, or " any other number, of its bonds to the Jacksonville, Pensacola " and Mobile Railroad Company, and did or did not said last " named company ever receive, or have in its possession, such " bonds or apply the same in the construction of its road, or " for any other purpose?

"No such bonds were ever issued by the Florida Central " Railroad Company for the Jacksonville, Pensacola, and Mobile " Railroad Company; the latter company never received any " bonds of any description from the Florida Central Railroad " Company.

"Q. 44. Please look again at the bill filed in this cause re- " specting the Florida Central Railroad, at Schedule 'F,' headed " and dated 'Tallahassee, Fla., January 11th, 1871,' and signed

" 'T. B. Coddington,' which says, 'Received from Edward " 'Houstoun, Esq., in trust and for his account one thousand " 'Florida Central Railroad Company First Mortgage bonds, " 'payable to the State of Florida, for one thousand dollars " 'each,' &c., and state, if you know, what bonds are therein " mentioned, and if yea, please state to the best of your knowledge and recollection.

" A. I know the bonds mentioned in Schedule 'F,' and they " are the same bonds mentioned in Schedule 'E,' and are " shown by Schedule 'B.'

" Q. 45. Do you or do you not know whether said bonds " were charged in the hands of said Houstoun or Coddington " with the payment of any debts or obligations other than the " debt to said Houstoun, as to which you have testified, and if " yea, please state the same to the best of your knowledge and " recollection; please give the names and amounts as far as " you can remember?

" A. The said bonds were charged with the payment of other " debts; besides the one hundred and sixty-three thousand " dollars to Edward Houstoun, there were to M. D. Papy, " $16,000; R. H. Gamble, $15,000; J. P. Sanderson, $57,560; " F. H. Flagg, $4,000; J. D. Wescott, Jr., $3,845.33; T. W. " Brevard, $50,000; Harrison Reed, Governor of the State of " Florida, about $300,000; T. B. Coddington, $25,000.

" Q. 46. You have stated that said bonds, purporting to have " been issued by the Florida Central Railroad, Company were " signed by said Thompson, as Treasurer, in New York, and " by said Swepson, as President, in Washington City; do you " or not know, and if yea, will you please state when, where, " and in what manner the seal of the Florida Central Railroad Company was affixed to said bonds, if its seal was " affixed thereto?

" A. The seal of the Florida Central Railroad Company was " affixed to said bonds at my room in Tallahassee, by Thomas " J. Saunders; the seal was brought from the railroad office at " Tallahassee by said Edward Houston, and delivered to said " Saunders or myself, I will not be positive which.

" Q. 47. You have stated that F. H. Flagg was, at the time " mentioned, Secretary and Treasurer of said Florida Central " Railroad Company; will you please state whether or not the " said seal of said company was in his custody, and whether or

" not he was applied to to affix the same to said bonds; and if " yea, please state what, if anything, he said or did in relation " thereto?

"A. The said Flagg was the custodian of the seal of the Florida " Central Railroad Company, and he was asked to put the seal " upon said bonds, by Mr. Houstoun, in my presence and " hearing, which said Flagg decidedly refused to do, for the " following reasons, as given by him: First, that there was no " authority given by the law to said company to issue any " such bonds and exchange them with the State; second, if " there was any such law, the stockholders had not authorized " or directed him to do so; third, if the stockholders should " authorize and direct him to put the seal upon said bonds he " would resign before he would obey it, unless Mr. Houstoun " would first purchase his stock in the Florida Central Rail- " road Company.

" Q. 48. Referring again to the original record book of the " Florida Central Railroad Company, at page 27 occurs the " following resolution, purporting to have been adopted by a " meeting of stockholders, represented to have been held at " Tallahassee April 13, 1871: 'Mr. Houstoun offered the fol- " 'lowing resolution: Resolved, That Edward Houstoun is " 'authorized to place the bonds referred to in the preamble " 'and resolution of the stockholders adopted June 2, 1870, in " 'the hands of S. W. Hopkins & Co., for the purposes men- " 'tioned in the said resolution, subject to the same exceptions " 'as therein expressed with respect to the portion thereof " 'applicable to the stock owned by other parties, and accord- " 'ing to the same terms therein mentioned;' will you please " look at said resolution, and state whether you was or was not " present at said meeting; and if yea, state to what bonds " said resolution referred to the best of your recollection?

"A. I was not present at said meeting; the bonds referred to " were the same bonds T. B. Coddington received from Edward " Houstoun on the 11th day of January, 1871, as described " in schedule 'F,' heretofore testified to."

These facts, proved by the only surviving party (except George B. Foster) who participated in the transaction he testifies about, and whose testimony is in no manner contradicted, but, on the contrary, is fully corroborated by the other testimony, both oral and written, certainly shows a case which does not justify the finding of the court that any 1,000 bonds were ever lawfully issued by the Florida Central Company; or were in any manner applied to its use.

The witness George R. Foster (fols. 13, 78 to 81) fully corroborates the testimony of Littlefield as to the character of the pretended stockholders' meeting of the 2d of June, 1870, and proves it was not convened in the manner prescribed by law.

Houstoun, Huling, and Papy, the only other parties who were present at this *impromptu* stockholders' meeting of June 2, 1870, are all dead.

THE ALLEGED $1,000,000 OF FLORIDA CENTRAL BONDS ARE PROVEN TO BE FABRICATIONS AND FORGERIES.

Besides the testimony of Littlefield, proving that this 1,000 papers called bonds of the Florida Central Company, were never authorized by said company, or issued for its use—that they were gotten up in New York and Washington, and signed by Swepson as president, early in the year 1870, and by H. H. Thompson as treasurer, who never held such office—F. H. Flagg being then the lawful Treasurer of said company, and who refused to sign or seal any such papers. The seal of the company was secretly abstracted from his office and custody by said Houstoun and taken to Littlefield's room, where it was fraudulently affixed to said papers by Thomas J. Saunders. Besides these facts thus proven, we present the deposition of H. H. Thompson, corroborating Littlefield as to the time, place, and manner of getting up said pretended Florida Central bonds.

This witness, who occupies a high position in the financial department of the Erie Railway Company, in New York, testifies (fols. 1,501-2) as follows:

" *Henry H. Thompson*, called and sworn as a witness on the " part of the complainants, deposes and says:

" Q. 1. What is your name, age, residence, and occupa- " tion?

" A. Henry H. Thompson, fifty-four years of age, residing

" in the City of New York, and am clerk in the Treasurer's " office of the Erie Railway Company.

" Q. 2. Are you or not acquainted with a corporation known " as the Florida Central Railroad Company, and if yea, were " you at any time a stockholder, director, or officer of the " same?

" I am acquainted with such a corporation by repute, but " never was a stockholder or director thereof.

" Q. 3. Did you at any time sign any bond as Treasurer of " said company, and if yea, state under what circumstances you " did so?

" I did sign some bonds as treasurer of said company, " and under the following circumstances: In the years 1866, " 1867, and 1868 I was cashier of the Newbern National Bank, " in Newbern, North Carolina, where I made the acquaintance " of Geo. W. Swepson, and soon thereafter of Milton S. Little " field; they informed me that they were the owners of the " Florida Central Railroad, and held other railroad interests in " the State of Florida, connected therewith, and desired me to " organize and take the cashiership of a National Bank at Jack- " sonville, Florida, together with the treasurership of said rail- " road, which they said would prove agreeable and remunera- " tive to me financially. Believing in the representations made " to me, I was persuaded to agree to do so, and made my ar- " rangements accordingly; after considerable preparation to " go to Florida, I was informed by Mr. Swepson that I had " been duly elected Treasurer of said railroad company, and I " believed his statement to be true; about or soon after the " time mentioned I was requested by Mr. Swepson, as Presi- " dent of the Central Florida Railroad Company, to sign " papers purporting to be bonds of said company, which " I did to the number, I believe, of one thousand, not suspect- " ing at the time that I was being imposed upon and deceived, " for had I suspected or doubted the truth of said Swepson's " statement I never would have signed said bonds as Treas- " urer.

" Q. 4. Please state where you were at the time when you " were induced to sign said bonds, and whether you had seen " them before signing the same, or have seen them since?

" A. I was at Littlefield's room in the St. Nicholas Hotel, New " York City; the bonds were brought to me by Mr. Swepson, "and believing his statement that I was duly elected Treasurer of said company, I signed the same as such, and have since become satisfied that I was imposed upon in the manner stated; I never saw said bonds before, and have never seen them since."

In addition to the conclusive proofs thus presented to the court that these 1,000 papers never were issued with the knowledge or consent of the Florida Central Company, it is proven by the record (fol. 59) that at a *regular* meeting of the directors of the Florida Central Company *held on the 21st of November*, 1870, it was, among other things,

"Resolved, That the resolution adopting the bonds to be issued by the company, signed by George W. Swepson, President, and H. H. Thompson, Treasurer, at a meeting of the Board of Directors, held on the 2d day of June, A. D., 1870, *be, and the same is hereby, rescinded, and that said bonds be destroyed.*"

The existence of this resolution was well known to Governor Reed, Houstoun, Littlefield, and Coddington, on the 11th day of January, 1871, when they conspired together to exchange said Florida Central bonds for State bonds, in willful contempt of the injunction of the State court, granted in part upon said resolution, procured by Judge Westcott and Comptroller Gamble only two days before.

Governor Reed testifies (fol. 1364) that he "delivered one million of bonds to Edward Houstoun, which were afterwards returned by him and deposited with the Comptroller, and afterwards, I don't recollect the date, they were re-exchanged with Thomas B. Coddington, he acting in conjunction with Edward Houstoun," &c. * * * * *

"13th Q. At the time of the re-exchange I had heard of objections being made on the part of some members of the Florida Central Railroad Company, or persons connected with it; I may have had official notice; I don't know; I can't recollect."

He also testifies, A. 9 (fol. 1365), that "there were charges of illegality and fraud circulated" about the issue of said bonds.

Thomas B. Coddington testifies (fol. 1735½) precisely how these 1,000 papers called bonds of the Florida Central Company came to his hands, for what purpose, and how he disposed of them; that he received the bonds as the agent of

Houstoun, but from the hands of Gamble; that he then took them to Governor Reed's office in the Executive Chamber, where he received from Governor Reed 1,000 State bonds numbered from 3,001 to 4,000, inclusive; that Houstoun then directed his servant to take the said bonds to his (Coddington's) room at the hotel, where they were left with him; that he received the bonds to apply the proceeds as set out in his receipt to Houstoun—that is, to pay over $600,000 of private debts (fol. 46), and that he received his instructions from Littlefield and Governor Reed.

Coddington further testifies (fol. 1740), that when he made said exchange of bonds he knew of the suits pending, and that the injunction was granted restraining the issue and use of said bonds. He also says (fol. 1745) that, after getting said bonds, he left Tallahassee by way of Thomasville, Ga., by private conveyance, to avoid any further process of the court (see, also, his testimony, fol. 1737, on the same subject).

In the face of the facts, and acts of the parties thus proven, it seems hardly possible that any one can contend, with any degree of success, that the Florida Central Company ever issued, or agreed or attempted to issue any bonds payable to the State of Florida, to aid in the building of the Jacksonville, Pensacola, and Mobile Road, or for any other purpose, or that the court below was justified by the testimony in so finding.

The transaction shows a corrupt conspiracy to appropriate this 1,000 papers called bonds, which, if properly understood, would have been viewed differently by the court below.

We do not overlook the statement of the court (fol. 1225), that "On the 13th of April, 1871, at a stockholders' meeting of " the Florida Central Company, he (Houstoun) was author- " ized to place them (the State bonds) in the hands of S. W. " Hopkins & Co., subject to the same trusts as to the " proceeds thereof."

In the first place, there is no proof presented to the court, or in the cause, that any such resolution ever was passed at a lawful meeting of the stockholders. No such resolution was offered in evidence by Schutte, *et al.*, and consequently, no opportunity was offered to the Western Division Company to contest the legality or regularity of the same, or to expose the palpable fraud by which it was placed on the minute-book of the stockholders. This resolution of April 13, therefore, was neither pleaded nor proved by Schutte, *et al.*, and was not properly in evidence before the court.

The only evidence touching it, and the only time it was inquired about was in the Western Division's examination of Littlefield, who, at fol. 1645, was asked:

> "Q. 48. Referring again to the original record book of the "Florida Central Company, at page 27, occurs the following "resolution, purporting to have been adopted by a meeting of "stockholders, represented to have been held at Tallahassee, "April 13, 1871.
>
> "'Mr. Houstoun offered the following resolution:
>
> "Resolved, That Edward Houstoun is authorized to place the "bonds referred to in the preamble and resolution of the stock- "holders, adopted June 2, 1870, in the hands of S. W. Hopkins & "Co., for the purposes mentioned in the said resolution, subject "to the same exceptions as therein expressed with respect to the "portion thereof applicable to the stock owned by other parties, "and according to the same terms therein mentioned'; will you "please look at said resolution and state whether you was or was "not present at said meeting; and if yea, state to what bonds "said resolution referred, to the best of your recollection.
>
> "A. I was not present at said meeting; the bonds referred "to were the same bonds T. B. Coddington received from Ed- "ward Houstoun on the 11th day of January, 1871, as "described in schedule F., heretofore referred to."

Now, independently of the fact that the record does not show that any such stockholders' meeting was convened on the 13th of April, in the manner required by the company's by-laws, we here see that Littlefield, who had just acquired all of Houstoun's stock, and then represented fully *four-fifths* of the *entire stock*, was not present, and, consequently, that there *could not* have been a *majority of the stock present*, and capable of passing this or any other resolution.

But what is still more significant of the false, sham, and fraudulent character of this pretended resolution is, that all the proof shows that there were no bonds, company or State, in Houstoun's hands to be handed over by him to Hopkins & Co., or anybody else. He had parted with them all on the 11th of January, some four months before; that the bonds were *then* in London; and that *his* resolution, directing *himself* to hand them over, was a palpable attempt to cover up his own fraud upon the other stockholders, committed on the 11th day of January preceding, and in open contempt of court at that.

We respectfully submit that such a manifest sham and fraud cannot receive sanctification at the hands of this honorable court; but, being correctly advised, will treat and regard the same as deserving of no favorable consideration whatsoever.

In fact this resolution discloses a robbery upon its face. It attempts to speak of rights reserved to other stockholders not agreeing to the fraud, whose bonds were to be reserved; when it is shown that *all the bonds* were *then* in England, *in* the hands of Hopkins & Co., and the entire proceeds appropriated to other purposes than those for which they were created by the statute; and in which misappropriation it is shown that the State, the common Trustee, was to share. Surely this court will not, for a moment, give effect to such injustice and fraud, when thus brought to its attention.

But this resolution, even supposing it to have come to the knowledge of any intending purchaser of said State bonds, could not have misled him. If it was necessary for any one to inquire whether said bonds were legally and regularly issued, this resolution would advise such persons that they were *not* so issued. The bonds of the State show that they were issued under the act of January 28, 1870. That act only attempts to authorize the issue of bonds to *aid in the construction of the Jacksonville, Pensacola, and Mobile road.* But this resolution, and the one of June 2, 1869, which it refers to and revives, *show that these bonds were issued to pay private debts, and so were issued fraudulently.* No party, therefore, could be *innocently misled by it,* and neithor the Florida Central Company, nor the Western Division Company can be justly held *estopped* by it, as decided by the court below.

The VIIth error assigned presents a very important point, which seems to have wholly escaped the attention of the court below. And that is, that the first *proviso* in the 4th section of the act of January 28, 1870, under which all these bonds were sought to be imposed upon the Florida Central Road expressly *restricted*, and *limited* the exchange of State bonds for company bonds *to "one hundred miles of any part of railroad "between Quincy and Jacksonville."*

This 4th section, as we have before argued, is new and independent legislation. It refers to nothing contained in the act of June 24, 1869, and neither amends nor repeals any section or portion thereof, except by implication.

On the contrary, it confers new powers—imparts new rights—and tenders a new and different contract between the State and said company. It confers the right to exchange State bonds for company bonds, on the road *east of Quincy*. It says: "*any portion of the road between Quincy and Jacksonville.*" "THE ROAD," here is the road of the *Jacksonville, Pensacola, and Mobile Company*, which is to receive the bonds, and *not* the road of the Florida Central Company, which is *not named in the act!*

To the exchange of State bonds for Jacksonville, Pensacola, and Mobile Company bonds, the Legislature set a distinct and unequivocal limitation, in these words: "*Provided, however*, The State bonds under this section shall not be exchanged for First Mortgage Bonds for a greater length than one hundred miles of any part of railroad between Quincy and Jacksonville." The "length" of the Jacksonville, Pensacola, and Mobile road, between Quincy and Jacksonville, is found by the State Court to be 138 miles. It is therefore seen that the said bond issue and exchange would have reached its statutory limit thirty-eight miles before it reached the western terminus of the Florida Central, at Lake City. The Florida Central is, therefore, clearly not within the scope of the provisions of this statute, even if it were *constitutional* and *valid*, instead of *unconstitutional* and *void*, as rightly adjudged.

This statute, it will be further noticed, only authorizes the issue and exchange of 1,600 bonds by the State, upon the road "between Quincy and Jacksonville." This provision, *also* relieves the Florida Central Road; for 2,800 bonds—an over-issue of 1,400—had been exchanged and sold, before it was ever *attempted* to exchange any bonds of the State for Florida Central bonds, and those which were exchanged, the proof shows, were numbered from 3,001 to 4,000 inclusive.

Besides this, the court will observe that the statute of June 24, 1869, only provides for a bond issue of $14,000, per mile, whilst the act of January, 1870, provides for the issue and exchange of bonds at the rate of $16,000 per mile, which, had it been made under the 9th, 10th, and 11th sections of the act of June, 1869, would have rendered the whole issue void on the doctrine of *ultra vires*. How, in any event, is this issue and exchange of over 3,000 bonds to be upheld under the statute of January 28, 1870, which they recite upon their faces as the authority for their existence? Is it *possible* to put more than 1600 bonds *east of Quincy under this act?* And if not, is it possible to lay any of them on the Florida Central Road? Must they not be placed on road claimed by the Jacksonville, Pensacola, and Mobile Company, and not on the Florida Central road.

The only way we can account for the action of the court below, is, as we stated at the beginning of the discussion of this topic, that it was overlooked.

The VIII assignment of error contends that the 1,000 bonds charged against the Florida Central Company as exchanged on the 11th of January, 1870, were parted with by the Governor and Houstoun, in contempt of court, because inviolation of the injunction order in the suit of Westcott and Gamble *against* Reed, Houstown, Littlefield, and others, upon bill in equity filed in the Leon County Circuit Court, issued and allowed, January 9, 1871.

This is shown by a copy of the record, in said suit (fols. 2083 to 2099).

In this bill Westcott and Gamble charged upon their oaths (fol. 2089), that this 1,000 papers called bonds of the Florida Central Company were *not* its bonds, and were not a lien upon its property or estate; that they were issued at the instigation of M. S. Littlefield, and were not the act and deed of said company; that they had passed into the hands of said Houstoun, and were about being parted with (fol. 2095, and would be, unless restrained and enjoined by the order of said court, &c.

This complaint was sworn to by both Westcott and Gamble before Chief Justice Randall, of the Supreme Court of Florida, on the 6th day of January, 1871 (fol. 2096), and this verified bill, an order of injunction, was granted and served, upon 9th of January, 1871.

This proceeding, we contend, was notice to all the world that said bonds were fraudulently and illegally issued; and was especially good and sufficient notice to the Governor of Florida, the Trustee of Schutte *et al.*, who as his *cestui que trust*, were affected and bound by his knowledge.

The IXth Xth and XIth assignments of error refer to corresponding findings of fact by the court below, and involve the same questions which have been discussed under errors V and VI, and need not be repeated here.

The only question not before discussed is in that part of assignment XI, which alleges that no mortgage was ever executed or delivered by the Florida Central Company to the State of Florida, creating any lien on its franchise or estate.

It is not alleged in the bill of Schutte *et al.* that any such mortgage was ever made, nor is there any proof offered in support of such an obligation had it been made.

A lien is claimed by their bill upon the Jacksonville Pensacola, and Mobile road extending from Jacksonville to the Chatahoochee river, and relief prayed accordingly. We contend that the court erred in finding a lien upon the Florida Central Road notprayed in the Schutte bill, nor proven.

That no such lien existed was found by Mr. Collinson's counsel, Mr. McFarland, before the bonds were sold, and an attempt made to correct it, which never accomplished the result aimed at. The witness Chase swears (fols. 1575–6) as follows:

> "Q. 33. Please look at the telegram now shown you, dated "New York, December 17, 1872, addressed to M. S. Little-"field, and which reads as follows: '*Before anything can be* "'*completed*, the mortgage to the State, sent down by Mr. Mac-"'Farland for execution last year, must be executed and re-"'corded in each county through which the road runs; answer "'immediately; send Henderson here immediately,' and "signed 'C. L. Chase, Trustee,' and state whether you wrote "or sent said dispatch, and if yea, the reason therefor?
>
> "A. I wrote and sent this dispatch because Mr. MacFar-"land, the attorney for John Collinson, required it; he said "the mortgage would not be valid unless the mortgage was re-"corded in each county through which the road run. *In other* "*words, he said the lien on the road was worth nothing without the* "*mortgage.*"

In support of the XIIth and XIIIth and XIVth errors assigned, we contend that the decisions of the State court (15 Florida R.,) should not have been followed and adopted by the court below, as governing the construction of the proposed statutory contract of January 28, 1870.

As we think we have conclusively demonstrated elsewhere that the construction put upon the statute by the State court is erroneous, we will not pursue that branch of the subject further here.

We only add here that this is not the ordinary case of *construing a statute;* but is the very *different* case of the con-

In the construction of State statutes and constitutions, the Federal courts are loth to interfere with the doctrine of the state courts; but in the construction of *statutory contracts*, where a State is a party, we understand the doctrine of this court to be uniform, that such contracts must be construed and upheld or overthrown upon the grounds of merit or infirmity which uphold or overthrow other contracts.

In construing a statutory contract of the State of Pennsylvania, Chief Justice Marshall, speaking for this court, says:

"This is a *contract*, and although the state is a party, it ought to be construed accordtng to those well established principles which *regulated contracts generally*."

Huidekoper's Lessees *vs.* Douglass, 3 Cranch, 70.

"This court has uniformly applied the general principles of the law contracts in constructing such statutes, and not unfrequently has overruled the State courts in so doing."

Craige *vs.* Missouri, 4 Pet., 436.
Byrne *vs.* Missouri, 8 Pet., 39.
Woodruff *vs.* Trapnall, 10 How., 203.
State of New Jersey *vs.* Wilson, 7 Cranch, 164.

The Vth assignment of error will be considered with XIXth, XXth, XXIst and XXIId, which relate to the same subject matters.

In support of the XVIth assignment, we contend that the court below erred in finding that either the Florida Central Company or the Western Division aided or acquiesced in the issuing and sale of any of the State bonds in question, and in finding that the resolution of the 13th of April, 1871, was passed by any regular or lawful meeting of the stockholders of the Florida Central Company.

This assumption pervades the whole finding of the court below at different points. But the part immediately under consideration is at fols. 1225 to 1228.

The court finds that this appellant is estopped to set up that the State bonds were issued for an unlawful purpose. To support this proposition it indulges in the totally unwarranted assumption that this appellant participated in the issue and sale of said State bonds; whereas the truth is as abundantly shown by the evidence, that this appellant never did any such thing, and is a greater sufferer by the fraudulent issue of said bonds under the decree appealed from, than the Dutch bondholders could become in any event, and this appellant has the advantage of having traced its property into the roads which are the subject of this litigation.

Now, we suppose it is only necessary to call the attention of this court to the old and well settled principle of law that an *estoppel* by matter of record in equity must be *plead* and *proved*, to be available. But there is no such plea interposed here by Schutte *et al.* They should not only set up the matter of record by plea distinctly, but they should have *alleged and proven that they were influenced thereby to their damage. But they have done neither.*

Again:

The court below, in its opinion, at folio 1230, says:

"The question is *not so much what the bondholders ought to* " *have, as* WHAT THE STATUTE GIVES THEM. If they stood on " grounds of mere equity, they might not be able to secure " more than the amount paid by them for the bonds. *I think,* " *however, that the matter is to be governed by the statute*" (fol. 1230).

Now, the State court has found, in the opinion adopted by the court below, that this statute is unconstitutional and void so far as the State's side of the contract is concerned. We have tried to argue, that without the State as a party, the statutory contract tendered would be unilateral, and therefore *no contract;* that the statute being confessedly void *in part,* is void *in toto.*

"Where a statute is adjudged to be unconstitutional, it is as " if it had never been. Rights cannot be built up under it; " *contracts which depend upon it for their consideration are void;* " it constitutes a protection to no one who has acted under it; " and no one can be punished for having refused obedience to " it before the decision was made."

Cooley on Con. Lim., p. 188, and cases cited.

If this proposition be true, how can any party, by any matter of any kind, estop himself to plead the infirmity of the bonds at bar to charge the Florida Central Company, the Jacksonville, Pensacola, and Mobile Company, the Western Division Company, or any one else?

As stated, the matter of *estoppel* should be alleged and fully set forth. If consisting of judicial proceedings they should be fully set forth, *and must be between the same parties.* We repeat, that nothing of this kind is alleged in the Schutte bill, nor shown by the proofs.

The bill of the Western Division Company, on the other hand, does allege the repeated efforts at compromise settlements of its demands, but that all those efforts failed to accomplish the desired ends.

We have seen that the Western Division bills allege that the company had no knowledge of the use made of its funds by its agents and fiduciaries until advised in part by Swepson and Littlefield on the 16th day of April, 1870, when the compromise settlement of that date was made, as shown by the document which is made part of the bills. This is their starting point, and the proof shows just what followed.

The testimony on this point is derived from Rollins and Candler, two of the Commissioners under the Act of March 24, 1870, and Swepson and Littlefield, the other contracting parties. No other witnesses were examined touching this subject.

The four witnesses above named unite in proving that previous to the 16th of April, 1870, the Western Division Company had no knowledge whatever of the fraudulent use made of its funds; and only got such knowledge as the wrongdoers chose to disclose.

The testimony of Rollins, one of said Commissioners, and now President of the Western Division Company, was taken orally, upon notice to all parties, and is as follows (folios 1408 to 1417):

" 1. Question. State your name, age, residence, and occu-
" pation.

" Answer. Wallace W. Rollins; thirty-nine years old; " residence, Marshall, N. C.; by occupation, a farmer.

" 2. Ques. What relation have you, if any, with the Western Division of the Western North Carolina Railroad Company, the complainant in the suits in equity mentioned in " the caption?

" Ans. I am a stockholder and President of the company, " and have been a director of the same from its organization, " in 1868.

" 3. Ques. How long have you been President of said company?

" Ans. Since October, A. D. 1870.

" 4. Ques. Beside your relation as stockholder and President of said company, have you occupied any other relation " thereto, and if so, what?

" Ans. I was one of the Commissioners, appointed under " an act of the Legislature of North Carolina, passed in the " early part of the year 1870, to seek to recover the money " and assets due to, and belonging to, said company, which " had been misappropriated by George W. Swepson and " others, while acting as fiduciaries and agents of said company.

" 5. Ques. Was, or was not, any settlement of the matters " referred to arrived at, in whole or in part, with said parties?

" Ans. There was a conditional settlement arrived at.

" At the request of, and to afford witness an opportunity to " examine papers, the examination is adjourned until Friday " morning, April 26th, at eight o'clock.

" And on Friday morning, the 26th day of April, 1878, at " the place abovesaid, I proceeded with said examination, " according to previous adjournment, when and where the " said Wallace W. Rollins further deposed and said as follows:

" 6. Ques. When and where did the settlement take place?

" Ans. On or about the 16th day of April, 1870, in the City " of Washington, D. C.

" 7. Ques. In what capacity were you acting when said " conditional settlement occurred?

" Ans. I was acting as one of the Commission, under the

" act of the Legislature of the State of North Carolina, before " mentioned.

" 8. Ques. Who, besides yourself, was present at and par- " ticipated in said settlement?

" Ans. Nicholas W. Woodfin, W. G. Candler, W. P. Welch " and myself, on the part of the State of North Carolina; and " George W. Swepson and Milton S. Littlefield, as parties " representing the fund and assets belonging to the complain- " ant, and which we were seeking to recover.

" 9. Ques. Please state what was the special object intended " by the Commission, of which you were a member, in seeking " the settlement to which you have referred?

" Ans. The first and primary object was to ascertain what " amount of money or assets, belonging to the complainant " corporation, had come into Swepson's hands while acting as " President and fiduciary of the complainant corporation, and " then to ascertain, as far as possible, in what manner the " same had been used and disposed of.

" 10. Ques. What amount, if any, of either money or assets, " did your Commission ascertain had come into the hands of " Swepson while acting as President; and state in what ca- " pacity, and under what circumstances,, and for what purpose " he received the same?

" Ans. During the latter part of the year 1868, and until " October, 1869, said Swepson was the President, fidicu- " ary and agent of the complainant company, and as such " President he received about $6,666,000 of bonds of the State " of North Carolina, which were issued and paid by said State, " in payment for its capital stock in the complainant corpora- " tion. These bonds said Swepson, as such President and " fiducuary, but acting upon his own motion, took to New York " and there sold and hypothecated, and otherwise raised on " them about $3,000,000. The exact amount we could never " ascertain. He received the bonds of the State of North " Carolina for the purpose of applying the same, or the pro- " ceeds thereof, to the construction and equipping of the road " of the complainant corporation.

" 11. Ques. What disposition did your Commission ascer- " tain the said Swepson had made of the said assets, or the " proceeds thereof, which he had received as President of the " complainant company?

" Ans. We found from the statements of said Swepson, and " from papers shown us by him, that he had paid out a small " portion, the exact amount not remembered, in the construc- " tion of the road of the complainant company; but that much " the larger portion thereof, and, indeed, more than nine- " tenths of it, had been used and appropriated by said Swep- " son for his own purposes; and among others, that he had " invested a large portion of the money belonging to the " complainant company in purchasing stock and bonds of cer- " tain Florida railroads; that is to say, in purchasing the " capital stock of the Florida Central Railroad Company, and " purchasing bonds of the Pensacola and Georgia, and Talla- " hassee railroad companies, which were, by a subsequent sale " and purchase, to which said Swepson was a party, organized " into what is now the Jacksonville, Pensacola, and Mobile " Railroad Company, which, together with the said Florida " Central Railroad Company, are parties defendant to this " suit.

" 12. Ques. Had, or had not, said Swepson any right or au- " thority, by reason of his position as President of said com- " plainant company, or otherwise, to use, invest, or apply its " assets or money in the purchase of stock or bonds of any " company or corporation whatever?

" Ans. He had not.

" 13. Ques. When did it first come to your knowledge, as a " stockholder or director, or that of the Commission of which " you were a member, that said Swepson had used and mis- " appropriated the assets and money of the complainant com- " pany?

" Ans. Not until April, 1870, about the time of the conditional " settlement above mentioned.

" 14. Ques. Referring now specially to the use and appropria- " tion by said Swepson of the complainant company's money " and assets, in purchasing the stock and bonds of the said " Florida railroads above mentioned, did, or did not, your " Commission ascertain what amount of money had been so " used in Florida, and if yea, please state the sum, to the best " of your recollection?

" Ans. The Commission did ascertain the amount, which was " shown to be about $1,287,436.

"15. Ques. Was, or was not the terms of said conditional "settlement reduced to writing, and if yea, will you produce "the same, or a copy thereof, as part of your answer to this "question?

"Ans. The result of said conditional settlement was reduced to writing, in two parts of even date, viz;: April 16, "1870, signed by the parties as interested therein, the originals "of which I now present for inspection and comparison; but "as I desire to retain the same, as President of said company, "for business reasons, I furnish copies thereof, and make the "same part of this answer, marked, 'W. W. R., No. 1,' and "'W. W. R., No. 2,' respectively.

"16. Ques. Was, there, or was there not, any provision made, "or agreed to be made, for receiving, and having returned to "the complainant company the said $1,287,000, or any part "thereof, so appropriated by Swepson in the purchase of said "stock and bonds of said Florida railroads, and if yea, please "state in what manner the return of said money was proposed "to be secured?

"Ans. As shown by the two papers of April 16, 1870, above "mentioned, there was a proposal made by said Swepson and "Littlefield which was conditionally accedted by said Commis- "sioners for the return to the complainant company of its said "money, so misapplied by said Swepson. By the terms of the "proposal so made and accepted, the complainant company was "to receive one-half of the proceeds of the sale of bonds of "the State of Florida, a sufficient amount to return back to "the complainant company its said money, so illegally appro- "priated by said Swepson, to the amount of $1,287,000, as "aforesaid.

"17. Ques. Was, or was not, the terms of said conditional "settlement complied with?

"Ans. They were not.

"18. Ques. You have spoken of bonds of the State of "Florida which were to be applied, or the proceeds thereof, in "returning the money due the complainant company; will "you please state in what manner the said bonds were to be "issued by the said State of Florida, and for what purpose, "and in what manner the same were to be obtained, or pass "into the hands of said Swepson and Littlefield, or either of

" them, as indicated in the said papers of the 16th of April, " 1870?

" Ans. I had no knowledge whatever as an individual, or as " a member of said Commission, or otherwise, of the origin, " character, and object of said Florida State Bonds, or for " what purpose they were to be issued, or in what manner " they were to come into the hands of, or be subject to the " control of said Swepson and Littlefield, or either of them, " nor do I believe that either of my associate members of said " Commission had any knowledge whatever of the origin, character, and object of said bonds; I, myself, had not, nor do I " believe that either of my associates had heard of said Florida " State Bonds till they were mentioned in the conditional settlement above stated, and referred to in one of the papers of " the 16th of April, 1870; the action of the Commission in " making said conditional settlement was based wholly upon " the proposition—*first*, that said $1,287,000 of the complainant company's money had been illegally and fraudulently invested in the purchase of the stock and bonds of the said " Florida roads; and *second*, that the equivalent in value in " Florida State bonds were being issued, and would come back " into the hands of said Littlefield and Swepson, or one of " them, and which he, or they, could apply, and would have " the lawful right to apply, to restoring to the complainant " company its money which had been so illegally used; and " acting upon these two propositions, with no other knowledge " or information whatever, the Commissioners appointed by " the Legislature of North Carolina, when so advised of the " means of settlement, accepted the same, on condition that " the same was carried out.

" 19. Ques. Had you, or had you not, yourself, individually or as a member of said Commission, or within your " knowledge, information, or belief, had, or had not, said Commission seen or read, or been advised of, the act of the Legislature of the State of Florida under which the bonds of " said State were to be issued, or the terms, objects, and conditions thereof?

" Ans. I certainly had not, myself, ever seen or read the act " of the Legislature of Florida under which said bonds were " then being issued, and I know that the same was not, in any " manner, discussed by the members of the Commission; as

" before stated, we were seeking to get the best security we could for the complainant company, in obtaining the restor-" ation of its money so illegally used; that the whole of the " $1,287,000 of the complainant company's money had gone " into the State of Florida, and been applied to the purchase " of said roads, as aforesaid, and represented at par the pur-" chase of the bonds of the said State of Florida, then being " issued, and that the State had already received the par " value, in money, for its said bonds, or the proceeds thereof, " and the Commission supposed and believed that the Legis-" lation of the State of Florida, whatever it was, was such as " to impress proper validity upon said bond issue, and nothing " was said or intimated to the contray, within my knowledge " or belief; the State bonds, themselves, were not shown to " the said Commission.

" 20. Ques. State what next occurred in reference to said " conditional settlement, after the execution of the papers of " April 16th, 1870, to which you have referred?

" Ans. Nothing occurred; the Commission awaited the " coming of the money, *which did not* come; but, about the " month of October, 1876, it came to our knowledge that the " bonds of the State of Florida, above mentioned, had been " disposed of, and were, in fact, disposed of at the date of said " settlement; this information, coupled with other matters, " coming to our knowledge, gave rise to certain judicial pro-" ceedings which were instituted in New York, about the 3d " of October, 1870, against said Littlefield and Edward Hous-" toun; and soon thereafter Mr. Nicholas W. Woodfin, Chair-" man of the Commission, proceeded to London, to see what " possibility there was of obtaining the proceeds of said bonds, " as provided in said agreement of April 16th, 1870.

" 21. Ques. Please state what was the result, if any, of Mr. " Woodfin's visit to London; whom did he see there, and what, " if anything, did he do?

" Ans. The result of said Woodfin's visit to London, was the " entering into further conditional agreement, by himself, as " Chairman of the Commission on the one part, and Milton S. " Littlefield, in conjunction with S. W. Hopkins & Co., on the " other part, dated November 10, 1870, a copy of which said " agreement I make part of this answer, marked 'W. W. R., " No. 3;' according to the terms of this agreement 800 of the

" said Florida State bonds of $1,000 each, were to be turned " over and applied to the use of the complainant company, " and an order was given by Littlefield in favor of said Wood- " fin, as chairman, to that effect, on said Hopkins & Co., in " London, on or about the 16th day of November, 1870, and " was accepted of them of the same date, agreeing to hold said " 800 bonds subject to the order of said Commission, a copy of " which acceptance is made a part of my answer to this ques- " tion, marked 'W. W. R., No. 4.'

"22. Ques. Were the terms and conditions of said last " named or modified agreement complied with, and the said " bonds, or any of them, delivered as therein provided?

" Ans. The said modified conditional agreement was not " complied with in any respect whatever, and not a single one " of said bonds ever was delivered under it.

" 23. Ques. What steps did you next take towards recover- " ing the money due the complainant company, as provided in " said agreements or either of them?

" Ans. Acting under the advice of counsel, in the City of " New York, on or about the 8th day of September, 1871, I, as " President of the complainant company, brought suit in New " York against said Hopkins & Co., to enforce the surrender of " said bonds, or the proceeds thereof, and caused the members " of said firm, or some of them, to be arrested.

"24. Ques. Did said cause come to a hearing in any respect, " and if so, what was the result thereof?

" Ans. The said cause did come to a hearing, upon a motion " made upon the part of the defendants, S. W. Hopkins & Co., " to vacate said order of arrest and dismiss the plaintiff's suit " upon the ground, among others, that by the terms of the " act of the Legislature of Florida, authorizing the issue of " said Florida State bonds, that the same were dedicated " to a special purpose, and could not be used, transferred, or " appropriated to the payment of any money to the complain- " ant company, which could acquire no title to said bonds, or " the proceeds thereof, or right of property therein, and upon " hearing, the court so held and decided, and discharged said " order of arrest, and the plaintiff's suit was dismissed.

"25. Ques. Previous to the bringing of this suit, had you " acquired any knowledge of the facts about the issue of said " bonds, or the object for which they were issued?

" Ans. We had not, so far as I know or believe. There had " been some discussion, but none that led to any conclusion " till after the action above taken.

" 26. Ques. Did you, at any time, receive any money from " Hopkins & Co., for or on account of said 800 bonds, and if " you say you did, state when it was, and under what circum- " stances?

" Ans. We did receive £10,000 of said Hopkins & Co., by a " sixty days draft, dated April 3d, 1871, a copy of which " draft is made part of this answer, marked 'W. W. R., No. 5.' " The circumstances which gave rise to the drawing of said " draft were as follows: That after said Woodfin had returned " from London we waited for the forthcoming of the proceeds " of said 800 bonds till we lost confidence and threatened the " bringing of the suit, which we afterwards did bring, at the " time wholly ignorant of the facts which we subsequently " learned, when, to prevent our bringing suit, the said Hop- " kins & Co. agreed to accept our draft for said sum of £10,- " 000, which we accordingly drew on the 3d of April, 1871, " they assuring us that we should have our money in the fu- " ture as agreed, but we subsequently became convinced that " the said draft was designed to throw us off our guard till " other things could be accomplished, which being done, all " further payments were denied, and we thereupon brought " suit on or about the 8th of September, 1871, which resulted " in the court holding and deciding that we had acquired no " titles to said bonds by any of said agreements, when we " abandoned all further effort to realize anything from said " bonds, except such as we could effect by negotiation, which " amounted to nothing.

" 27. Ques. Besides the said proposed Florida State bonds, " or the proceeds thereof, what other security, or means of " payment, if any, was provided for in said agreement of the " 16th of April, 1870?

" Ans. It was agreed that the entire stock, bonds, and in- " terest of every description of the said Florida Central Rail- " road Company, and Jacksonville, Pensacola, and Mobile Rail- " road Company, purchased and acquired by said Swepson " and Littlefield, or either of them, should be turned over and " invested in the complainant company, or held for its use.

"28. Ques. Are you, or are you not, in possession of and "holding said stock and bonds of said companies?

"Ans. We do hold about 5,000 shares of the stock of the "Florida Central Railroad Company, and also claim to hold "the entire capital stock of the said Jacksonville, Pensacola, "and Mobile Railroad Company, and especially certificates "Nos. 6, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 25, 27, 30, 33, "34, 35, 36, making a total of 51,668 shares out of the capital "stock of 60,000 shares, and also claim that the remainder of "said stock is held to the use of the complainant company.

"29. Ques. By the concluding paragraph of one of the said "agreements of the 16th of April, 1870, it is stated: 'It is "further understood and agreed by the parties of the first and "second parts, that all interest, accrued or claimed by the said "parties of the first part, both George W. Swepson and Milton "S. Littlefield, or which they, as individuals, have a right to "control in the said Florida railroads, are hereby pledged for "the faithful fulfillment of this contract, without the right on "the part of any party to interfere with our management, or "the control of the affairs of the roads;' will you please state "for what purpose said clause was inserted, and what control "was therein referred to?

"Ans. The Commission claimed and contended that all the "interest in said Florida railroads, purchased by the misappropriation of the complainant company's money, as aforesaid, forthwith and instantly became the property and estate "of said complainant company, and in no manner became the "property of said Swepson and Littlefield; but as they claimed "to have purchased a portion of said property with their own "money, but which we did not admit, but claimed the assignment of it, nevertheless, as a part of said security, but agreed "not to claim the right to control the working operation of "said roads, or the management thereof, by reason of the control of said stock, pending the fulfillment of said conditional "settlement, and for this reason, and this only, was said clause "inserted.

"30. Ques. Was it, or was it not, the intention of the said "clause to create or constitute said Swepson and Littlefield, or "either of them, the agents to represent the interest of the "complainant company in any respect, or use or pledge the

" same for any purpose, or encumber or charge the same in " any manner?

" Ans. It certainly was not; the Commission was dealing " with reference to the speedy fulfillment of the terms of said " conditional settlement, and parted with, and intended to part " with, no interest whatever, till the same was done, and such " not being done, claims that the said stock of the Florida Central Railroad Company, and the entire property and estate " of the said Jacksonville, Pensacola, and Mobile Railroad Company, belongs to the complainant company in this suit, as " being acquired and purchased by its assets and money, fraudulently appropriated by agents and fiduciaries.

" 31. Ques. Besides the papers of the 16th of April, 1870, " what other papers, if any, were then transferred to the complainant company, or to the said Commission for its use?

" Ans. We claim that all papers, assignments, and transfers, " in any manner creating or vesting any right in said Swepson " or Littlefield, or either of them, passed to and vested " in the complainant company, and especially the assignment " in trust of F. Dibble and associates to George W. Swepson, " dated April 22, 1869, conveying to him the purchase and title " deeds of F. Dibble and associates, as executed by the Trustees " of the Internal Improvement Fund, dated April 8, 1869, conveying what is now known as the Jacksonville, Pensacola, " and Mobile Railroad, and described as Schedules " A," " B," " and " C " in complainant's bill, filed in this cause for the recovery of said Jacksonville, Pensacola, and Mobile Railroad, " subject to the terms of sale therein provided.

" 32. Ques. Do you know, or can you state, any other matter or thing material to the interests of the parties plaintiff " or defendant, besides what you have stated; if yea, please " state the same fully and at large in your answer, as if you " had been particularly interrogated thereto?

" Ans. Nothing occurs to me beyond what I have stated in " answer to the question propounded.

" W. W. Rollins."

Mr. Candler, another member of the said Commission, who was a party to the conditional settlement of April 16, 1870 being likewise orally examined, on notice to all parties, testified as follows (fols. 1427 to 1433):

"1. Ques. State your name, age, residence, and occupa-
" tion?

"Ans. William G. Candler; age, forty-four; residence,
" Hominy Creek, Buncombe County, North Carolina; by oc-
" cupation, a lawyer.

"2. Ques. Please state your relation, if any, with the com-
" plainant company—said Western Division of the Western
" North Carolina Railroad Company?

"Ans. I am a stockholder, and was a director, in said com-
" pany.

"3. Ques. Did you, or not, at any time occupy any other
" relation to the complainant company than that of stockhold-
" er and director, and if yea, please state what it was?

"Ans. I did, at one time, occupy an additional relation to
" said company, as being one of a Board of Commissioners ap-
" pointed under an act of the Legislature of North Carolina,
" approved on or about the 24th of March, 1870, empowered
" to ascertain what disposition had been made of certain assets
" of said company by George W. Swepson, while acting as the
" President thereof, and I accepted and acted as one of said
" Commission.

"4. Ques. Did said Commission have such settlement, and
" ascertain the facts authorized by said act of the Legislature
" of North Carolina?

"Ans. We did, to the best of our ability.

"5. Ques. When did such investigation take place, and
" where?

"Ans. On or about the 16th day of April, 1870, in the City
" of Washington, District of Columbia.

"6. Ques. Did you or not, arrive at a settlement with said
" Swepson?

"Ans. We arrived at a conditional settlement.

"7. Ques. Please state who were present and participated
" in said settlement?

"Ans. On the part of the Commission, Nicholas W. Woodfin,
" Wallace W. Rollins, W. P. Welch, and myself, and the per-
" sons with whom we conducted said conditional settlement
" were George W. Swepson and Milton S. Littlefield.

"8. Ques. How, and in what way, did said Littlefield be-
" come a party to said proceedings and settlement?

"Ans. I only know of his connection by what was developed

" by the papers which they exhibited and executed, wherein it
" appeared he had become connected with the illegal appro-
" priation of the assets and money of the complainant com-
" pany, which was the subject matter of said settlement, and
" which had become invested in the purchase of the capital
" stock of the Florida Central Railroad Company, and of the
" Tallahassee Railroad Company, which had, by some change,
" organization, become the Jacksonville, Pensacola, and Mobile
" Railroad Company.

" 9. Ques. What amount of assets of the complainant com-
" pany did it appear, or was shown by said settlement, had
" passed into the hands of said Swepson ; in what manner and
" capacity had he received same, and what disposition had he
" made thereof?

" Ans. It was shown, by the papers brought before the Com-
" mission, that said Swepson, among other things, had come
" in possession of about $6,600,000 of the bonds of the State
" of North Carolina, which had been issued to the complainant
" company by the State in payment for its stock subscription ;
" that at the time this occurred, to wit, in the latter part of the
" year 1868, till about November, 1869, said Swepson was the
" President, agent, and fiduciary of the complainant company,
" and received said bonds in such fiduciary capacity ; that he
" subsequently took said bonds to New York, and by sale or
" hypothecation of the same, I believe principally through the
" house of Soutter & Co., realizing therefor in the neighbor-
" hood of ($3,000,000) three million of dollars, the exact
" amount the Commission could not ascertain ; the disposi-
" tion made of said money belonging to said complainant com-
" pany, as shown by the papers brought before the Commission,
" and by the statement of said Swepson, made it appear that
" a small portion of said money had been applied to the build-
" ing and equipping of the road of complainant company, but
" that much the larger portion thereof had been fraudulently
" misappropriated by said Swepson to his own purposes, in-
" cluding, in the amount so misappropriated, about ($1,287,000)
" one million two hundred and eighty-seven thousand dollars
" had been fraudulently used by said Swepson, in conjunction
" with said Littlefield, in the purchase of said stock of the
" Florida Central Railroad Company, and the absolute pur-
" chase of the Jacksonville, Pensacola, and Mobile Railroad

" Company, so far as payment was made for the same, amounting, I believe, to about nine hundred and sixty thousand dollars; that, in fact, no other payments had been made for " said Jacksonville, Pensacola, and Mobile Railroad, except " such as had been made for the misuse of the " complainant company's money; such was the information imparted and derived in the course of the settlement referred to, and which I believed, and still believe, to " be true.

" 10. Ques. Was, or was not, the settlement you referred to " reduced to writing, and if yea, will you produce the same, or " a copy thereof, as part of your answer to this question?

" Ans. The terms of said conditional settlement were reduced to writing, in two papers, simultaneously executed on " or about the said 16th day of April, 1870, one of which was " signed by N. W. Woodfin, W. G. Candler and W. W. Rollins, " on the part of the Commissioners, and by George W. Swepson, for himself, and the other was signed by George W. " Swepson, President of the Florida Central Railroad Company, and Milton S. Littlefield, individually, and M. S. " Littlefield, President Jacksonville, Pensacola, and Mobile " Railroad Company, and by N. W. Woodfin, W. W. Rollins, " W. P. Welch and myself, as Commissioners, both of which " said original papers are now before me, but are not subject " to my control; I will, if possible, procure and produce copies " of the same as part of my answer to this question; but I am " informed that the originals themselves will be before the " court on the hearing of this cause, and in that event refer to " them.

" 11. Ques. You have stated that the sum of about $1,287,000 " of complainant company's money was shown, by the papers exhibited at the time of said conditional settlement, to have been " invested in the purchase of the said Florida railroads; will " you now be so good as to state by what means the return of " said money to said complainant company was proposed to " be secured and effected?

" Ans. The terms were such as were set forth in said papers; " that is, it was stated that said Littlefield and Swepson, one " or both of them, were about to receive a large number of " bonds of the State of Florida, then being issued to said " railroads, and that the same, or the proceeds thereof, should "be applied in such manner as to secure the return to the "complainant company of said sum, of about $1,287,000, "which had been so misapplied by said Swepson and Little-"field; the manner in which the same should be done was "stated and provided in one of the papers so signed, to which "I refer for details.

"12. Ques. You have spoken of certain bonds which were "being issued by the State of Florida, which said Swepson "and Littlefield proposed should be applied to the payment "of the money due the complainant company; will you please "state what knowledge or information you or said Commis-"sioners had or received, at the time of said conditional "settlement, about the said Florida State bonds, and especially "by what authority, or for what purpose, the same were being "issued, and would be subject to the control of said Little-"field and Swepson, or either of them?

"Ans. I, myself, either as an individual or as a stockholder "and director of complainant company, or as a member of "said Commission, had not, and never had, any information "whatever on the subject of said Florida State bonds, or the "object for which they were issued, except such as was im-"parted by said papers, so signed on the 16th of April, 1870; "and, to the best of my knowledge and belief, neither of the "other members of said Commission had any other knowledge or "source of information about said bonds than I had. It was "only at the time of said conditional settlement that we "learned that any of the money of the complainant company "had been so illegally applied by said Swepson, in the pur-"chase of said Florida railroads, or the stock and bonds there-"of; and only at the same time learned anything about the "issuing of said bonds on the part of the State of Florida, "which, or the proceeds of which, it was proposed to turn over "to the complainant company, in reimbursement of its illegally "appropriated assets, and the impression conveyed, and belief "established in the minds of the Commissioners were, that "these Florida State bonds were being issued as the equiva-"lent, or consideration, of the said $1,287,000 of the complain-"ant company's money, which, it was shown, had been in-"vested in the purchase of said Florida railroads, and that the "authority under which said Florida State bonds were being "issued was such as conferred upon said Swepson and Little-

"field the right to use the same in the manner proposed in "said agreement, but the law itself was not brought before, "seen or considered by the Commissioners. The object of the "settlement being the return of the complainant company's "money, and the terms of the settlement being conditional, whereby the complainant company's money, demands and equities would only be discharged, on such "payments being made as proposed, there was no necessity or motive for the Commissioners to enquire into "the laws of the State of Florida, or to ascertain the relations "of Littlefield and Swepson, or either of them, to said Florida "State bonds, or for what reason, or by what authority they "assumed the control of the same.

"13. Ques. Referring to said agreement of 16th of April, "1870, proposing to turn over said Florida State bonds, or "their proceeds to the complainant company, as therein "stated, the concluding paragraph of the same is in the following words: 'It is further understood and agreed by the "'parties of the first and second parts, that all the interest "'owned or claimed by said parties of the first part, both "'George W. Swepson and Milton S. Littlefield, or which "'they, as individuals, have a right to control in the said "'Florida railroads, are hereby pledged for the faithful fulfillment of this contract, without the right on the part of "'any party to interfere with our management or control of "'the affairs of the road.' Will you please state, to the best "of your knowledge and recollection, what was the reason "and object of inserting said clause?

"Ans. As soon as it was developed, by the facts shown at "the time of the said conditional settlement, that the money "and assets of the complainant company, to so large an "amount, had been so illegally applied in the purchase of the "said Florida railroads, the Commission claimed the same, "as the property and estate of the complaint company, to the "exclusion of any right of property in said Swepson and Littlefield; but as Swepson and Littlefield claimed that they "had invested some of their individual money in the purchase "of said roads, it was agreed that that interest also, if it existed, should be assigned as part of security for the fulfillment of said additional agreement, which was so done accordingly; and it was also agreed, that the control and man-

" agement of the roads should not be interfered with pending " the fulfillment of said conditional agreement, for which " reason the words in the concluding clause to that effect were " added, namely: 'Without the right on the part of any party " 'to interfere with our management or control of the affairs of " 'the roads.'

" 14. Ques. Was it, or was it not, the intention of said " clause to create said Swepson and Littlefield, jointly or severally, the agent or agents of the complainant company, in " the management or the direction of the affairs of the said " Florida Central Railroad Company, or Jacksonville, Pensacola, and Mobile Railroad Company, as bodies corporate?

Ans. Such was the intention of the said clause; the word " 'company' or 'companies' was not used, or intended to be " used; it was the management of the '*roads*,' as properties, " that said Swepson and Littlefield were permitted to control, " and not the exercise of corporate functions, which it was not " in the province of the Commission to delegate, had they " been disposed, and which they did not attempt to do.

" 15. Ques. Was, or was not, said conditional agreement fulfilled, as provided therein?

" Ans. It was not.

" 16. Ques. What other steps were taken, if any, to secure " the return to complainant company of its said money, so " misapplied by said Swepson and Littlefield?

" Ans. The money agreed in said conditional settlement not " being paid, suit was instituted, in the City of New York, in " the month of October, 1870, with the details of which I am " not familiar; and soon thereafter, Mr. Woodfin, as chairman " of Commission, by reason of information obtained, proceeded " to London, where he met said Littlefield and the firm of S. " W. Hopkins & Co., which resulted in a modified agreement " being entered into, on or about the 10th day of November, " 1870, wherein it was agreed that eight hundred thousand " dollars of said Florida State bonds should be turned over to " the commission for the use of the complainant company; " and an order was given by said Littlefield, and accepted by " said Hopkins & Co., on or about the 16th day of November, " 1870, as I am advised and believe to be true. I never saw " said order and acceptance myself, but did see said modified

" agreement of 10th November, 1870, and approved the same, " as a member of said commission.

" 17. Ques. Was, or was not, the terms of said modified " agreement of 10th November, 1870, complied with, and the " bonds delivered as therein provided?

" Ans. The said modified agreement was not complied with " in any respect, nor a single one of said bonds delivered to " said Commission, or to the complainant company, so far as I " have any knowledge or belief.

" 18. Ques. What further steps, if any, were taken by the " Commission, or the complainant company, to recover its said " $1,287,000, so far as you know or believe?

" Ans. There were further suits instituted, in the City of " New York and elsewhere, during the years 1871 and 1872, as " I have been advised from information and the inspection of " papers, but I have no personal knowledge thereof, and did " not participate therein. My personal participation ceased " after my approval of the contract made by the chairman of " the Commission, as aforesaid.

" 19. Ques. Do you know, or can you state, any other matter or thing of interest to the parties complainant or defendant, or material to this, your examination, besides what you " have answered, and if yea, please state the same fully and at " large, as if you were particularly interrogated in reference " thereto?

" Ans. Nothing that I now remember.

" W. C. CANDLER."

Such is the testimony of these two of the commissioners who made the settlement of April 16th, 1870.

By the terms and conditions of the settlements of April 16th, and November 10th, 1870, the court will see that the testimony of Rollins and Candler that these settlements *were* conditional, and made as an attempted *compromise*, is fully sustained by the writings between the parties. The paper of the 16th of April, made part of Rollins' deposition, after reciting the fraudulent use of the Western Division Company's money, and the proposed mode of payment, says (fol. 1419):

" *The said commissioners, in their capacity as commissioners,* " *by authority of the said act of the Legislature of North Carolina,* " * * * * *agree and promise to excute and deliver to said*

" *George W. Swepson a full and final release and discharge, &c.,* " WHEN *the said Swepson shall have executed the said mortgage or* " *deed of trust, &c., and* WHEN *the sum of* $880,000 *of the amount* " *of* $1,287,000 *transferred in Florida railroads shall have been* " *paid or made* FULLY SECURE."

The same conditional and provisional character is also preserved in the London paper, of November 10th, 1870, also made part of Rollins' deposition.

It is there provided as follows (fol. 1424):

" Now, WHEN the foregoing undertakings and agreements of " the party of the first part *are fully accomplished* and performed, " it is to be taken as a *full compliance with and final discharge* " *of the parties of the first part to this contract, as well as all* " *parties to the first part to the said contract executed at* " *the City of Washington aforesaid*, a copy of which is hereunto " annexed; and this shall operate as a receipt and final dis- " charge thereof, from all obligations growing out of the " same."

It certainly will *not* be questioned that these papers constitute a *conditional settlement* and *compromise* between the parties thereto, and fully sustain the depositions of Rollins and Candler that the settlements were in every respect conditional, and not otherwise.

The testimony so far, certainly shows that the Western Division Company in no manner aided in the sale of bonds. That neither the company nor its agents ever had a bond in their hands to sell, and the further fact that none of the proceeds of said bonds was ever paid to them.

The other two parties to these papers of April 16th and November 10th, 1870, Swepson and Littlefield, were examined, upon notice to all parties. Littlefield testifies (fols. 1429 to 1431) that less than $100,000 was paid to said Commissioners under said settlements; that neither he nor Swepson were, in any manner, constituted the agents of the Western Division Company, by virtue of the settlements aforesaid; that neither the Western Division Company nor any of its agents ever, at any time, assumed the authority to dispose of any of the bonds mentioned in said settlements, within his knowledge that he gave an order for 800 bonds to Woodfin upon Hopkins & Co., who informed him that the bonds, the proceeds of which they had allotted to him, were those numbered above 3,000, "and that *no bonds of the State of Florida, numbered above* 3,000, *were then issued.*

And, again, the witness is asked the direct question (No. 88, fol. 1658):

"*Did or did not said Woodfin take any part or assume to exer-*
"*cise the right to sell the Florida State bonds referred to in this*
"*action?*
"A.-*Not to my knowledge.*"

The deposition of S. W. Hopkins was also taken orally, upon notice to all parties, and, among other things, he was especially interrogated as to the receipt or sale of bonds by said Woodfin, and the order for 800 State bonds given by Littlefield, on the 16th of November, 1870, which it is pretended he aided in the sale of. To these interrogatories the witness answered as follows:

"11. Ques. On or about the 16th day of November, 1870,
"did you acknowledge and accept an order on your house, in
"London, drawn by M. S. Littlefield, President, in favor of
"one N. W. Woodfin, a commission on the part of the State of
"North Carolina, representative of the complainant?
"Ans. Yes.
"12. Ques. Have you a copy of said order?
"Ans. I have.
"13. Ques. Will you produce the same as part of your ex-
"amination?
"Ans. I will produce the original, or a true copy thereof.
"14. Ques. Do you remember the number of the bonds
"called for in said order, and if you do, please state the
"same?
"Ans. The number was 800 bonds, of $1,000 each, to be held
"subject to the order of the party in whose favor the order
"was drawn.
"15. Ques. Did you appropriate any particular portion of

" said bonds to meet said order, and if you did, please state
" what portion of the bonds they were?

" Ans. We fixed upon 800 bonds out of the 1,000 bonds
" which were to come into our hands, numbering from 3001 to
" 4000, inclusive.

" 16. Ques. Did said bonds ever come into your hands, and
" if yea, did you ever deliver the same, according to said
" order?

" Ans. They came into our hands, but we never delivered the
" bonds under said order.

" 17. Ques. Please state what became of said bonds, according
" to your recollection, and where they are now, if you have
" any knowledge of the subject?

" Ans. 800 of them were placed in the hands of the Receiver
" of the Supreme Court of the State of New York, for the City
" and County of New York; the other 200 bonds were delivered
" to the representative of the Jacksonville, Pensacola, and
" Mobile Railroad Company.

" 18. Ques. Do you know what became of the said 1,000
" bonds, and to what purpose they were applied?

" Ans. 568 of the bonds are now tied up in chancery, in
" England; 224 were sent back to the State of Florida and
" canceled, and the remainder went into the possession of
" John Collinson, of London, England, under an agreement by
" which he, Collinson, agreed to furnish money to pay the then
" maturing interest on certain of the Florida State bonds which
" had previously been negotiated. I have given the figures as
" near as I remember them.

" 19. Ques. Did your firm sell any of the said 1,000 bonds,
" numbered from 3001 to 4000, inclusive?

" Ans. We did not.

" 20. Ques. Do you know, or can you state, any other matter
" or thing material to this, your examination, of benefit to
" either party, beyond what you have been interrogated to, and
" if so, please state the same?

" Ans. No, sir.

"S. W. Hopkins."

The defendants Schutte *et al*. placed in evidence an affidavit of this same witness, Hopkins, made in a case in which the Western Division Company was plaintiff, and Hopkins & Co.

were defendant, as early as the 28th of June, 1871, respecting these same bonds, wherein he fully corroborates his testimony given above. as follows (fols. 22, 32):

> " And deponent says that the sale of the Florida bonds mentioned in the 32d folio of the affidavit of the said Woodfin " *afterwards fell through* and was never completed, and in confirmation thereof, deponent referees to a letter dated London, " 27th day of March, 1871, signed George Richardson, in the " possession of deponent and ready to be produced if required, " and he says that the fact that said sale had fallen through was " well known to the said Woodfin when he made his affidavit.
>
> " And deponent further says that the £10,000 sterling referred to in folios 44 and 45 of the affidavit of said Woodfin, " was what it purported to be, *an advance, and not a payment.*"

Upon the foregoing, which we believe includes all that is material or competent in the record upon this topic, we respectfully submit that it is conclusively shown that neither the Florida Central Company, nor the Western Division Company either aided or acquiesced in the issue or sale of said bonds. The testimony shows that said commissioners appointed under the Act of March 24, 1870, tried, in good faith, to secure the restoration of the fraudulently appropriated funds of the Western Division Company, and that all their steps were taken in that behalf legitimately and properly.

Before leaving this branch of the subject it is proper that we should call the attention of this court to another manifest oversight of the court below. It sets out *one* of the papers of April 16, 1870, which is rather a memorandum of the *means* of of settlement, than the *terms* of the settlement itself. The court will see (deposition of Rollins, ans. 15, fol. 1410) the following:

> " The result of said *conditional settlement* was reduced to writing in *two* papers of even date, viz., April 16, 1870, signed by " the parties as interested therein, the original of which I now " present for inspection and comparison, but business reasons, " I furnish copies thereof, and make the same part of my answer marked W. W. R., No. 1, and W. W. R., No 2, respectively."

These papers will be found at folios 1417 to 1422. No. 2 is inserted in the opinion at length, but No. 1, which contains the *condition* above recited, is totally omitted, and no allusion made to it. This accounts for the *impossibility* encountered by the court in considering this subject. It had *overlooked* the paper containing the *condition* or *reservation*.

In support of the XVIIth and XVIIIth assignments of error we contend that when the court found that the stock of the Florida Central Company, and the Pensacola and Georgia, and Tallahassee railroads (the latter two now known as the Jacksonville, Pensacola, and Mobile road) it should have then granted to this appellant the relief prayed in the bills.

In this respect the case at bar comes within the doctrine of Cook *vs.* Tullis (18 Wall., 431), cited early in the argument. The doctrine is elementary that a *cestui que trust* can follow his property, when fraudulently appropriated and invested by his Trustee, and repossess it wherever he can find it or its proceeds and identify them.

Perry on Trusts, sec. 831, 217.

Under XIXth, XXth, XXIst, and XXIId assignments of error, we contend that the Jacksonville, Pensacola and Mobile Company has not, and never had any title to ths Pensacola and Georgia and Tallahassee roads now operated under its name; that they were paid for with the funds of the Western Division Company when sold by the Trustees of the Internal Improvement Fund, as found by the court below; and that title to them having been conveyed to Swepson, in trust, to secure the repayment of the Western Division's funds so, remains in him to this day.

There is not a shred of documentary title in the case to the contrary, and the assumption of the court that the incorporation of Dibble and associates into the *new* Tallahassee Company by the charter of June 24, 1879, wrought a conveyance to that company, would seem to be thoroughly exploded by the record (fols. 3608–9, *infra*), where it is shown that Swepson, in whom both the legal and equitable title were at the time, was not one of "Dibble and associates," and that he did not have a share of the stock of either the *new* Tallahassee Company or the Jacksonville, Pensacola, and Mobile Company.

No covenant for possession is reserved in the deed of Dibble and associates to Swepson, of April 22, 1869, and hence we say that both the legal and equitable title were in him. How, therefore, could the incorporation of "Dibble and associates," of whom Swepson was *not one*, work a conveyance of these roads out of him and into this new company? Is it either rational or just to assume, as the court did, that a responsible man, as Swepson was at the time, would suffer himself to be divested of his title, without first having the $960,300 which he advanced for Dibble and associates, and the $472,065, which he assumed or guaranteed for them, repaid?

But this assumption is not only made without any evidence even *tending* to sustain it, but in the teeth of the unimpeached and uncontradicted oath of Swepson to the contrary (fols. 1455 to 1458).

The Jacksonville, Pensacola, and Mobile Company could not to-day eject a trespasser upon its premises, for want of a proper title. Were any one to erect a building upon the ground the company occupies, it could not assert sufficient title to expel the intruder. To get such a title would require a bill in equity to divest the title of Swepson. And will any one say that such relief would be granted by any court of equity without paying the $960,300 and interest, which the legal title he holds was conveyed to him to secure?

Besides this the court must observe that because of Swepson's citizenship he is not a party to this suit, though deeply interested in it, and the more so because the 8th paragraph of the decree in favor of Schutte *et al.* allows them to sue Swepson for any deficiency that may exist after the exhaustion of the property of the Jacksonville, Pensacola, and Mobile to its road and rolling stock. Surely it will not be contended that Swepson can be divested of his title to the Pensacola and Georgia and Tallahassee roads without the payment of the money he held the title to those roads to secure.

Be his errors and breaches of trust what they may, he is not to be wholly outlawed, and denied his legal and constitutional rights, without a hearing.

By the XXIVth assignment of error, we contend that the court erred in holding that any conveyance was executed by Dibble and associates to the *new* Tallahassee Company or the

Jacksonville, Pensacola, and Mobile Company, conveying the Pensacola and Georgia and Tallahassee roads. This question has been considered in another part of our argument, and will not be repeated here.

We said then, and again say, that no such deed ever was executed or delivered, and prove that we are correct by presenting the pretended and incomplete execution of the alleged deed to the court, the reading and inspection of which ends the question.

Besides the deed being unexecuted and not acknowledged, it never was delivered to either company, and is not alleged or claimed in the bill of Schutte *et al* as a basis of title, nor do *they* introduce it into the record.

The Western Division Company found the paper in the possession of one of those whose name is appended to it, and set it up in its answer to the Schutte bill (fols. 589–90), to show the *negative* fact that no such conveyance ever had been made. This was in answer to the Vth paragraph of the Schutte bill, which alleges that

"Afterward the said Tallahassee Railroad Company and "said Dibble and associates, conveyed the said railroads to the "Jacksonville, Pensacola, and Mobile Company, of which "Geo. W. Swepson and Milton S. Littlefield owned nearly "the entire stock," and does not even allege that Dibble and associates ever made any conveyance to the Tallahassee Company at all.

The proof shows that not only was no such conveyance made as found by the court, but that no such conveyance is *alleged in the bill.* The finding of the court, therefore, is utterly without either allegation or proof to warrant or sustain it, and must be reversed and set aside.

There is *no attempt* made to prove the alleged conveyance by the Tallahassee Company and by Dibble and associates to the Jacksonville, Pensacola, and Mobile Company, and the allegation that Swepson owned nearly all the stock, "is equally without any proof even *tending* to show it, whilst the contrary has just been conclusively shown by the record (fols. 3608–9), where it has been seen that Swepson was not a party to the organization of either company, and *did not own a share of stock in either.*"

The XXVth and XXVIth assignments have been sufficiently considered in the argument of the XXIIId, and we will only add that the issue of the stock and bonds was not made as provided in the agreement of March 26, 1869, and the trust deed of April 22, 1869 (fols. 113–114), as assumed by the court. There is no allegation in the bill of Schutte *et al.* that such was done, or that Swepson in any manner received his pay; and no proof to suport such an allegation if were made, whilst the contrary is shown most positively by Mr. Swepson and the record facts.

The truth is, as shown by the record, that the passage of the Act of the Legislature of North Carolina, of March 24, 1870, creating the commission and calling on Swepson for a settlement, terminated all his proceedings; and from that time forward he did all in his power to consummate said settlement of the 16th of April, 1870, and secure to the Western Division Company its assets which he had misappropriated.

Under the XXVIIth assignment we show that the court erred in finding that the President of the Jacksonville, Pensacola, and Mobile Railroad Company ever certified upon oath that any portion of the road was completed and in running order, as positively required by the 2d section of the Act of January 28th, 1870.

This is proven by the alleged certificate (fols 1671–2), which was never completed by the oath of the President, and by the testimony of Littlefield, (fols 1648–9).

“Q. 54. Will you please produce the said original paper,
“ and make the same a part of your deposition?

“ A. I do produce the same, and it is marked ‘L, No. 10.’

“ Q. 55. Now, please state the origin, why and for what pur-
“ pose, and by authority of what law, if any, said paper ‘L,
“ ‘No. 10,’ to which you have just testified, was prepared?

“ A. It is a paper presented by Harrison Reed, then Gov-
“ ernor of the State of Florida, for me to sign and swear to, on
“ or about the 6th day of June, 1870; it was intended to be
“ the authority of said Governor to exchange bonds with said
“ company under section 2 of ‘An Act to alter and amend an
“ ‘Act entitled “An Act to perfect the public works of the
“ “State” (of Florida), ‘approved June 24, 1869,’ said amen-
“ datory act was approved January 28, 1870.

" Q. 56. By the terms of second section of said act 'the
" 'Governor of the State is hereby directed to deliver to the
" 'President of said company, coupon bonds of the State to
" 'the amount of $16,000 for the whole line of road and length
" 'of railroad owned by or belonging to said Jacksonville,
" 'Pensacola, and Mobile Railroad Company, in exchange for
" 'first mortgage bonds of said railroad company, when the
" 'President thereof shall certify upon his oath that the road,
" 'or parts of road to which he asks for exchange of bonds, is
" 'completed, and is in good running order.' Will you please
" state whether or not you ever made, signed, or certified on
" oath to any such certificate as described in said act, and de-
" livered the same to the Governor of Florida?

" A. I never did.

" Q. 57. Do you remember, and, if yea, please state who
" placed the original of said paper, 'L, No. 10,' in your hands,
" and whether there was any change or alteration made there-
" in, and if so, by whom?

" A. The paper was prepared by J. P. Sanderson, and by
" him delivered to said Harrison Reed, Governor, requesting
" me to swear to the same, and deliver it back to him, which
" I declined to do, for the reason that in the original were these
" words: 'Do certify that one hundred and fifty-nine miles of
" 'road of said company, is that for which, under said section,
" 'I ask for an exchange of bonds.' This sentence was changed
" when handed to me by said Governor, so as to read: 'Do cer-
" 'tify that one hundred and eighty-eight miles of road of said
" 'company is that for which, under said section, I ask for an
" 'exchange of bonds,' and, declining to make such oath, as
" stated, I retained said original paper in my possession, and
" make the same part of this my examination.

" Q. 58. Subsequent to the date of said paper, 'L, No. 10,'
" and the exchange of the said $3,000,000 of bonds of the State
" of Florida, did or did not the Governor of said State further
" request you to execute the said paper, or give a receipt for
" the said $3,000,000 of bonds, and the further amount of
" $1,000,000 of bonds, and if yea, please state what you did in
" reference thereto?

" A. Referring to a memorandum in the handwriting of
" Harrison Reed, Governor, under date of May 22, 1871, he
" called upon me to 'give a receipt for $3,000,000 and $1,000,000

"'railroad bonds, and return coupons to July,' referring to
"another memorandum, also in the handwriting of said Har-
"rison Reed, Governor, he requesed me to 'forward receipt
"'for $3,000,000 and $1,000,000 railroad bonds, and send stamp
"'for railroad bonds in treasury;' for the same reason stated
"above, I declined to execute and forward the receipt."

The XXVIIIth assignment has been anticipated in the preceding portion of our argument. We contend that the lien created in favor of the State by the 3d section of the Act of June 28, 1870, is of no higher dignity, or of any greater force or notoriety, than the 6th section of the Act of June 24, 1869, incorporating the new Tallahassee Company, reserving a lien in favor of Swepson, as the assignee of Dibble and associates, named in said act; and that if the former was notice of the lien of the State, the latter was equally good notice of the *prior* lien existing in favor of Swepson, created by Dibble and associates, no matter who held it. The statute was notice to all the world that such lien existed, and that is all that was required.

The XXIXth, XXXth, and XXXIst assignments of error have also been covered by the previous part of our argument. We contend that there is no sufficient allegation in the bill of Schutte *et al.*, that the Commissioners, under the Act of March 24, 1870, took any part in the sale of said bonds of the State, and that there is no proof to support the allegation if made.

The only evidence on that subject is derived from the reswearing of Hopkins by Schutte *et al.*, after he had been examined on notice by the Western Division Company, and the testimony of Collins, taken under the New York Commission on the eve of the trial (fols. 2670 to 3022), which are under our motion to suppress, for reasons apparent on their face, which will be considered in a separate presentation.

The portion of the testimony referring to Mr. Woodfin while in London is at fols. 2689 to 2695, and it is upon its face fabricated testimony, giving statements not called for in the questions, and attempting to prove what Woodfin and others *did not do.* It attempts to state that Woodfin did all he could to sell bonds, *but does not say what he did do.* And this, too, in the face of the previous testimony of Hopkins, that Woodfin never saw or received a bond—that the bonds he "set apart" for Woodfin were numbered above 3,000, which bonds we have seen were in Florida until Coddington spirited them out on *January* 11, 1871, whereas Woodfin returned from London to the United States *in November*, 1870. He never could have helped to sell any such bonds. This finding should be reversed, therefore, as having neither allegations nor proof to sustain it.

Under the XXXIInd assignment we contend that the court erred in finding that the settlements of April 16th and November 10th, 1870, were *not* conditional settlements, and branding the claim that they were as a "*new thought, the result of new light.*"

This assignment, also, has been anticipated in a preceding portion of our argument to, which we refer; and especially to the papers themselves, which were made part of the pleadings, and which show upon their face that they were and are all *conditional* or *compromise* settlements.

Indeed, the whole case on the part of the Western Division Company is one of repeated compromises:

1st. That of April 16, 1870.
2d. That of November 10, 1870.
3d. The compromise decree of December 26, 1872.
4th. The compromise decree of January 18, 1873.

But none of these arrangements being complied with, all fell to the ground.

The XXXIIIrd assignment of error has been fully covered, as we maintain by the argument.

Under the XXXIVth, XXXVth and XXXVIth assignments we contend that the issue of any bonds by the Florida Central Company, of the description involved in this suit, was *ultra vires*, and that the State bonds, being on their face dedicated by the statute to the building of the road of the Jacksonville, Pensacola, and Mobile Company west of Quincy, could not, in any event, become the property of the Western Division Company, or constitute a consideration for the said compromise settlements, even had the act attempting to authorize them not been declared unconstitutional and void. Having elaborated these propositions elsewhere in our argument, we will not repeat them here.

By the XXXVIIth assignment of error we contend that there was no proof to justify the finding of the court that the Western Division Company received any of the proceeds of the Florida State bonds. The testimony of Rollins and Candler is to the contrary. And we have seen that Hopkins, upon whose testimony the finding must have been based, swears positively to the contrary in the suit of the Western Division Company, before the Supreme Court of New York, on the 28th day of June, 1871 (fol. 2232).

In that suit, the witness, Hopkins, swore that the State bonds of the Western Division Company was to have had the proceeds (those numbered above 3,000) *were never sold*, and hence no proceeds were ever derived from them; and that the £10,000 was not a payment, but an "*advance*," as the draft for the money purported to be upon its face. And this is the only proof on the subject.

By the XXXVIIIth assignment, we contend that the court below erred in finding that the parties called Dutch bondholders had no notice of the fraudulent, illegal, and unconstitutional character of the State bonds sued on in this case.

As against this finding, we contend that full, ample, and legal notice was given and received by the parties who were dealing in said bonds in London, Amsterdam and Rotterdam; that they had such notice as to put them upon inquiry and investigation; *that, before the bonds were sold, such inquiry was made*, and the purchasers chose to be governed by such information as they got, while, as a matter of law, they were bound by such knowledge as they *could* have gotten, *and did get*, but preferred to disregard.

In pursuing this subject we shall avoid comment as much as possible, and simply present the facts.

Notice was given and received as follows:

1st. The State bonds bear upon their face the endorsement "issued in accordance with the Act of the Legislature of Florida, January 28, 1870" (fol. 3693), which gave notice to all parties as to the statute under which they were issued.

2d. The said Act of January 28, 1870, being declared null and void, was, at all times, notice to all persons that it was null and void. And for the purposes of this suit, as we understand the law, as expounded by this court, all unconstitutional and void laws proclaim their own inherent worthlessness.

United States *vs.* Macon, 9 Otto, *supra.*

But there was other notice given of the unconstitutional, void, fraudulent, and criminal character of this Florida legislation of 1869 and 1870, in the matter of creating and circulating bonds of the State of Florida, and of these in their order.

3d. No sooner had the Act of June 24, 1869, incorporating the Jacksonville, Pensacola, and Mobile Company, become a law than it was assailed and published to the world as passed by fraud, and had been feloniously altered between the legislative hall and the executive chamber. This lod to the indictment of Littlefield and others as to this change in said law.

4th. That to restrain the execution of that fraudulent and void act a bill in equity was filed in Leon County, Florida, by George W. Scott, Joseph Williams *et al.*, against Gov. Reed and others, charging fraud, bribery, and forgery in the passage of said law, (fol 910).

That a motion for injunction was made and granted, restraining the issue of any bonds under said corrupt and fraudulent Act of June 24, 1869, in words and figures as follows (fol. 946).:

“ George W. Scott, and Joseph
“ John Williams,
“ *Complainants*

vs.

“ George W. Swepson, Milton S.
“ Littlefield, John P. Sanderson,
“ J. L. Requa, William H. Hunt,
“ Harrison Reed, Governor, and
“ S. B. Conover, Treasurer of
“ Florida,
“ *Defendants.*

In Chancery.

“ On reading the bill and affidavit in this case, and on motion
“ of the counsel to the complainants, and it appearing that the
“ notice of said motion had been served on defendant Reed, a
“ writ of injunction is awarded the complainants to enjoin the
“ defendant Harrison Reed, Governor of Florida, from issu-
“ ing, signing, and sealing, and from causing to be issued,
“ signed, and sealed, any State bonds of the State of Florida,
“ under the provisions of a pretended act of the Legislature,
“ pretended to have been passed at the session began and held
“ on the 8th day of June, A. D., 1869, entitled ‘An act to per-
“ ‘ fect works of the State,’ and from delivering and from caus-
“ ing or permitting to be delivered, any such bonds to the
“ President of the Jacksonville, Pensacola, and Mobile Railroad
“ Company, or to any other person, and restraining the
947 “ defendant Conover, from countersigning or causing to
“ be countersigned such bonds, and restraining who-
“ ever is or may be President of the Jacksonville, Pensacola,
“ and Mobile Railroad Company from receiving any of the
“ said bonds, or if received, from negotiating the same until the
“ further orders of this court.

“ P. W. White.
“ *Judge 2d Judicial Circuit of Florida.*

“ (Endorsed:) Order in Scott Case. J. Fred Schutte *et als.*
“ *vs.* West'n Div. West'n N. C. R. R. Co. *et als.* Exhibit H
“ to answer of trustees internal improvement fund.”

No answer was made to this bill by the Governor, or other parties enjoined, and decree *pro confesso* was duly entered, and together with the injunction was in full force during the year 1870, and has since remained in full force and effect. This injunction and decree were notice of the fraudulent character of said Act of June 24th, 1869.

5th. Upon the passage of the Act of January 28, 1870, and the proposed exchange of bonds thereunder, and before said bonds were sold in the market, said act and the bonds to be issued thereunder, were declared to be unconstitutional and void, and repeated publications made to that effect. Among these was a publication in the New York *World*, June 10, 1870, copied generally in the press of the country, (fols. 1536 to 1560).

6th. An editorial in the *World*, June 18, 1870, (fols. 1540–1.)

The deposition of Thomas E. Wilson, proves that the *World* had then an office in London, and circulated generally in Europe.

The effect of this publication was such,that none of the Florida State bonds could be sold in the American stock market (see deposition of Chapman, of the firm of Hopkins & Co., fol. 1542), which is as follows:

"Q. 9. What, if anything, within your knowledge caused "said bonds to be sold at such a reduced price as, say, of about "five hundred dollars for each one thousand dollar bond, and "when and in what manner were said purchases and sales "made; please state fully the facts as they occurred?

"A. When the said bonds were first brought to the firm for "sale, they expected to get a good market price for them, as "they were eight per cent. gold bonds of a State, but before "any of them were placed upon the market the newspapers of "the State of Florida and of the City of New York charged "that the issue of said bonds was fraudulent, illegal, and void; "in consequence of these publications and the fact that it was "charged that the law authorizing the issue of said bonds was "unconstitutional and void, it was not in their power to put "them on the market at the price they originally expected; "there were verbal reports of the illegal and fraudulent char-"acter of the bonds in circulation before the publications I "have mentioned, and these rumors were afloat as early as "June in the year eighteen hundred and seventy, but before "this time the firm had given credit on the faith of the bonds, "and they were forced to sell them at some price to protect "themselves; the attention of M. S. Littlefield, the President "of said company, was called to these rumors and publica-"tions, and requested that they be allowed to take the bonds "to account at a reduced price of fifty per cent. or less, so as "to be able to hold out special inducements for parties to buy "them, as the only way to make a sale of them at all. Their "proposition to said Littlefield was acceded to by him for the "company, and the bonds were taken to account at one hun-"dred pounds per bond, and afterwards disposed of through "John Collinson, in London, at or about one hundred and "thirty-eight pounds, ten shillings and one pence per bond.

"Q. 10. About what time did your firm make the offer to "take said bonds at fifty per cent. or less, and at what time "were your propositions agreed to, if at all, and if the proposi-"tion or acceptance, or either of them, was in writing, please "produce such writing and make the same a part of your an-"swer to this interrogatory?

"A. Letters were addressed to M. S. Littlefield, as Presi-"dent of said company, under dates of June 16th and 17th, "1870, which I will produce and make part of my answer to "this interrogatory; his acceptance was subsequent, and "made in London, November 14th, 1870, which I also produce "as part of this answer, and also the acceptance of said firm "under date of November 28th, 1870, which I also make a part "of this answer (marked respectively Exhibits C, D, E, and "F).

"Q. 11. Who, if any one, to your knowledge or information, "besides your firm and said John Collinson, were interested in "the sale and purchase of said bonds, at the reduced prices "you have named?

"A. Certain parties in Amsterdam, Holland.

"Q. 12. Please give the dates of the first and last sale of "said bonds, if you can?

"The first real sale of said bonds was made on or about the "19th day of November, 1870, and the last on or about July "31st, 1871."

7th. Under these circumstances the bonds get to London, to the house of Hopkins & Co., and Collinson, who make the combinations with Boissevain, Milders, Zaddock, Stoop, Mangay, and others in Amsterdam and Rotterdam.

The bill of the Western Division Company charges (fol. 86) that Collinson, Hopkins & Co., and the Dutch parties in Holland, all worked together, and that whatever knowledge one had was the knowledge of all. These allegations are not denied by the answer of Schutte *et al.*, but are really proven by *their witness*, H. L. Pierce (fol. 2027), who, when asked who were engaged in speculating in said bonds, replied:

"*Collinson, Hopkins & Co., Boissevain, Milders, Zaddock, Stoop,* "*Mangay and others were jointly and personally interested in said* "*speculation in bonds.*"

The testimony of this witness is fully corroborated by the following facts shown by the records:

(*a.*) That on the 4th day of May, 1870, Littlefield, as president of Jacksonville, Pensacola, and Mobile Company, appointed Hopkins & Co. agents of said company to sell said State bonds (fol. 3911). *Note.—This was before the consolidation of the Tallahassee and Jacksonville, Pensacola, and Mobile Companies.*

(*b.*) On the 17th of November, 1870, Hopkins & Co. appointed Collinson, of London, a sub-agent to sell and dispose of the same bonds in European markets, with power to appoint other sub-agents:

"58 OLD BROAD STREET,
"LONDON, E. C., Nov. 17, 1870.

"JOHN COLLINSON, Esq.:

"Dear Sir,—Agreeable with contract, dated November 14, "1870, you are hereby authorized to appoint and arrange with "such bankers and brokers as you may deem it advisable, to "invite subscriptions for Florida State 8 per cent. loan of four "million dollars.

"We remain, dear sir,
"Your most obedient servants,
"S. W. HOPKINS & Co."

By this appointment Collinson was constituted an agent of the Jacksonville, Pensacola, and Mobile Company.

(*c.*) On the 17th of November, 1870, John Collinson, in the exercise of the power vested in him by the appointment from Hopkins & Co., repeated the same to Messrs. Holje & Boissvain, and A. T. & M. Milders, of Amsterdam and Rotterdam, as follows:

"50 OLD BROAD STREET,
"LONDON, November 17, 1870.

"JOHN COLLINSON, Esq.:

"Dear Sir,—Agreeable with contract, dated November 14, "1870, you are hereby authorized to appoint and arrange with "such bankers and brokers as you may deem it advisable to "invite subscriptions for Florida State 8 per cent. loan of four "millions of dollars.

"We remain, dear sir,
"Your obedient servant,
"(Signed,) S. W. HOPKINS & Co."

"To Messrs. HOLJE & BOISSEVAIN and A. T & M. MILDERS:

"In accordance with the authority of which the above is a "true copy, I hereby nominate you to bring out for subscrip- "tion the said loan in Holland.

"(Signed,) JOHN COLLINSON."

(*d.*) On the 28th of November, 1870, Littlefield, as President of the Jacksonville, Pensacola, and Mobile Company, addressed to Collinson a letter confirmatory of the agency and power of Hopkins & Co., to appoint Collinson agent, as follows:

"London, November 28, 1870.

"John Collinson, Esq., London—Florida State Bonds:

"Sir,—In accordance with request, I hereby state that "Messrs. Hopkins & Co., of 50 Old Broad street, London, "possess full authority to sell or otherwise dispose of the "$4,000,000 Eight per cent. Gold Bonds of the State of "Florida, issued to the Jacksonville, Pensacola, & Mobile "Railroad Company, and that any agreement entered into by "the said S. W. Hopkins & Co., for the sale of these bonds, "will be binding on the above mentioned railroad company.

"Believe me, sir, yours obediently,

"(Signed) "M. S. Littlefield,

"[SEAL J., P. & M. R. R. CO.] "Pres. J. P. & M. R. R. Co."

(*e*) And on the 19th of December, 1870, Collinson enlarged the powers of Messrs. Holje & Boissevain, as follows:

"9 Victoria Chambers,
"Victoria Street, Westminister, London,
"19th December, 1870.

"Messrs. Holje & Boissevain, for the Dutch Consortion,
"Florida State Loan:

"Gentlemen,—Referring to the enclosed letter from S. W. "Hopkins & Co., dated December the 16th, I hereby authorize "you to open subscriptions for these bonds in Holland during "the present week, closing the same on or before Saturday, "the 24th inst.

"Believe me, gentlemen, yours truly,

"(Signed) "John Collinson.

"Endorsed on back Exhibit, G. M. B. No. 7, referred to in "the evidence of G. M. Boissevain.

"D. Eckstein, Commissioner."

By these several appointments it is clearly shown to the court that in the very beginning of the negotiation—November, 1870—and *before a bond was sold*, a regular combination of agency and sub-agency was created between Hopkins & Co., Collinson, Holje & Boissevain and A. J. & M. Milders, in the United States, England, and Holland, for the sale of these bonds, which at that time had been denounced as unconstitutional, void, and fraudulent. These papers also show that the said parties were each and all acting as the agents of the Jacksonville, Pensacola, and Mobile Company.

Can it be doubted, then, that they made known among themselves, to each, all the knowledge possessed by the others? That this information as to the fraudulent, unconstitutional and void character of the said State was given, circulated, and received by all these parties, is not left in doubt, as the record shows.

8th. Whilst the matters above stated were transpiring, the publications of the press, and the writing of notices and warnings from various sources were kept up; and the fact that said bonds were declared void was becoming wide spread. To meet this situation became a necessity. Therefore the opinion of J. P. Benjamin and others was sought. On this subject Frank H. Collins, of the firm of Hopkins & Co., a witness, on the part of Schutte *et al.*, in answer to 10th cross-interrogatory (fol. 2708), testifies as follows:

> "It is my impression that the opinion of eminent counsel
> " in England was obtained as to the *constitutionality* of the said
> " Florida State bonds, and it is my impression that J. P. Benja-
> " min, Queen's counsel, *gave an adverse opinion as to the* VALIDITY
> " *of said bonds*, while De Tracey Gould, an eminent counsel in
> " London, maintained that the bonds were constitutional.
> " *After said opinions were given, said Collinson insisted upon and*
> " *obtained from our firm a modified contract or agreement, which*
> " *was executed on the 28th December*, 1870, *of which a copy annexed*
> " *to the cross-interrogatories, and marked A, I believe to be correct.*"

By reference to this modified contract, testified to by the witness Collins (fols. 2838 to 2841), the court will see that it was made a sort of *wager* as to whether the State bonds were or were not unconstitutional, whereby a given sum of money was to be placed with Drake, Kleinwort, & Cohen, bankers, to abide the result of an application to be made to the Supreme Court of Florida, for its opinion as to the constitutionality of the said bonds; and in the event the opinion was that the bonds were *valid*, the money should go to Hopkins & Co., but if the opinion should be that the bonds were *illegal and void*, then the money should go to Collinson.

Upon the signing of this contract, Mr. Collins, connected with the firm of Hopkins & Co., was sent from Europe to Florida to obtain the stipulated opinion of the Supreme Court of Florida, and other officials of that State, which were to determine the effect of this *wager contract.* Up to this time only 480 bonds had been sold, and *all sales were suspended* until this messenger should report, or cause to be reported, the opinion of the court.

But, again:

The witness Collins being asked by the 10th cross-interrogatory (for the court will see that all these facts are developed by the cross-interrogatories, and none of them by the *direct*-examination), as to the character and source of the information which gave rise to the taking of the opinion of the Supreme Court of Florida as to the validity of said bonds, and whether such information was *public* or *private*, says:

> "I suppose all the information *was accessible to everbody;* "*our firm* had no information that was *not accessible to every*-"*body;* I cannot now put my hands on any of the printed or "published statements, as the time when they were circulated "is so remote."

That this information *was* "accessible to everybody," and was known to those dealing and speculating in the State bonds, in Holland, is proved by the fact, as alleged in the bill of the Western Division Company (fols. 598–9), and is nowhere contradicted, the Dutchmen, through Boissevain, on the 18th day of December, 1870, telegraphed to Governor Reed, as follows (fols. 598–9):

> "*Being negotiating four millions bonds issued by your State to* "*the Jacksonville, Pensacola, and Mobile Railroad, beg to know, by* "*telegraph from you, whether provision made for payment of in-*"*interest; whatever result of railroad traffic; financial position* "*of State really sound, and bonds undoubted security.*
>
> "BOISSEVAIN."

To this despatch Governor Reed replied as follows:

> "*Bonds recently recalled by the company; no provision will* "*therefore be made for interest.*
>
> "REED,
>
> "*Governor.*"

Fols. 598–9.

The court has seen by the deposition of Chapman (*supra*), as also by the written proposition of Littlefield, of the 14th of Nov., 1870, as follows:

"58 Old Broad Street,
"London, Nov. 14th, 1870.

"Messrs. S. W. Hopkins & Co.,
"London:

"Gentlemen,—I herewith offer you four thousand (4,000) "Florida State 8 per cent. gold bonds, in aid of the Jacksonville, Pensacola, and Mobile Railroad Company, for one thousand ($1,000) dollars, gold, each, at the price of one hundred "(£100) pounds sterling for each bond, in the City of London, "subject to the commission agreed as per contract dated 13th "day of April, 1870, with your good selves.

"I remain, gentlemen, yours faithfully,

(Signed) "M. S. Littlefield,
"*Pres. J., P. & M. R. R. Co.*
"*Jacksonville, P. M. & M. R. R. Co.*"

The witness Littlefield, being asked why the bonds were sold at such a low rate, testified as follows:

"Q. 67. You have stated that you contracted to dispose of "said bonds for Florida State bonds at the price of only £100 "sterling for each $1,000 bond; do you, or do you not know, "and if yea, please state what reason, if any, caused you to "contract to sell said bonds at such reduced price—please "state in detail the facts as they occurred within your knowledge?

"A. I do know the reason; they were many, but principally "because of the damaging statement in relation to the issue of "said bonds which appeared in the public press of the State "of Florida, in the City of New York, and other places, which "papers were sent to London, England, Amsterdam, Holland, "Frankfort, Germany, thus rendering it impossible to sell the "bonds in open market at any price whatever. The only way "they could be converted into money was by placing them in "the hands and under the control of a syndicate formed for "the purpose of floating securities, and then we had to accept "just such terms as they proposed; before I accepted the "proposition, I tried to dispose of the bonds in open market, "and a private negotiation in London, England, in Brussels, "in Berlin, in Frankfort, and Vienna in person, and through "correspondence in Paris and in Holland; the damaging re-"ports in relation to the said Florida State bonds had pre-"ceded me at every place I went, and finally I was compelled "to accept the reduced offer from the necessities of the com-"pany at home; the company was extending its road west-"ward from Quincy and was greatly in need of money to pay "for material and iron and to pay employees upon, of which "there was a large number of men clamoring for their pay."

The enormous speculation which the so-called Dutch bondholders and operators saw in these State bonds at these rates only awaited the result of the *wager contract* of December 28, 1870, and the report of the special messenger, Collins, who had been sent to Florida, and the answer to the Boissevain telegram, to make up their minds how to act. The selling of bonds in Holland stood still, therefore, from the 29th of December, 1870, until the 20th of February, 1871 (see report of sales, Exhibit H, to Collins' and Hopkins' depositions, fol. 2859).

But whilst these matters were so actively carried on in Holland, there was no less activity in Florida. Persons deeply interested in the railroads, but *not* interested in the *swindle*, continued their efforts to notify the world not to deal in these fraudulent bonds, and ascertaining by the telegrams between the Governor and Boissevain, and also the mission of Collins to Florida, E. M. L'Engle, on behalf of himself and the Florida Central Company, on the 8th day of February, 1871, addressed to the Dutch Syndicate, the Messrs. Holje & Boissevain, an elabroate communication (fols. 314 to 326), in which the fraudulent and illegal character of the whole of said bond issue is fully exposed.

The receipt of this communication in Amsterdam is admitted by the Dutch agents, through Boissevain (fol. 3856), who referred it to their co-agents in London, Collinson and Hopkins & Co., and were by them advised that Mr. L'Engle's information was a "blackmailing letter," and was contradicted by the "Governor of Florida's declaration of the 26th" of February, 1871.

About the 17th of February, 1871, Collins, who had been sent to Floride to get the opinion of the Supreme Court as to the constitutionalty of said bonds, the sale of which was suspended meantime, caused the good news to reach the speculators that the Supreme Court had decided the bonds consitutional (fols. 3939 to 3955), and that, consequently, the *wager contract* of the 28th of December, 1871, was determined in favor of the State bonds.

These announcements were first made by telegraph to Holland and London (fol. 3947), and afterward followed up by an elaborate and significant official letter (fols. 3951–2) from the Governor, Treasurer, and Secretary of State of Florida, which shows that the *constitutionalty* and *character* of said bonds were very fully inquired into by and reported to the "Dutch bondholders."

Upon receipt of this information the sale of bonds was again resumed, to stimulate which, an assuring communication from the Dutch speculators in Amsterdam was published in their daily papers, as follows:

" Advertisement published in *Amsterdamsch Effedenblad*, No.
" 23, dated 23 February, 1871; in *Nieuw Algemeen Effedenblad*,
" No. 16, dated 24 February, 1871, and other papers.

" (Translation.)

" UNITED STATES OF AMERICA,

" 8 per cent. Florida Loan.

" The undersigned have the honor to advertise that, in con-
" sequence of some difficulties occurred lately in some of the
" States of the United States of America regarding the posi-
" tion of loan issued in behalf of railroads or other public
" works, and desiring to give full security regarding the 8 per
" cent. Florida Bonds which they issued the holders of the
" same, they decided to have the questions regarding this loan
" submitted to the Supreme Court of Florida, acting therein
" according to advice of legal and other authorities in the
" matter of American law and legislation; and they now have
" much pleasure in stating that it appears, from cable messages

" now at hand, that the Supreme Court have unanimously
" given their decision that said loan is a constitutional State
" loan.

" Amsterdam, }
" Rotterdam. } 20th February, 1871.

" HOLJE & BOISSEVAIN.
" A. J. & M. MILDERS."

On the day of the publication of this notice (Feb. 20, 1871), the sale of said bonds was resumed (see fol. 2859), and was vigorously pushed until 2,800 bonds were sold. *But, is it possible, in the face of these demonstrated facts, for anyone to believe that any of these bonds were sold or purchased without notice?*

Besides the abundant evidence of notice above given, in the most authentic and conclusive form, there is yet other testimony upon the same topic, showing how general and universal the notice of the illegal and fraudulent character of these bonds was among those dealing in such securities in England and Holland.

The witness, L. P. Bayne, testifies (fol. 1499) as follows:

"A. I did have occasion, and was compelled to deal with " some of said bonds while in Europe; I found their " standing in the market was very bad, because of a general " impression that they were not legally issued and would not " be paid by the State of Florida; this impression and current " opinion, I perceive, was founded on the same reports of fraud " and illegality which had assailed them in New York, and that, " *in order to meet these reports, a portion of the bonds had to* " *be used to pay the interest on the others before they were* " *sold, so as to hold them up in the market;* these charges of " fraud and illegality emanated from statements written and " published by parties in the railroad interest in the State of " Florida; also by some of the officials that no provision for " payment would be made of interest; these rumors and " reports were very numerous.

"Q. 9. State who at that time had the control of the negoti" ation of said bonds in London and Amsterdam, as far as you " know?

"A. In London they were controlled by S. W. Hopkins &

"Co., and John Collinson; in Amsterdam, as I was informed, "by one Boissievain and others."

The witness Aaron Barnett, on the same subject (fols. 1708–9), as follows:

"22. Q. At the time of the issue and sale of bonds to which "you have referred to, Mr. Barnett, was there not any question "raised about the legality and validity of the same?

"A. I so heard frequently.

"23. Q. To what extent did you hear it alleged and stated "that said bonds were illegal, and on what grounds?

"A. Mr. Collins, the old gentleman, representing S. W. "Hopkins & Co., passing through Savannah, Georgia, stopped "at my office in such place, and told me that the bonds could not "be sold or negotiated, as they are pronounced by some parties "in Holland as an illegal issue, and for that reason was going "to Florida, and for that reason asked me to go with him; "whether I went with him or not I do not remember, but he "stated that it was necessary to get some decision, I believe "to be from the highest court in Florida, to legalize the issue "of the bonds.

* * * * * * *

"31 Q. Did you not yourself, subsequent to giving these "notices, visit Europe in reference in part to the use being "made of the issue of said Florida State bonds?

"A. Yes, sir.

"32 Q. What part?

"A. England and Holland.

"33. Q. While there, was or was not the matters mentioned "in your examination, touching the validity and use of said "bonds, the subject of remark and more or less notoriety, both "in England and Holland, by or among those who were "engaged in handling said bonds?

"A. In the summer of 1872, while in Holland and England, "I remember having seen papers published in Holland, notices "which had been taken from Florida papers, attacking the "validity of the State of Florida bonds. I remember having "been spoken to in regard to the notices in papers, by whom "I do not now remember, but they were parties in interest, "asking me at the time as to the validity of this issue, the "entire complication as to the bonds being about to be compromised, but I do not remember having said anything "against the issue of the bonds.

"34. Q. Were the publications you refer to in Holland "printed in the public journals in the local language of the "country?

"A. Yes, sir; they were published in the Dutch language in "the papers for general circulation."

The witness, C. L. Chase, who went to Europe on the subject of these bonds, testifies as follows (fol. 1572):

"Q. 21. You have stated that about the time of the issue of "said Florida State bonds to said railroad company, during "the year 1870, that charges and allegations of their being "illegal and unconstitutional were circulated in print and "otherwise; will you please state whether or not said statements and publications, or any of them, were or were not in "circulation in Europe at the time of or preceding your arrival there; and, if yea, state at what places said publications and statements were made or spoken of in Europe?

"A. There were damaging reports in circulation in Europe; "I learned them first from Mr. John Collinson in person on "the 4th day of July, 1872, in London, and the reports were "published in a Dutch paper in Amsterdam, as I was informed at the time, although I could not read the paper; in "consequence of these reports I was requested by John Collinson to procure from the Attorney-General of Florida, the "Judge of Florida, and the Governor of the State of Florida, "statements to counteract these damaging reports; they desired the statements for publication in Holland; the object "of the publication of these statements or reports was to "publish them in Amsterdam to advance the market in such "bonds."

The witness, Collins, examined by Schutte *et al.*, in answer to the sixth cross-interrogatory (fols. 2705–6), says:

"*Sixth.*—To the sixth cross-interrogatory he saith: Before "or at the time we were selling said bonds I believe a question arose as to their legality, and it is my impression that

" it was alleged that the statute under which they were issued " was unconstitutional, and I believe these charges were pub-" lished, and the publications copied in some public journals " in the United States, but I do not remember that any such " charges were ever published in England and Holland; I did " not credit the statements made and circulated with respect " to the validity of the issue, because our lawyers had exam-" ined all the laws under which they had been issued, and they " advised our firm that the bonds were legally issued and con-" stitutional, and, therefore, a good and valid security; I can-" not state more definitely as to the publications with respect " to the character of the bonds.

" *Seventh.*—To the seventh cross-interrogatory he saith: In " consequence of such charges of illegality in the issue of said " bonds being so circulated, we were embarrassed in our efforts " to sell said bonds, and it was agreed between our firm and " M. S. Littlefield, who was at that time in London, and who " was the president and agent authorized to represent the said " railroad company in its dealings with our firm, that we should " sell the issue of four thousand of said bonds to said Collin-" son, at one hundred and thirty-eight pounds one shilling and " ten pence sterling for each bond, and that our firm should " account to the said railroad company for them when we re-" ceived payment for the same at the price of one hundred " pounds sterling for each of said bonds, less five per cent., " and that the said thirty-eight pounds one shilling and ten " pence sterling on each of said bonds should belong to and " be the property of our firm to indemnify us for such extra-" ordinary expenses of such negotiations as we might find it " necessary, *as we might find it necessary*, to incur by reason of " the attacks that were being continually made upon the " character of said bonds. In pursuance of said agreement " between said Littlefield and our firm a letter, dated Novem-" ber 14, 1870, was addressed to our firm by said Littlefield, " and replied to by letter, dated November 28, 1870."

And the affidavit of Jacobus Wertheim, sworn to May 28, 1877 (fols. 4016 to 4021), made part of his deposition taken May 20, 1879 (fols. 1765 to 1771), in which all the papers in relation to the seeking of advice from Florida as to the validity of said bonds are verified, shows the same knowledge and the line of inquiry testified to by other witnesses, and that the purchasers of the bonds *acted upon this information.*

We submit that the evidences of notice, published and repeated in every way, and in every form, taking the shape of newspaper publications and official proclamations is conclusive. Not only were these sufficient to put the Dutch bondholders upon inquiry as to the validity and constitutionality of said bonds, but in fact they suspended operations in the bonds from the 29th December, 1870, until the 20th February, 1871. This, we claim, was good and sufficient legal notice. The fact that they received erroneous advice from certain sources does not relieve them. Being put upon inquiry they were *bound by the best notice they could have acquired.*

"Whenever there is a duty of inquiry, the party is charged with knowledge of every fact which by inquiry he could have learned."

Wade on Notice, Secs. 11, 24.
Kerr on Frauds and Mistakes, p.

In support of the XXXIXth assignment of error, we contend that the court erred in finding that Schutte *et al.* were the owners of any bonds, because there was no evidence before the court proving that fact. All the testimony tending to prove the ownership of any bonds was that taken in Amsterdam, which was suppressed for cause sufficiently apparent upon its face, wherefore it was excluded, and thus all the evidence of ownership of Florida State bonds on the part of Schutte *et al.* went out of the record.

There were certain papers purporting to be bonds of the State of Florida brought into court, but that was not conclusive evidence as to their ownership. Nor is there any allegation in the Schutte bill showing the number of bonds they did own. All the bill contains on the subject is in par. xi. (fol. 541–2) which alleges: "*That complainants are the owners of a large number of the said bonds issued by Governor Harrison Reed to the said Jacksonville, Pensacola, and Mobile Company, and sold by its agents, as before set forth, which bonds are numbered between number one and number three thousand two hun-*

dred." This allegation can neither be proved nor disproved with any certainty; nor could a decree *pro confesso* be entered for any fixed amount had the defendants to the bill made default of answer thereto. It is evident, therefore, that when Schutte *et al.* filed their bill, they *did not know* what bonds they owned, or *what interest* they had in the suit.

But the allegations of the bill are denied by the Western Division Company, and consequently, so far as the pleadings are concerned, the case is with the defendant.

The Schutte bill (fol. 542) speaks of certain affidavits filed, showing "the number belonging to each complainant, which " are prayed to be referred to as part of the bill." The record, however, contains no such affidavits.

The record does contain as part of the deposition of Hon. George P. Raney (fol. 1390) the petition of Willard, as the attorney in fact of Schutte *et al.*, sworn to on the 31st day of March, 1879, in which was an affidavit of said Schutte, wherein he swore that he owned just 103 bonds; the affidavit of Jans Prins, who swore he owned 20 bonds; the affidavit of Adrianus Prins, who swore he owned 11 bonds; the affidavit of Heinrich Ulrici, who swore he owned 11 bonds; the affidavit of Elias Fuld, who swore he owned 33 bonds; the affidavit of J. Borzo, who swore he owned 23 bonds; the affidavit of H. Van Booran, who swore he owned 17 bonds, and the affidavit of G. M. Boissevain, who swore he owned 84 bonds (see Supplemental Record B.). And no other affidavits ever were made part of the record, or are to be found in or about it. And they show only 308 bonds, which are the only bonds controlled by the promoters of the Memorandum Plan, on the 31st of March, 1877, when petitioning the Governor to seize and sell the roads, and are consequently the only bonds averred in the bill when filed, and the bill has never been amended.

The bonds [made part of the affidavit of Boissevain are all numbered above 3000, as follows:

3002 3009 3013 3014 3016 3017
3020 3021 3022 3023 3026 3028
3029 3034 3041 3042 3043 3045
3049 3051 3055 3058 3060 3066
3068 3069 3072 3077 3078 3080
3083 3088 3092 3094 3097 3098
3106 31.0 3113 3117 3121 3123
3124 3127 3128 3129 3130 3140
3144 3145 3146 3147 3148 3149
3150 3151 3152 3153 3154 3155
3156 3157 3158 3159 3160 3161
3162 3163 3164 3165 3166 3167
3168 3173 3177 3180 3184 3185
3771 3772 3773 3776 3084

Total 84.

The 103 bonds, part of the affidavit of J. Fred Schutte, are as follows:

7 51 89 127 179 267 291 354
386 395 424 447 457 471 480 495
539 562 580 587 674 675 677 727
742 758 790 792 813 820 974 1016
1021 1088 1160 1190 1191 1225 1278 1281
1290 1297 1373 1393 1394 1448 1454 1572
1582 1663 1677 1748 1769 1772 1799 1957
1980 1990 1996 2002 2018 2024 2036 2166
2155 2172 2206 2207 2228 2238 2241 2272
2283 2291 2302 2303 2344 2386 2389 2502
2507 2537 2561 2760 2763 2773 2806 2821
2886 2915 2936 2938 2940 3032 3037 3098
3141 3142 3143 3168 3169 3182

Total 103.

It will be seen that just 9 of these bonds are numbered above 3000.

Upon this, and *only* this presentation of bonds, the pleadings were perfected, and the proofs taken. Pending this period, and on the 26th day of July, 1878, said Schutte swore to another affidavit, showing that pending the suit he had become the owner of 447 more bonds (see folios 3779–80) and this additional accumulation of bonds by Schutte shows a block of 72 bonds numbered above 3000 (see fols. 3780–1).

The power of attorney accompanying the 447 bonds is worthy of inspection.

On the 5th of August, 1878, Schutte swore to two additional affidavits (fols. 3784–5), showing he had procured two additional lots of bonds, amounting to 58 and 39, respectively, making in all 534 that this enterprising litigant had procured since he did his first swearing, and constituting a grand total of 637 bonds.

But becoming the purchaser of these additional bonds, he did not amend his bill so as to put them in issue, and afford the Western Division Company and other defendants an opportunity to contest his title, and where and how he got them *pendente lite.* Not having amended his bill how can he get a decree for over $1,000,000, without either pleading or proof.

And just here we ask the court to observe that a very important question is presented respecting the Florida Central Company, which looks like a fraud.

The Supreme Court of Florida decided that the Florida Central Company was not liable for any of said State bonds, because there was no proof that any had been sold above 3000. It was in proof there, and again in this case, that no bonds above 2800 ever were sold by Hopkins & Co.; that those above 3000 were held by Collinson and the Dutch Syndicate to provide for the interest on the whole issue, that is 3776 bonds, due January 1, 1873 (see decree, fols. 48 to 51). But the Florida Central was not a party to that proceeding, and, of course, did not consent to dispose of its bonds for sixty per cent. of their par value, to pay interest on the bonds of the State of Florida. When the break-up occurred these bonds were unsold and still in the hands of Collinson and the Dutch Syndicate, and never were sold out of the hands of these parties.

The bill of the Western Division Company respecting the Florida Central Company, (fols. 12 to 16), avers and charges that none of the bonds above 3000 were sold, and these allegations never were denied by the answer of Schutte *et al.*, though the Dutch Bondholders, and Collinson were all made parties to that bill; John Collinson was personally served, in London, with a copy of the bill, under an order of the court (p. 93), and a decree *pro confesso*, duly entered against him (fol. 537), which never was vacated. No claim was ever asserted, from any source, to any bonds numbered above 3000 until made by J. Fred Schutte *et al.*, who started with a sworn statement that he was the owner of 103 bonds, of which only nine were numbered above 3000, which added to the Boissevain lot of 84, makes 156 of the 197 charged to the Florida Central Company, and that, too, without pleadings, proof, or any opportunity to contest the ownership of said bonds.

We submit that there was no proof of the ownership of any State bonds before the court when the decree was rendered, and that all the bonds which were in the hands of Schulte *et al.* were subject to the same notice that attached to Boissevain, Milders, Holje, Den Tex, and others, before the bonds passed from their hands. This will relieve the Florida Central Company of at least 156 of the 197 bonds decreed against it, aside from all other defenses relied upon in the court below, or here.

In addition to the forgoing, the court will see by the testimony of C. L. Chase (fols. 1571 to 1573), that as late as Dec., 1872, 2,000 of said bonds were in the hands of the Dutch syndicate, as he was informed by John Collinson. And a Mr. Mangay, one of the Dutch syndicate, told the witness that he did not think more than 500 of said bonds were held outside of the syndicate.

(See Ques. 18 to 25; fols. 1571–2.)

Now, compare this testimony with the facts that *no bonds were presented with the Sherwin petition of Sept.* 22, 1876 (fols. 144–5–6), and that less that 350 bonds were in hand on the 31st of March, 1877, when Willard presented the petition of Schutte *et al.* (Suplemental Record "B."), and it looks as if the testimony of the witness Chase is correct as to how, and by whom, said bonds were held.

And this conclusion gains force when it is seen that NOT A SINGLE BONDHOLDER *is sworn except the speculating litigant, Schutte,* whose deposition was suppressed below for manifest illegality in its manufacture.

By the XLth and XLIst assignments of error we have deemed it just and proper to insist that the disposition of

Jacobus Wertheim should have been disregarded by the court below in its findings, instead of being favorably commended upon, as at folio 1228. There were three papers imported into these suits from Amsterdam, one of which was a paper in the Dutch language, bearing the signature of Jacobus Wertheim; another was an affidavit sworn to by said Wertheim, on the 28th day of May, 1877; and the third was a proposition for the sale of bonds made part of the said affidavit marked "A." It was desirable to put these papers in evidence before the court, which could only be done by the oath of somebody in Amsterdam knowing the facts, and there was no such person accessible until the arrival of said Wertheim in Jacksonville, at the time of the trial.

Application was made in open court in the presence of Wertheim, for his examination (Judge's Minutes, fol. 3054), when he declared aloud his readiness to be examined. An order of the court was made, an examiner appointed, and an hour and a place fixed.

He was served with a subpœna, and the usual fee for witnesses in that jurisdiction left upon his knee. At the hour appointed for his examination he did not appear.

Application was made the next morning for an attachment against him.

Upon the hearing of that application, it was ruled that he must be paid mileage from the place of his landing in this country (New York City), and return, and one day's attenance, amounting to over $100, before he could be *compelled* to attend for examination.

The fees ordered by the court were paid to him, whereupon he appeared for examination, attended by counsel (the same who appeared for the Dutch bondholders in this case). He made various objections to be examined. In answer to these objections he was assured that his examination would be confined to three papers, of one of which he was the author, and the others, papers to which he had made oath.

He was finally examined *as to the three papers mentioned*, and as to nothing else, by complainants. He avoided every question in a manner which exhibited a determination not to answer. In order that the court may conveniently see just how he behaved, and how he replied, we reproduce his examination entire, omitting the colloquies of counsel (fols. 1764 to 1773).

Order for the Examination.

" Application having been made to the court for leave to " examine Jacobus Wertheim, as a witness in behalf of com- " plainants, and the defendant's solicitors consenting in open " court that such order shall be taken, it is on motion of Joseph " B. Stewart, the solicitor of the complainant

" Ordered, that the complainant have leave to examine " said Jacobus Wertheim, as a witness in its behalf, before " Joseph H. Durkee, under and pursuant to rule 67 of Equity " Practice, prescribed by the Supreme Court.

"Jos. P. Bradley,
" *Circuit Justice.*"

" Question 1. Please state your name, residence, age and " occupation.

" Answer. I am Jacobus Wertheim, Law Doctor, Barrister at " the Court of Amsterdam, and Deputy Judge of the First " District Court of Amsterdam. I reside in Amsterdam. My " age is 51.

" Ques. 2. Do you know the parties plaintiff and defendants " to this suit, or either of them, and if yea, state who?

" Ans. I desire to know who are the parties plaintiff and " defendants.

" Ques. 3. The party plaintiff is the Western Division of " the Western North Carolina Railroad Company, and the " parties defendants are George F. Drew, Governor of the " State of Florida, *ex-officio* trustee for Gideon M. Boissevain, " Adrian Isaac Mildeus, Joseph Zaddock, Doctor Nicholas " Jacob, Den Tex, J. Fred Schutte, Jan Prins and others, " known as Dutch Bondholders. Do you know any of said " parties, and if so, state who of them?

" Ans. I have heard the names of all those parties. I know " only personally Mr. Boissevain ,Mr. Milders, Mr. Den Tex, " and Mr. Zaddock, and Mr. Schutte, and Jans Prins.

" Ques. 4. What relation, if any, do you hold or occupy to " the parties named in your answer?

" Ans. They belong to the Dutch Bondholders, of whom I " am counsel.

" Ques. 5. What do you mean by Dutch Bondholders?

"Ans. I consider them those who hold Eight per Cent. " Florida bonds.

"Ques. 6. When and in what manner did you become coun- " sel for the persons whom you name as Dutch Bondholders?

"Ans. I decline to answer, because I am counsel for those " people.

"Ques. 7. When did you become counsel for the persons " whom you describe as Dutch Bondholders?

"Ans. I cannot give you the exact date, because I have not " my professional diary with me.

"Ques. 8. Please state the date as near as you can?

"Ans. I cannot, or I should have done it.

"Ques. 9. Was it as early as the year 1870?

"Ans. I don't recollect.

"Ques. 10. Can you give any date?

"Ans. I find those queries being tedious; I should have " answered if I could.

"Ques. 11. You are not able to state, then, at or about what " time you became counsel for the persons you describe as the " Dutch Bondholders; is that so?

"Ans. I have answered that question fully.

"Ques. 12. Were you, or were you not, at any time, and if " so, when, counsel or solicitor for any other persons in refer- " ence to the Florida Eight per Cent. bonds of which you " have testified, and if yea, please state for whom and " when?

"Ans. If the gentleman is acquainted with the different " documents in those lawsuits he can answer himself the " question.

"(Complainant's solicitor excepts to the answer as evasive, " and question repeated.)

"Ans. I answer the same way, and I leave it to the court " whether my answer is evasive or not.

"Ques. 13. Were you, or were you not, at any time counsel " for other parties in reference to the Florida Eight per Cent. " bonds spoken of in your previous answers, and which are " the subject matter of this suit, than those whom you describe " as Dutch Bondholders in your former answer?

"Ans. I have been counsel for a great many people; if I

" had my diary with me, I could give you all the names; as it
" is, really I cannot.

" (Complainant's counsel excepts to the answer as evasive.)

" Ques. 14. I did not ask you for any multitude of persons
" or the names which might or might not appear upon the
" diary you have mentioned, but I did ask you the simple
" question which I repeat: were you, or were you not, counsel
" or solicitor for any other parties in relation to the said
" Eight per Cent. Florida bonds than those you describe as
" Dutch Bondholders?

" Ans. I answer that I refer to my previous given answer,
" that the gentleman, if he will look at papers in the case, he
" will find for whom I am counsel; where some persons are
" not named in the papers, I am bound as counsel not to answer
" that question.

" Ques. 15. Do you or do you not know Frank R. Sherwin,
" Charles D. Willard, Henry R. Jackson, Charles H. Simonton,
" Robert Walker, Calvin H. Allen, Hubbard L. Hart,
" John Clark, or either of them, and if yea, when did you
" first make their acquaintance, and did you or not, at any
" time, and if so, when, act as solicitor or counsel for said
" parties or either of them, jointly or severally, in reference to
" said Florida Eight per Cent. bonds involved in this suit?

" Ans. I know all those gentlemen except two—that is Mr.
" Walker and Mr. Clark; I have never been, and am not at
this moment, the solicitor or counsel for any of those persons,
either jointly or severally; I consider the gentleman too good
a lawyer to ask that question only in joke.

" Ques. 16. Will you please look at the paper now shown
" you, and a copy of which I now make a part of this question,
" purporting to be a translation entitled in these words,
" 'Proposition for a settlement tendered to the holders of
" Eight per Cent. Florida bonds, by M. J. Wertheim, Attorney
" and Counsellor of Amsterdam,' which original purports
" to be in the Dutch language, and state what, if anything,
" you know about said people, and whether or not the same,
" the original was prepared by yourself?

" Witness states that being a full stranger here, and unac-
" quainted with the customs of the bar, he asks Mr. Stewart if

"he could answer that question, and he said to me upon his
"honor as a barrister, that I am bound to answer, and there-
"fore I answer.

"Ans. The document you show me is an abstract of a
"speech that I made extempore, in more than three hours, in
"a public meeting of bondholders, and is in the Dutch lan-
"guage. Some gentlemen present at that meeting made an
"abstract and printed it. My name is signed under an ab-
"stract of a report of R. Walker, ex-Receiver of the Jackson-
"ville, Pensacola, & Mobile Railroad, to certify that the said
'abstract was correct with the original copy which I had be-
"fore me. I must earnestly warn any man not to have much
"confidence in the English translation, as it is badly trans-
"lated, and there are many expressions in the translation
"which I never made, and which are not in the original Dutch
"context. The title of that document is entirely wrong, be-
"cause I have never offered a proposal of settlement, but I
"have merely given my professional opinion about the Memo-
"randum Plan signed by Frank R. Sherwin, Henry R. Jack-
"son, and Charles H. Simonton, to my clients, in a general
"meeting, I believe in April, 1877, I am not quite sure of that
"date.

"Copy received, filed in evidence, and marked Exhibit 'A,'
"Jac. Wertheim.

"Ques 17. The translation which is made part of my former
"question was made by Henry L. Thomas, the official trans-
"lator of the Dutch language of the Department of State of
"the United States Government, at Washington, D. C., and is
"such as is received as official by the Government of the
"United States. Will you please state in what respect you
"find the same inaccurate, and for that purpose please look
"at the original translation in manuscript.

"(Solicitor for Defendant, George F. Drew, Governor, &c.
"objects to the question on the ground of irrelevancy.)

"A. I decline to answer that question, being a witness and
"not a schoolmaster to correct cacographies of a United

" States translator, and much the less, because I am only " bound to give my opinion upon original papers in my own " language, and not in any foreign language, because I may " understand that language.

"Ques. 18. The original paper in Dutch, which you have testi- " to as an abstract of your speech, bears date Amsterdam, " 10th April, 1877; were you, or were you not, at that date, " counsel and advisor of the persons you describe as Dutch " Bondholders?

" Ans. I truly answered that question in my previous an- " swer.

" Ques. 19. The paper purporting to be a translation con- " tains the following language in the first paragraph: 'Having " been requested last year by certain parties in the United " States, interested in the reorganization of the railways in " Florida, to present plans, in the event of certain contin- " gencies, to holders of bonds in the Netherlands, expressed " my entire willingness to do so, on the following conditions.' " Will you please state, looking at the original in the Dutch " language, whether the same represents what you said or ex- " pressed, and state who were the parties in the United States " who had requested you to act?

" (Defendant's solicitor interposes same objection as to for- " mer question).

" Ans. Mr. Stewart promised to my learned friend, Mr. Car- " penter, yesterday, not to put before me questions which as " an honest lawyer I could not answer; I consider this a ques- " tion that I cannot answer, and therefore I decline to do it.

" Counsel for the complainant states to the witness that if " the question tended to elicit matters known to him only as " counsel, and not published to the public, he would not put " the question, but as the witness has stated that the paper in " the Dutch language was an abstract of a speech made to the " public, and the same appears to have been published in " pamphlet form and circulated to the public, he therefore sup- " posed it was not private so as to prohibit the propounding " of the question, or to come within the restriction of confi- " dential relations between counsel and client.

" Ques. 20. Will you please look at the paper shown you, a copy of which is made a part of this question, marked Jac.

"Wertheim, Exhibit 'B,' and state what, if anything, you "know about said paper?

"Ans. That is a document that one of my clients handed to "me, and was attached to and referred to an affidavit that is "signed by me.

"Ques. 21. You have spoken of an affidavit made by you, to "which the prospectus Exhibit 'B' was attached as an annex, marked 'A'; will you please look at the paper now "shown you, and state whether or not the same is the affidavit "to which you refer?

"Ans. The affidavit which you show me was made and "signed by me; I was asked by one of my clients to make "that affidavit before the United States Consul at Amsterdam; I have no objection to do so. Paper received and "marked, 'in evidence and Exhibit C,' the paper is dated "18th May, 1877.

"Ques. 22. Are the matters and things in said affidavit "stated facts within your own knowledge, or matters derived "from others, and if from others, state whom?

"Ans. I decline to answer that question.

"Mr. Stewart must be satisfied when he has the paper "signed by me.

"Ques. 23. Do you know or can you state any other matter "or thing material or of interest to the parties to this suit, "plaintiff or defendant, and if yea, please state the same fully "in your answer?

"Ans. I cannot state anything to Mr. Stewart which can be "of any use to him in this suit.

"*Cross-examination* by Henry R. Jackson, solicitor for defendant, George F. Drew, Governor, Trustee, &c.:

"Ques. 1. Do you know that Mr. Boissevain, Mr. Milders, "Mr. Den Tex, Mr. Zaddocks, Mr. Schutte are purchasers and "holders of the Florida State Eight per Cent. bonds?

"Counsel for complainant objects to the question, as introducing matter not called for in the direct-examination.

"Ans. I knew that they are holders and purchasers of said "bonds, because they told it to me personally.

"Ques 2. Are you not yourself the holder of some of the "Florida Eight per Cent. State bonds?

" Ans. I was so stupid as to invest some of my money in " the Florida Eight per Cent. State bonds; at the rate of 80½ " per cent., believing in the good faith of the State of Florida " and the managers of the railroads; I was bitterly deceived, " and I was unhappy enough to have more of these bonds out " of the inheritance of my father—not I alone, but a great " deal of widows, orphans, and charity institutionsin Holl and, " who also believed it to be a good and safe investment, are " sufferers.

" Complainant's solicitor objects to the answer as irrespon- " sive and beyond the call of the question.

" Ques. 3. Did you buy these bonds upon speculation, or as " an investment of money?

" Ans. I am 51 years old, and I have never in my life specu- " lated, not for a penny.

" Complainant's solicitor objects to the question and answer " for the reasons before stated.

" Ques. 4. Are you still the owner of these bonds, and how " many do you hold?

" Ans. I am still the owner; the bonds are here in court; " the receipts for the bonds are at home in my trunk.

" Ques. 5. Did you not purchase the bonds, upon the faith " which you gave to the Act of the Legislature of Florida, un- " der which they were issued, to the decision of the Supreme " Court of Florida which pronounced them to be constitutional " and to representations which were made, that the were se- " cured as well by lien upon the line of railroad from Jackson- " ville westward as by the statutory obligation of the State?

" Complainant's solicitor objects to the question for the rea- " sons before stated and for the further reason that the same " is leading and otherwise incompetent.

" Ans. One of my brothers, who is a stock broker, told me " at the time of the issue of these bonds that this loan was a " State loan, with the guarantee or lien upon the railroad, " so as I have stated in my affidavit of 28th May, 1877, which " Mr. Stewart has shown you, I asked that my brother if he " could prove me that, and he said yes, and took me at the " office of Mr. Holje & Boissevain, where all the official docu-

" ments and a map lay for inspection; I went there; I saw
" the papers, and I believe at that time that it was just as you
" told me, the facts are narrated in my affidavit already sub-
" mitted, marked Exhibit 'C,' Jac. Wertheim.

"I certify that the foregoing testimony of Jac. Wertheim
" was taken before me as Special Examiner on the 20th of
" May, 1879, in my own handwriting, and that all erasures, al-
" terations and interlineations made upon said testimony were
" made in the presence of the witness and before the signing
" of the same.

"JOSEPH H. DURKEE,
" *Special Examiner.*

"Jacksonville, Fla., May 21, 1879."

Having concluded his examination in chief, Mr. Wertheim was then cross-examined by counsel for Gov. Drew, as Trustee, upon matters in no wise inquired about in the direct-examination, and to which objection was made on that account.

In the midst of this the witness left the stand, and never returned to be further examined or cross-examined, or to sign his deposition.

We will abstain from any comment upon the manner of this witness, and leave it to this Honorable Court alone to judge of the degree of credibility to which he is entitled.

The document in the Dutch language, dated, April 10, 1877, written by said Wertheim, and addressed to the so-called Dutch bondholders, was translated at the State Department, and made part of his deposition, and is set forth in full at folios 1774 to 1784 of the record, to which we invite the special attention of the court. (We also bring the original, with said translation, before the court for its inspection.) By reading the paper the court will see, at once, that said Wertheim was *not* the counsel of the Dutch bondholders, as he swore, but *was* the counsel of the promoters of the "Memorandum Plan" for wrecking the Florida railroads, *to impose it upon the Dutch bondholders.*

We submit that this paper so completely contradicts the position assumed by Wertheim in his deposition as to place him in an attitude of utter discredit.

We do not overlook the fact that he is our witness. We only called him to prove papers of his own creation or verified by his oath, addressed to the public, as to which matters we were entitled to the truth as he knew it, as from any other witness. But having manifestly evaded, as he did, we have a right to be protected from his falsehoods so far as to ask the court to disregard him.

Under the XLIId assignment of error we contend that the court below erred in not allowing the Western Division Company to put in evidence the five letters of Hopkins & Co. to Littlefield, under dates of September 6, 7, 8 and 10, 1870, in contradiction of the depositions of Hopkins and Collins respectively, wherein they state that Woodfin aided in the sale of said State bonds.

As before stated, these depositions were not taken until the eve of the trial, and no opportunity afforded for the Western Division Company to see them until after the trial commenced. The application was in strict accordance with the rule respecting the production of evidenceon the hearing of the cause, when opportunity had not before been afforded.

It was not *oral*, but written evidence that was offered, and not the writing of strangers, but that of the witnesses whose testimony had just been published, as set forth in the petition for leave, referring to the contents of the letters fully.

Note.—We discover that the petition is omitted from the record, the only reference to it being in the judge's minutes (fol. 3064), and hence we cannot pursue our argument in a satisfactory manner, and leave it where it is.

By the XLIIId assignment we contend that when court found, as *it did find* (fols. 1202-3 and 6), that the stock of the Florida Central and the $960,300 *paid in the purchase* of the Pensacola & Georgia and Tallahassee Roads were purchased with the bonds of the Western Division Company, it certainly should have found that the complainant was entitled to the relief prayed, even though held subject to a prior lien in favor of the Dutch bondholders, and that it was error to dismiss its bill without any relief.

The finding of the court fully established that the misapplied funds of the Western Division Company, to an amount exceeding $1,000,000 were used in the purchase of said stock and roads, then being "reorganized" by strangers under the

"Memorandum Plan." The existence and the locality of this $960,300 were pointed out (fols. 328 to 535), which, under the repeated rulings of this court, as the fundamental law of trusts, entitled this defrauded *cestui que trust* to relief. We contend that the case stands on the exact footing of Cook *vs.* Tullis, 18 Wal., 341, cited earlier in this argument that, "it is a rule of "equity jurisprudence, perfectly well settled, *and of universa* "*application*, that where property held upon any trust to keep, "or use, or invest it in a particular way, is misapplied by the "Trustee, and converted into different property, *or is sold, and* "*the proceeds are thus invested, the property may be followed* "*wherever it can be traced through its transformations, and will* "*be subject, when found in its new form, to the rights of the* "*original owner, or cestui que trust.*"

This, we contend, is precisely the case at bar. That, like this, was for the misuse of bonds. The bonds have been traced. The eye of the court is fixed upon the property purchased, and the same relief was certainly due this defrauded *cestui que trust*. It was not proper to treat the Western Division Company as the offending party, and grant it no relief, when, according to the findings of the court as they stand, it was a second *lienor*, but *condemned without day. We think this was error.*

The XLIVth assignment of error presents rather a technical than a substantial error—but an error nevertheless.

The case, as tried, was upon the Western Division Company's bills, and the answer and cross-bill of Schutte *et al.* But the cross-bill was simply a mode of defense, and could not change the title of the cause. Any decree in the case, therefore should have been entitled in the Western Division Company's suits.

Under the XLVth assignment of error, we earnestly contend that when the court decided that the right to sue on the part of Schutte *et al.*, was not founded upon the general principles of equity, but stood wholly upon the statute (fol. 1230), wherein they had an adequate remedy at law, it divested itself of jurisdiction and should have dismissed the bill of Schutte *et al.*

We insist that a statute declared unconstitutional and void cannot be enforced by any process known to the law, and that the real and only remedy of Schutte *et al.*, was an action at law to recover the money they paid for these void bonds.

By the XLVIth assignment we contend that the court below erred in granting some $15,000 too much against the Florida Central Company, and about $200,000 too much againt the Jacksonville, Pensacola, and Mobile Company, even upon *its own theory* of the facts and for this reason at least, must be returned for correction.

By the XLVIIth assignment of error we contend that the court below erred in decreeing that the bonds of the State of Florida, adjudged to be unconstitutional and void, should be paid as the consideration of the purchase of said railroads under the decree in this case, for the reason that such bonds cannot constitute a lawful consideration for the purchase of anything, and for the further reason that the decree violates the positive provision of the 3d section of the statute the court pretended to be executing, which provides that said roads shall be sold for "lawful money of the United States, *and for nothing else.*" We do not believe these void bonds are "lawful money of the United States."

Under the XLVIIIth assignment we contend that the court should have decreed that the bonds of said companies were made payable to the State of Florida, and so not negotiable; that whatever lien or liability it was *possible* for them to create was in favor of the State alone, and that since the State had given no value for them, they should be delivered up to said companies to be cancelled.

The Dutch bondholders could not by any means, be placed in a better position than the State itself in this transaction, so far as we are able to learn. And the State can have no standing in either a court of law or equity to enforce these State bonds.

The record shows that full knowledge of the illegal and fraudulent character of these bonds was had by—was accessible to Schutte *et al.*, and of course they speculated at their peril.

Before concluding, we wish to avail ourselves of another ground of error which we omitted to assign in its order. And that is that it was error in the court below not to find, as the truth is, that said Schutte *et al.* knew that the interest which was paid on the State bonds was *not* provided by the State of Florida, as falsely alleged in their bill (fol. 542), wherein it is stated:

> " That interest was paid on said bonds after they were sold
> " up to January 1, 1873, semi-annually, by a trust company in
> " the City of New York, which was appointed by the Governor
> " of Florida as the fiscal agent of the State to pay such inter-
> " est; that the said Governor gave notice to the holders of
> " such bonds of such appointment; *that it was represented to*
> " *the person who dealt in said bonds, including complainants, that*
> " *the money for the payment of such interest was provided by the*
> " *State.*"

Not a syllable of proof exists to prove this averment. It was known, or *should have been known*, to be untrue when it was made.

To prove this it is only necessary to look at the account of sales put in evidence by Schutte *et al.*, themselves, by their witness Hopkins & Collins (fol. 2859). This account shows that the allegations was made either in ignorance or bad faith.

We have before shown that on the 18th of January, 1871, the Dutch Syndicate were notified by the Governor of Florida that the bonds were "*recently recalled by the company; no provision will therefor be made for interest.*"

It is evident, therefor, that the *speculators* in these bonds were advised at that date, not only that the State was not paying any interest, but that *it did not intend to pay any.*

In addition to this sufficient information and notice, the Dutch Syndicate (which included Schutte *et al.*) knew perfectly well that the money to pay the interest on each bond as sold, from and after the 20th day of February, 1871, was deducted from each sale of bonds as made for as much as two years.

That is to say, a $1,000 bond was sold for $500 to the *combination* or *syndicate*, composed of Collinson, Hopkins & Co., Boissevain, Milders, Zaddock, Stoop, Mangay, and others (see deposition of Pierce, fol. 2027) and the interest then and there, and by them deducted from each sale, and deposited with Drake, Kleinwort & Cohen, until £67,506 6s. 1d., or say $337,550 was so deducted and deposited.

Thirty per cent. of the proceeds of the bonds being deposited to pay interest, with the knowledge of the Dutchmen, and not a dollar provided by the State of Florida, or any one else in New York, as charged in the Shutte bill.

Again:

The so-called consent decree in England (Exhibit H, to Western Division Company's bill, fols. 48 to 50) also reserved £31,800, to pay the interest on the whole 3,776 bonds due January 1871, which was well known to said *syndicate*.

These facts completely disprove the allegation of Schutte *et al.*, that the interest was provided by the State of Florida, and paid through a trust company in New York.

For these, among other good and sufficient reasons, the decree appealed from should be reversed, the bill of Schutte *et al.* dismissed, with costs, and the relief prayed by the Western Division Company fully decreed.

Jos. B. Stewart,
Sol. for W. D. Co.

Supreme Court of the United States.

OCTOBER TERM, 1880.

No. 667.

THE FLORIDA CENTRAL RAILROAD COMPANY, APPELLANT,

vs.

J. FRED. SCHUTTE ET AL.

No. 668.

THE JACKSONVILLE, P. & M. RAILROAD COMPANY, APPELLANT,

vs.

J. FRED. SCHUTTE ET AL.

No. 669.

THE WESTERN NORTH CAROLINA RAILROAD COMPANY, APPELLANT,

vs.

GEORGE F. DREW, GOVERNOR ET AL.

These are appeals from decrees of the Circuit Court of the United States for the Northern District of Florida.

CASE.

There was a continuous line of railroad in Florida, extending from Jacksonville, on the St. John's River, westward to Quincy, with branches to St. Mark and Monticello. From Jacksonville to Lake City was owned by the Florida Central Railroad Company, and from Lake City to Quincy, with branches to St. Mark and Monticello, was owned by the Jacksonville, Pensacola and Mobile Railroad Company; but the whole road from Jacksonville to Quincy, and branches, was operated as one road by the J. P. & M. Company—both roads being a part of the system of internal improvements adopted by the State of Florida.

By an act of the Legislature, the Governor of the State was authorized to exchange the bonds of the State with the railroad companies, dollar for dollar, to the amount of $16,000 per mile on any part of the road between Jacksonville and Quincy; the bonds of the companies to be a statutory lien upon the roads to secure the payment of the State bonds. This exchange was made: $3,000,000 on the J. P. & M. road, and $1,000,000 on the Central road; and the State bonds delivered to said companies were sold in Holland to the amount of $3,206,000.

At the May Term, 1879, of the court below, there were three causes in equity pending in said court, as follows:

(1.) The Western Division of the Western North Carolina Railroad Company *vs.* George F. Drew, Governor, &c., The Florida Central Railroad Company and others, to cancel said bonds issued by the Central Company. Certain of the Dutch Bondholders were named as defendants, but were not served. (R., p. 1.)

(2.) The same complainant *vs.* George F. Drew, Governor, &c., The J. P. & M. R. R. Co. and others. This suit was brought to cancel the bonds issued by the J. P. & M. Railroad Company. Certain of the Dutch Bondholders were named as defendants, but not served. (R., p. 40.)

(3.) J. Fred. Schutte and others, the Dutch Bondholders, against both Railroad Companies and the Trustees of the Internal Improvement Fund.

This suit was brought to have it declared that the holders of the State bonds had a lien on the roads to the amount of the bonds held by them, and to have the roads sold to satisfy the same. (R., p. 201.)

The court (Record, p. 547) ordered that the Dutch Bondholders should enter appearance in the suits Nos. 1 and 2, as condition to obtaining the relief prayed by them in No. 3, and they did so. (Record, pp. 547, 548.)

These causes were *not consolidated*, but, relating to the same subject-matter, they were heard at the same time.

In No. 1 the court rendered final decree dismissing the bill, and the complainant—The Western N. C. Company—appealed.

Decree, *Record*, p. 550.
Appeal, *Record*, p. 549.

In No. 2 the court rendered final decree dismissing the bill, and the complainant—The Western N. C. Company—appealed.

Decree, *Record*, p. 550.
Appeal, *Record*, p. 549.

In No. 3 the court rendered final decree ordering a sale of the roads to satisfy the lien of the bonds, and the Railroad Companies, defendants, appealed.

Decree, *R.*, 578.
Appeal, *R.*, 549.

The clerk of the court below, instead of sending separate records in the three causes, has mingled the records of all the causes and sent them in one bundle.

Record, p. 1309.
Record, p. 1469.

This makes it necessary to state the condition of the pleadings in each cause.

No. 1.

The bill was exhibited by the Western Division of the Western North Carolina Railroad Company against Geo. F. Drew, Governor, &c., the *Central Railroad Company*, four of the Dutch Bondholders, and others.

The bill set forth—

(1.) That the complainant was the equitable owner of 4,370 shares of the capital stock of the Central Company.

(2.) That the bonds of the Central Company, which were exchanged for the State bonds, were illegally—that is, without legal authority—issued. That the bonds of the company are void for various irregularities in their execution.

(3.) The exchange of the company's bonds for the bonds of the State.

(4.) That the Governor and Treasurer of the State claim that the bonds of the company in their hands are valid, and will sell the road of said company to pay the same unless restrained, &c.

(5.) Various reasons why the Governor should not sell the road.

(6.) Prayer for injunction, and for discovery, &c., and that the bonds be declared void, and returned to the company.

The bill does not set out any fraud committed by the Dutch Bondholders, nor does it allege that they are not *bona-fide* holders of the bonds; nor does it show any reason why the complainant, even conceding it to be a stockholder, has any right to maintain a suit; as, for instance, that the company, of which the complainant is stockholder, has in any particular *refused* to protect its interest, or is acting in collusion with the Dutch Bondholders, or in *bad faith* in any way.

Before the hearing, the complainant corporation having been dissolved by act of the Legislature of North Carolina, and the Western North Carolina Railroad Company made its successor, the latter company filed bill of revivor, and the cause proceeded to final hearing and decree in its name. The bill was dismissed at the final hearing.

Act dissolving complainant company, R., p. 953.
Bill of revivor, R., p. 223.
Decree dismissing bill, R., p. 578.

No. 2.

Is a bill by same complainant against the J. P. & M. Company and others, and is similar in all respects, and was revived in the same way, and proceeded to final hearing and decree in the name of the successor company, the Western North Carolina Railroad Company. At the final hearing this bill was also dismissed.

No. 3.

This bill was exhibited by the Dutch Bondholders against both railroad companies of Florida and Trustees of the Internal Improvement Fund, to have their lien declared and the roads sold to satisfy the same. The court rendered decree of sale according to the prayer of the bill.

Bill, R., p. 201.
Decree, R., p. 578.

This brings us to a statement of the real controversy involved in this litigation, and to comprehend it, a chronological statement of the principal facts is necessary. For this purpose we have taken the statement of facts as recited in the opinion of the court, giving reference to the record for the documents referred to.

There was a railroad company in Florida called the Pensacola and Georgia Railroad Company, and another called the Tallahassee Railroad Company; both companies had received aid from the Trustees of the Internal Improvement Fund; and a lien existed on both roads, which was foreclosed, and a sale of both roads took place on 20th March, 1869. Dibble and associates became the purchasers of both roads at this sale, and paid part of the purchase-money in the bonds of the respective companies, which constituted the lien upon the roads to pay which the sale took place; and a part of the purchase-money was not paid at all; and this unpaid balance constitutes the lien upon the property of the J. P. & M. Co. which is saved and protected by the decree in No. 3, the Schutte case *vs.* the Railroad Companies.

The claim made by the North Carolina Company is that the bonds which were used by F. Dibble and his associates in payment of the bid for the two railroads in question, namely, that of the Pensacola and Georgia Railroad Company and that of the Tallahassee Railroad Company, were furnished to them by George W. Swepson, and that Swepson procured the same by a fraudulent use of money in his hands, produced by the sale of North Carolina State bonds belonging to the Western Division of the Western North

Carolina Railroad Company, of which he, Swepson, was president. After the roads were bid off at the said sale thereof by the Trustees of the Internal Improvement Fund, and before any payment was made on such bid, the purchasers, F. Dibble and his associates on one part, and Swepson on the other, entered into a written agreement, dated March 26, 1869, by which, after reciting the fact of the sale and the amounts respectively bid for said railroads, it was, amongst other things, agreed that Swepson should deliver, as he should come into possession thereof, to be surrendered to the Trustees of the Internal Improvement Fund, the first mortgage bonds of said roads purchased by him, amounting to about $900,000 of the Pensacola and Georgia bonds, and about $150,000 of the Tallahassee Railroad bonds—the former to be surrendered at par, and the latter at their *pro rata* of the amount bid for said road at said sale, and the balance of the purchase-money to be supplied by said F. Dibble and his associates. Secondly, it was agreed that as soon as might be after the title should be acquired from the Trustees, first mortgage bonds should be issued, secured by a mortgage or trust deed on said roads, their equipments and franchises, to be given to said F. Dibble and Swepson, as trustees. Thirdly, it was agreed that the bonds so to be issued should be delivered to Calvin B. Dibble and George W. Swepson, to be sold or negotiated, and the amount thereof for that purpose should be paid to George W. Swepson, to reimburse him for the amount of money paid out by him in purchasing the first mortgage bonds aforesaid, and for commissions and attorney's fees, together with interest, and the additional sum of $100,000. Fourthly, it was agreed that the stock was to be divided and owned as follows: Swepson to have one-third, Calvin B. Dibble to have enough with Swepson's share to constitute a majority, and F. Dibble and his associates to have the remainder. Fifthly, it was agreed that Swepson should appoint four directors;

F. Dibble and associates, four, and that Calvin B. Dibble should be the ninth director, which arrangement was to last until Swepson was fully paid. (R., p. 291.)

In pursuance of this agreement, Swepson shortly after furnished the first mortgage bonds, which were delivered to the Trustees of the Internal Improvement Fund, namely, $806,600 of the Pensacola and Georgia Railroad bonds, and $153,700 of the Tallahassee Railroad bonds, in all $960,300 of said bonds, leaving still due as aforesaid the sum of $472,065. The deeds for the property were executed by the trustees, in the name of the purchasers, on the 8th of April, 1869, but delivery of them was withheld until the balance should be paid. An arrangement was made that two of the trustees should go to New York with the deeds, and there receive the said balance in cash. A worthless check was palmed off upon the trustees, who gave a receipt for the amount and delivered the deeds. In the consummation of this device Swepson bore the principal part. The deeds were subsequently recorded in Florida, on the 22d day of April, 1869. On the same day Dibble executed to Swepson a trust deed as security for the fulfillment of the engagements entered into by the agreement of 26th of March, which trust deed was never recorded, its purpose being accomplished by carrying out the arrangement contemplated. This trust deed recited that Swepson had paid for Dibble and associates, in purchase of said roads, bonds to the amount of $960,300, and that he had paid to the trustees for the same parties the sum of $472,065, being the full amount due for said roads; it also recited the engagements of Dibble made in the agreement of 26th March, and after formally conveying the property of the two railroads as conveyed by the trustees to Dibble, it declared the object of the trust deed to be to enable Swepson—which he bound himself to do—to convey the same to the corporation to be formed, consisting of Dibble and his associates, as soon as they should have granted to them such or similar relief as the Legislature had granted William E. Jackson and his associates by the act of July 29th, 1868; it was also declared to be for the purpose of securing Swepson in all advances made as specified and agreed upon in the agreement of March 26th, 1869, and the advancement of said sum of $472,065 until such time as said relief shall have been granted, and said Swepson should have conveyed said property to said corporation. (R., p. 62.)

The counsel for the North Carolina Railroad Company places great stress on this trust deed, insisting that it inured to the benefit of the said company, whose money had been fraudulently used by Swepson in purchasing the $960,300 bonds; and that it conveyed the legal title of the property to Swepson, in whom it still remains, inasmuch as he never executed any deed in pursuance of the trust. But this trust deed was never recorded, and was never heard of by any of the parties to these suits until since the commencement thereof; and as all the terms of the deed were complied with which made it the duty of Swepson to convey the property to the company thereafter formed, and as the title was sufficiently transferred to the company in other ways, it is to be presumed that this deed was either looked upon by the parties to it as having no further office to perform, or the execution of a deed in pursuance thereof was purposely omitted, in order to perpetrate further frauds on some other innocent parties.

The fact is, that an act was soon after procured similar to the act passed in behalf of William E. Jackson and his associates, in relation to the Florida Central Railroad, and bonds were given and the stock was disposed of amongst the parties in accordance with the agreement of March 26, 1869. The act referred to was passed on the 24th day of June, 1869, and is entitled "An act for the relief of Franklin Dibble, A. Huling, E. M. Cheney, and their associates, purchasers of the railroad from Tallahassee to St. Mark's, and of the railroad from Quincy to Lake City, and incorporating the Tallahassee Railroad Company." It recites the sale of the two roads on the 20th day of March, 1869, by the Trustees of the Internal Improvement Fund, to Franklin Dibble, A. Huling, E. M. Cheney, and their associates; and that it was essential for the interests of the people of Florida that the parties aforesaid should be invested with such corporate powers as were needful for the operations of said road, as well as more accurately to define their powers and duties. It then enacted as follows:

"SECTION 1. That the said Franklin Dibble, A. Huling, E. M. Cheney, and their associates, and their successors and assigns, are hereby made a body politic and corporate, under the name of the Tallahassee Railroad Company, and they, their successors and assigns, as such body politic and corporate, are hereby vested with and shall be entitled to exercise and enjoy the like powers, franchises, and privileges as were granted to the Pensacola and Georgia Railroad Company and to the Tallahassee Railroad Company by the several acts incorporating said Pensacola and Georgia Railroad Company and said Tallahassee Railroad Company, and with the right to hold, operate, and enjoy the said railroad, under the name of the Tallahassee Railroad Company, subject to the conditions annexed to the sale of said roads by the Trustees of the Internal Improvement Fund, and by and in the name of the Tallahassee Railroad Company they, their associates, successors, and assigns may purchase, receive, and hold lands and tenements, goods and chattels of whatsoever character that shall be necessary or useful for the purposes of said railroads, and the same to grant, sell, mortgage, or dispose of, and to sue and be sued, implead and be impleaded, to make common seal and at pleasure to break and alter the same, and to establish and put in execution such by-laws and regulations as may be necessary and expedient, not inconsistent with the Constitution and laws of the State of Florida.

"SEC. 2. *Be it further enacted*, That the provisions of the act incorporating the Pensacola and Georgia Railroad Company for the protection of its roads from trespass, injury, or intrusion, and providing for the punishment of persons who shall trespass upon or injure the same, be, and they are hereby, made applicable to all cases of trespass, injury, or intrusion on, to, or upon the aforesaid railroads, and the said Tallahassee Railroad Company shall be entitled to all the benefits and protection thereof and therefrom.

"Sec. 3. *Be it further enacted*, That said Franklin Dibble, A. Huling, E. M. Cheney, and their associates shall be entitled to declare the amount of which the stock in the said Tallahassee Railroad Company shall consist, and to divide the same into shares, which shares, however, shall not be less than one hundred dollars each.

"Sec. 4. *Be it further enacted*, That said Tallahassee Railroad Company may, when they shall see fit, rent, lease, farm out, or sell any part of the said railroad to any person or persons, corporators or corporations, upon such terms as may be agreed on; provided said sale, renting, or leasing shall not be made to any person or persons or corporation owning any railroads out of the State of Florida.

"Sec. 5. *Be it further enacted*, That the board of directors of the said Tallahassee Railroad Company shall consist of nine directors, of whom the president of said company shall be one. The first directors shall be elected or appointed within one month after the passage of this act, and annually thereafter, at such time as may be fixed by resolution or law; but the said company shall not be dissolved for failure to elect or appoint its directors so long as the said railroads shall be kept running and in operation, but the directors may be elected or appointed at the next meeting thereafter.

"Sec. 6. *Be it further enacted*, That said company shall have the right to issue coupon bonds in such denominations and at such rate of interest, annual or semi-annual, and payable at such time and place as they may determine, and may secure the same by mortgage on said railroads, their equipments, depots, workshops, property, and franchise, executed in such form and manner as may be determined: *Provided*, That any deed of trust, mortgage, conveyance, bond or bonds, or security which may have been executed, made, created, or contracted for as a lien on said railroads or otherwise by said Franklin Dibble, in behalf of himself and his associates, prior to the passage of this act, shall be valid and effectual to all intents, either at law or in equity, as a lien or mortgage or security on said railroad, as if the same had been made by virtue of this act, and shall in nowise be affected by any provisions thereof.

"Approved, June 24, 1869." (*Record*, p. 69.)

It was the purpose of this statute to clothe with corporate powers the said Dibble and his associates *as purchasers and owners of the roads*, and that no further conveyance from them to the corporation into which they were constituted was contemplated. As a corporation, they are invested with the rights to hold, operate, and enjoy the said railroad, under the name of the Tallahassee Railroad Company; and in the enjoyment thereof, free from molestation, they are to have the benefit of the provisions of the original charter of the Pensacola and Georgia Railroad Company. Instead of a subscription to capital stock, they are authorized to declare the amount of which the stock shall consist, and to divide the same into shares. They are authorized to lease or sell the "said railroads and to issue coupon bonds and secure the same by mortgage on said railroads, their equipments, franchise," &c. The counsel for the North Carolina Company supposes that the concluding part of the last section was a notice to any person dealing with the corporation of the trust deed executed to Swepson. But this does not follow. That deed is not mentioned, and the provision itself is a proper one to prevent the operation of the act in transferring the title to a new personality from affecting the previous conveyances or mortgages—which it might be thought to do. Such previous conveyances or mortgages, however, would stand on their own inherent validity and effect, and would not, if unrecorded, operate to the prejudice of those dealing with the company without notice of them.

But the parties did not stop here. Fearing that the title so conferred by the statute might be questioned, a deed of confirmation and release was subsequently executed by

Dibble and his associates to the Tallahassee Railroad Company. It is not dated, it is true, except by the year, (1870,) but that does not interfere with its effect and operation. Having to be executed by a number of parties and their wives, it is probable that the date was left to be inserted when it was completed, and was then overlooked.

Record, p. 952.

The statute and this deed of confirmation and release are sufficient for the protection of all parties dealing with the company, without any knowledge of the trust deed to Swepson.

It is pertinent to remark that the North Carolina Railroad Company, in its original bill, which is sworn to, expressly and without qualification states that the railroads were duly conveyed to the corporation. The averment is as follows:

"That pursuant to said acts of incorporation, or one of them, the said Franklin Dibble and associates did convey and transfer said Pensacola and Georgia and Tallahassee Railroads according to the terms of said trust agreement, when, and from and after which time the said Pensacola and Georgia Railroad and the said Tallahassee Railroad, as separate properties, and the said Tallahassee Railroad Company, as incorporated in the name of said F. Dibble and associates, on the same 24th day of June, 1869, became and now are the railroad owned by the corporation defendant, the said Jacksonville, Pensacola and Mobile Railroad Company, as aforesaid." (Record, p. 43.)

It is true the complainant obtained leave to amend its bill by adding an averment that no such title ever was conveyed to the corporation. Had this positive averment in the original bill been called to the attention of the court, it is doubtful whether the amendment would have been allowed. Standing as it does, however, in the bill, it shows that it was always the understanding of all parties that the title of the roads had been regularly passed to the corporation.

The Tallahassee Railroad Company being duly organized according to the plan proposed by the parties, took possession of the railroads and operated or leased them to others. It maintained a separate existence for only eleven months, when it became amalgamated with the Jacksonville, Pensacola and Mobile Railroad Company, as will be mentioned hereafter.

It appears that its officers executed bonds to the amount of $1,500,000, which were delivered to Swepson, but were never used, and, if still in existence, have never been regarded as *bona fide* or valid issues of the company; being superseded by subsequent transactions, effected by and through the Jacksonville, Pensacola and Mobile Railroad Company, after the two companies were consolidated. No relief based upon these bonds is sought by any of the parties.

We are next brought to the consolidation of the Tallahassee Railroad Company with the Jacksonville, Pensacola and Mobile Railroad Company. The charter of this company was granted by the Legislature of Florida on the 24th day of June, 1869, by an act entitled "An act to perfect the public works of the State." As this act as amended has an important bearing on the questions to be decided in these cases, we state the substance thereof in some detail. (R., p. 69.) The corporators were George W. Swepson, Milton S. Littlefield, J. P. Sanderson, J. L. ReQua, and William H. Hunt. The company was authorized to construct a railroad from Quincy, the terminus of the Pensacola and Georgia Railroad, westward to the Alabama line, in the direction of Mobile, touching certain specified points. To aid the company in the construction and equipment of its road, by the 9th section of the act as amended, in January, 1870, the Governor of the State was directed to deliver to the president thereof coupon bonds of the State to an amount equal to $16,000 per mile for the whole line of road and length of railroad owned by, or belonging to, the company, in exchange for first mortgage bonds of said company, when the president should certify upon his oath that the road or parts of the road were completed and in good running order.

Laws Extra sess., 1869, *p.* 29.

By the 10th section of the act it was provided that, in exchange for the bonds of the State, the president of the company should deliver to the Governor coupon bonds of the company, payable to the State of Florida, signed by the president, sealed with the corporate seal, and payable at the same time and place as the State bonds.

By the 11th section, as amended by the act of January 28, 1870, a statutory lien was given to the State, valid as a first mortgage duly registered, on the part of the road, for which the State bonds were delivered, and on all the property of the company appertaining to that part of the line which it might then have or thereafter acquire, together with the powers and franchises, &c.; and on failure of the company to pay either principal or interest, for twelve months after due, the Governor was empowered to enter and take possession of said property and franchises, sell the same at public auction; and it was directed that all moneys arising from such sale should be promptly and exclusively applied to the payment and satisfaction of the bonds issued by the State, or if the bonds should not be presented, to be invested, and held by the State of Florida, as trustee for the bondholders, until they should demand the same, and then to be paid to them by the treasurer.

By the 14th section of the act, it was declared that it should be lawful for the several companies owning the road or parts of roads from Quincy to Jacksonville, from Tallahassee to St. Mark's, and the branch to Monticello, or either of them, by a vote of the owners of a majority of the stock in interest, and with the consent of the owners of a majority of the stock in interest of the Jacksonville, Pensacola and Mobile Railroad Company, to consolidate with the latter company, so as to become one corporation under its name, on such terms as might be agreed on; and after such consolidation, the Jacksonville, Pensacola and Mobile Railroad Company were authorized to raise money by way of mortgage, &c., of the railroad and property, franchise, and effects acquired by such consolidation, and issue coupon bonds; and to each of said companies was granted the same privileges as those granted to the Jacksonville, Pensacola and Mobile Railroad Company.

By the fourth section of the amended act of January, 1870, it was enacted that the Governor should, for the purpose of aiding the Jacksonville, Pensacola and Mobile Railroad Company in the speedy construction of its road, deliver to the president of said company coupon bonds of the State to the amount of $16,000 per mile upon receiving from the president of the company first mortgage bonds of like amount on any part of the road between Quincy and Jacksonville; but not for a greater length than one hundred miles of any part of railroad between Quincy and Jacksonville; provided the said railroad company or companies should not issue first mortgage bonds to a greater amount than $16,000 per mile.

Under the fourteenth section of this act the Tallahassee Railroad Company, on the 25th day of May, 1870, was consolidated with the Jacksonville, Pensacola and Mobile Railroad Company by the unanimous vote of the stockholders of both companies. From the minutes of the stockholders' meeting on this occasion, it appears that Littlefield, who had succeeded to Swepson's interest, held 18,000 shares of the 30,000 of the Tallahassee Railroad Company, and 9,930 of the 10,000 shares of the Jacksonville, Pensacola and Mobile Railroad Company, and that by the consolidation the stock of the two companies was increased to 60,000 shares, of which Littlefield held 38,433. The consolidated company was duly organized, and the road from Quincy to Lake City went into its possession.

Record, pp. 1327, 1328.

The effect of this consolidation was to vest in the consolidated company the property and franchises of both the companies who were parties thereto.

The North Carolina Railroad Company must seek for the enforcement of any equities it may have by reason of the misappropriation of its moneys by Swepson and Littlefield, through its right to the interest which they acquired as stockholders in the Jacksonville, Pensacola and Mobile Railroad Company. So far as the public was concerned, Littlefield was the apparent owner of this stock. In dealing with the company the public had a right to regard him as the owner of the stock. The corporation could only act by its officers. The action of those officers, unless known to be fraudulent, bound the company and its stockholders, and all those who claimed any equitable interest in the stock. If the North Carolina Railroad Company knew of the destination which its moneys had taken, and suffered Swepson and Littlefield to retain possession of the stock and control of the Florida corporation, they must abide by their acts as such. It had a remedy in the Florida courts to prevent the continuance of this state of things, and if it did not choose to resort to this remedy, it must not call third parties in question for dealing with the corporation as a duly organized body capable of transacting business.

Under the powers conferred by its charter, and the amendments thereto of January 28, 1870, (Laws 3d Sess., 1870, p. 9,) the Jacksonville, Pensacola and Mobile Railroad Company executed its bonds to the State of Florida in May or June of that year to the amount of $3,000,000, and received therefor the bonds of the State to the same amount, which were delivered to the president of the company, M. S. Littlefield, for disposition and sale thereof. Littlefield had already, by an agreement executed on the 13th of April, 1870, made an arrangement with S. W. Hopkins & Co., of New York and London, to dispose of the bonds which he expected to receive from the State on account of the Jacksonville, Pensacola and Mobile Railroad Company. This agreement is set out in the pleadings. It purports to treat for $4,000,000 of State bonds to be issued to the railroad company. It will be seen that $1,000,000 were contemplated to be issued by the Florida Central Railroad Company, of which Swepson had the control. Only three days after this arrangement with Hopkins & Co. to dispose of the bonds not yet issued, Swepson and Littlefield, whose speculations had now been discovered by the agents of the North Carolina Railroad Company, entered into an agreement with them for a participation in the proceeds of these Florida State bonds. This agreement was made at the city of Washington on the 16th day of April, 1870. It is as follows:

MEMORANDUM

of agreement and settlement between the Florida Central Railroad Company, George W. Swepson, President, and the Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefied, President, and Milton S. Littlefield, majority owner of the stock of said companies, and also of the stock of the Tallahassee Railroad Company, of the first part, and the Western Division of the Western North Carolina Railroad Company, represented by N. W. Woodfin, W. G. Candler, W. Pink Welsh, and W. W. Rollins, commissioners appointed by an act of the Legislature of North Carolina, approved by the stockholders of said corporation, of the second part:

Witnesseth, that whereas George W. Swepson, late President of the Western Division of the Western North Carolina Railroad Company, made certain investments of the funds of said company in securities of and interest in the said Florida Central Railroad, Jacksonville, Pensacola and Mobile Railroad, and the Tallahassee Railroad, of the said State of Florida, as per report made by the said George W. Swepson to the said commissioners, amounting in the aggregate to the sum of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, to bear interest from the first day of November, 1869, at the rate of eight per cent per annum; and

Whereas the said George W. Swepson heretofore conveyed to the said Milton S. Littlefied, subject to the payment of the above-recited claim, his interest in the above-recited railroads; and

Whereas the said Littlefield has received authority from the Legislature of the State of Florida and the several railroad companies to receive bonds to be issued by and for account of the several railroad companies, which bonds are to be exchanged for the bonds of the State of Florida, to be issued for the purpose of aiding the finances of the said several railroad companies, all of which bonds are now in a state of preparation; and

Whereas the said Milton S. Littlefield has made a contract with S. W. Hopkins & Co., No. 71 Broadway, for the disposition of said bonds as the same may be issued, the proceeds of the issue of the bonds of the Florida Central Railroad Company of the said State of Florida, amounting to nine hundred and sixty thousand dollars, are to be applied to the payment of the existing liabilities of the said several railroad companies, including the sum of one hundred and fifty thousand dollars to be paid to the commissioners aforesaid for the purpose of paying existing liabilities of the said Western Division of the Western North Carolina Railroad Company.

It is understood and agreed by the parties of the first and second parts, that the proceeds of the sale of the said bonds so to be issued by the said Florida railroad companies and the said State of Florida, are to be equally divided, dollar for dollar, between the Western Division of the Western North Carolina Railroad Company and the said Florida railroads, and as the commissioners aforesaid receive by this first sale of bonds only the sum of one hundred and fifty thousand dollars, it is further understood and agreed, that out of the proceeds of the sale of the issue of the bonds of the Jacksonville, Pensacola and Mobile Railroads there is first to be received by the commissioners aforesaid a sum sufficient to be equal to the amount received by and on account of the said Florida railroads, and then an equal amount is to received by the said commissioners and the said Florida railroads, dollar for dollar, until the entire amount of one million two hundred and eighty-seven thousand four hundred and thirty-six dollars and three cents, with interest at eight per cent., as aforesaid, being the sum reported by the parties of the first part as due to the Western Division of the Western North Carolina Railroad, is fully paid.

It is further understood and agreed by the parties of the first and second parts, that all the interest owned or claimed by the said parties of the first part, George W. Swepson and Milton S. Littlefield, or which they, as individuals, have a right to control in the said Florida railroads, are hereby *pledged* for the faithful fulfillment of this contract, without the right on the part of any party to interfere with our management or control of the affairs of the road.

(Signed) George W. Swepson,
President Florida Central Railroad Company.
M. S. Littlefield,
M. S. Littlefield,
Witness: *President J., P. & M. Railroad Company.*
M. W. Ransom.
R. R. Swepson.

N. W. Woodfin,
W. W. Rollins,
W. G. Candler,
W. P. Welch,
(Record, p. 1223.) *Commissioners.*

Upon this branch of the subject the Circuit Judge expressed his opinion as follows:

Opinion. (*Record, p. 568.*)

"After reading this agreement, it seems to me impossible to contend that the North Carolina Railroad Company did not accept the situation, and acquiesce in the organization of the Florida Railroad Companies by Swepson and

Littlefield, the issue of stock therein to them, and the issue of the bonds in question in this suit.

"It has been strenuously argued by the counsel of said company that the issue of these bonds was a fraud upon it, and done without its knowledge, and against its interests and will. On the contrary, the fact is plain, that the North Carolina Company acquiesced in their issue, and stipulated for a large portion of the proceeds of the sale thereof. If a fraud was committed in the issue of these bonds, it was rather committed on the State of Florida and on the small minority in interest of the other stockholders of the Florida companies; and it is hardly possible to refrain from observing that the North Carolina Company itself was a *particeps criminis.* What right had that company to make a private stipulation with Swepson and Littlefield, its own officers and agents, to take to its own use the proceeds of bonds issued by the State of Florida with the fond, but mistaken, expectation that they should be employed in developing its own resources upon its own soil?

"It is idle to contend that the North Carolina corporation was not represented in this transaction. The authority of the commissioners appointed by the Legislature of North Carolina to act in behalf of the company cannot be questioned. The State was much the largest stockholder, and the Legislature had repealed the charter of the company on the 14th of February preceding, and had appointed these commissioners to settle up its affairs. They were the only representatives of the company then existing. Littlefield himself was president of the company at the time of the repeal of its charter, and Rollins and Candler were directors. The commissioners acted in the company's name, and no one can justly challenge their right so to do. Besides, from that time onward, throughout the year 1870, and afterwards, the same commissioners continued to represent the company. as well as the State, in many ways, and always in affirmation of the issue of the bonds. Actions were brought and actions defended in the company's name in asserting its claim to the bonds or the preceeds thereof. One of the commissioners, Col. Woodfin, was sent to London to secure their rights in this regard, and then made another final settlement *there* with Littlefield, by agreement dated November 10, 1870, on the part and behalf of the Western Division of the Western North Carolina Railroad Company, which agreement, throughout, purported to provide ways and means for carrying out the agreement of April 16, 1870, and securing to the said company the proceeds of the bonds sold and to be sold. Amongst other things, providing that an order should be given to said company on S. W. Hopkins & Co. for 800 of the bonds still in their hands, but with the condition that the bonds should be sold by Hopkins & Co., and the proceeds paid to the company. Such order was in fact given and accepted, and £10,000 sterling were subsequently received by the company on account thereof.

"Calling these settlements conditional settlements, compromises, &c., is a new thought, the result of new light. No such language is used in the original bill. Besides, though they were conditional settlements or compromises, they were entered into and had the same effect in misleading the public and inducing a sale of the bonds, as if they had had no conditions attached to them. They were not like unaccepted offers of compromise, which, it is true, cannot be used to the prejudice of the party who makes them. They were executed agreements, and show the position which the North Carolina Railroad Company deemed it expedient to assume.

"It is useless to go into all the evidence on this subject in detail. The truth is too evident, that not only did the North Carolina Company acquiesce in the issue of the bonds, but that they urged and promoted the sale thereof. The principal contest of this company consisted in endeavoring to get the proceeds of the bonds after they were sold; and this contest was continued until the 3,000 State bonds issued to the Jacksonville, Pensacola and Mobile Railroad Company in exchange for its own bonds, had been sold and disposed of. In view of all the evidence on this subject, I am clearly of opinion that the North Carolina Railroad Company is to be held as participating in putting out these bonds upon the money market of the world, and that it cannot be heard to except against the *bona fides* of their issue and sale.

"Having reached this conclusion I must hold that the complainants in the case of J. Fred. Schutte and others who have produced these very bonds, claiming to be the *bona-fide* purchasers and holders thereof, are such holders, unless the contrary be shown. But there is no evidence, of which I am aware, that shows in the slightest degree that they are not *bona-fide* holders. The bonds being sold with the acquiescence of the North Carolina Company, the holders thereof stand in the same position as the holders of any other negotiable securities. If, therefore, as the owners of these bonds they have any title to relief as against the railroad and property of the Jacksonville, Pensacola and Mobile Railroad Company, they are entitled to such relief notwithstanding, and prior to any equities which the North Carolina Company may be entitled to. The equities of the latter company are to be affected, as equitable owners of the stock of the Jacksonville, Pensacola and Mobile Railroad Company held by Littlefield and Swepson, and are to be enforced through the Jacksonville, Pensacola and Mobile Railroad Company, and can rise no higher than the rights of that company itself, as against third parties dealing with it in good faith.

"The question then arises whether the holders of the State bonds have, by reason of being such, any lien, legal or equitable, against the railroad and property of the Jacksonville, Pensacola and Mobile Railroad Company.

"It has been decided by the Supreme Court of Florida that the State bonds which these parties hold were created and issued in violation of the Constitution of the State, and that they are for that reasan absolutely void. But the same court has also decided that the *bona-fide* holders of such bonds are entitled to the benefit of the bonds issued by the Jacksonville, Pensacola and Mobile Railroad Company, in exchange for them, and to have such company bonds, and the first mortgage lien created thereby, enforced for their protection. In the case of Holland *v.* The State of Florida, when this question was involved, the court held that the State of Florida occupied two distinct relations to the holders of the State bonds and to the railroad company, the first being that of a primary debtor on its own bonds, and mortgage creditor of the company for its indemnity; the second, that of a trustee for the holders of the State bonds. 'In this relation,' says Mr. Justice Westcott, (in which the other justices concurred,) 'the lien created by the statute was for the benefit of the holders of the State bonds. The proceeds of the sale, if he declined to surrender his bonds, were to be invested for him, and he was to have the beneficial interest of a *cestui qui trust.* The lien of the statute and the company bond, viewed in this light, was for his benefit, and the property and franchises of the company were to be his security for payment; and as the company received his money and the State received nothing, the company was to be held to the obligation of common honesty in the matter of payment and satisfaction.' (15 Fla. Rep., 534.)

"In the subsequent case of The State *v.* The Florida Central Railroad Company, (15 Fla, 723), the court further defines its position on this subject. It then says: 'In the case of Holland *v.* The State of Florida, we held, that while the State bond, as an obligation against the State as a simple and primary debtor, was void for want of constitutional power in the Legislature to authorize such obligation, yet that, *under the statute*, the State held the bonds of the company and the mortgage lien, enuring thereby for the benefit of the holder of the State bonds. That the State, *under the statute*, was to occupy these two relations, and that while the one failed for want of constitutional power in the Legislature to authorize it, the other must be sustained, because the Legislature did have the constitutional power to create it, and it was the duty of the court to enforce it. This court did not hold that the relation and rights of the State as 'trustees' were the result of any equity springing from the circumstances independent of the statute, but that its relation as a trustee was a creature of the statute. That viewed in this light, the lien created by the statute and the company bond was for the benefit of the bondholder, and the property and franchises of the company were to be his security for payment.' The court then proceeds to show, that under this view, the bondholder is not restricted to the amount paid by him for his bonds, but has all the rights of a 'holder' of bonds, including that of recovering the full amount thereof.

"The same views were again repeated in the recent case of the Trustees of the Internal Improvement Fund *v.* The Jacksonville, Pensacola and Mobile Railroad Company, and also reported in 16 Florida, 719.

"A careful examination of the statute leads me to concur in this view of the subject. But the decision of the State court on a question of the construction of a State statute, if not absolutely binding on this court, is, at least, entitled to the very highest consideration and respect, and is to be regarded as of great authority. I feel compelled, therefore, to hold that the holders of the State bonds have a right to the enforcement of the mortgage lien created by the statute by virtue of the bonds of the Jacksonville, Pensacola and Mobile Railroad Company given in exchange therefor. The result of this opinion is, that next to the lien for the balance of purchase-money due to the Trustees of the Internal Improvement Fund, the complainants in the case of J. Fred. Schutte and others are entitled to a mortgage lien upon the Jacksonville, Pensacola and Mobile Railroad, extending from Lake City to Quincy, and from Tallahassee to St. Mark's, including the branch to Monticello, with all its equipment, property, and franchises, for the payment of such portion of the bonds held by them, and the interest accrued thereon, as are to be considered as having been exchanged for the bonds of that company; and a first mortgage lien for the payment of the same bonds and interest upon the railroad extending from Quincy to the Chattahoochee River, and its equipment, property, and franchises, reserving, however, for the present, further consideration of the claims of J. G. Gibbs, who has intervened *pro interesse suo* in respect to that portion of the lien.

The said J. Fred. Schutte and others, holders of said State bonds, will also be entitled to a decree dismissing the bill of the Western North Carolina Railroad Company, which relates to the Jacksonville, Pensacola and Mobile Railroad."

THE CENTRAL RAILROAD CASE.

The Circuit Judge states the facts and delivers his opinion in the Florida Central case as follows: (Record, p. 571.)

"I will now proceed to the consideration of the case relating to the Florida Central Railroad Company and its property. I have already stated that, in this case, there is no question about the status of the Western Division of the Western N. C. Railroad Co. of North Carolina. Its interest arises altogether from its equitable right to the stock of the Florida Central Railroad Company, and its equities rise no higher than those which belong to the rights of a stockholder. This stock, during the period of transactions under consideration, was held either by Swepson or Littlefield, or by those to whom they transferred it from time to time for their own purposes. Parties dealing in good faith with the Florida Central Railroad Company as a corporation have nothing to do with the manipulations of this stock. The main question in the present controversy is whether the corporation itself became bound by the bonds which were issued in its name, the amount of which; as before stated, was $1,000,000.

The first inquiry that naturally presents itself is, whether the said company had power to issue such bonds. The act which incorporated the purchasers of the road, passed 29th July, 1868, was in the same general form as that which incorporated the purchasers of the Jacksonville, Pensacola and Mobile Railroad Company, already recited. It did not, however, contain any section corresponding to the 6th section of that act, authorizing the issue of coupon bonds and the securing of the same by mortgage; but it gave the company the general power to grant, sell, mortgage, or dispose of any property acquired for the purposes of the railroad. It will be recollected, however, that the act entitled 'An act to perfect the public works of the State,' which incorporated the Jacksonville, Pensacola and Mobile Railroad Co., by its fourteenth section not only authorized the several companies owning the road or roads from Quincy to Jacksonville, &c., to consolidate with the Jacksonville, Pensacola and Mobile Railroad Company, but gave to each company the same privileges as were granted to the latter company by the act; and by the fourth section of the amended act, passed January 28th, 1870, it was enacted as follows, namely: 'That the Governor shall, for the purpose of further aiding the said Jacksonville, Pensacola and Mobile Railroad Co. in the speedy construction of its road, deliver to the president of said company coupon bonds of this State, of the same character as those above described in this act, to the amount of $16,000 per mile, upon receiving for and from the president of said company first mortgage bonds of like amount on any part or portion of the road between Quincy and Jacksonville: *Provided, however*, The State bonds under this section shall not be exchanged for first mortgage bonds for a greater length than 100 miles of any part of railroad between Quincy and Jacksonville: *Provided*, The said railroad company or companies shall not issue first mortgage bonds to a greater amount than $16,000 per mile.'

"Now, there were only two roads between Quincy and Jacksonville, a part of the road belonging at the time of the passage of this act to the Tallahassee Railroad Company, extending from Quincy to Lake City, and the road of the Florida Central Railroad Company. The act, therefore, must necessarily have referred to these roads and to the companies owning the same. The Supreme Court of this State so decided in the case of The State *v.* The Florida Central Railroad Co. *et al.*, 15 Fla. 704, 705, and held that this section authorized the Florida Central Railroad Co. to issue coupon bonds to be exchanged for State bonds by the president of the Jacksonville, Pensacola and Mobile Railroad Co. Taking the two acts together, that of June 24th, 1869, and its amendatory act of January 28th, 1870, I have no doubt that the Florida Central Railroad Company did have all the requisite powers for issuing such bonds as were issued in this case in the name of said company, and that they might be issued for the purpose of exchanging them for a like amount of State bonds in aid of the Jacksonville, Pensacola and Mobile Railroad Company. Of course it would be for the Florida Central Railroad Company to prescribe the conditions or consideration on or for which it would issue such bonds. It had the power to do it. If done, and the exchange should be made, and after this the State bonds received by the president of the Jacksonville, Pensacola and Mobile Railroad Company in lieu thereof should be misappropriated by the agents of that company, this would not relieve the Florida Central Railroad Company from its obligations arising upon its bonds to the *bona-fide* holders of the State bonds..

"Much stress has been laid in this case upon the fact that the bonds issued in the name of the Florida Central Railroad Company were not regularly executed, but were made and executed in the city of Washington, and signed by George W. Swepson as president of the company, and by one H. H, Thompson as treasurer, when the latter was not treasurer, and no authority having been given by the directors for the issue of any such bonds. But before the bonds were issued the following action was taken by the board of directors on the 25th day of May, 1870, to wit:

"'General Littlefield stated that Mr. Swepson, late president, had appointed H. H. Thompson, Esq., as secretary and treasurer of this company for the past year, and moved that the action of the late president in this respect be approved and confirmed, which was agreed to.'

"A few days later, on the 2d of June, 1870, (Record, p. 1334,) a meeting of the stockholders was held, representing a very large majority of the stock, when it was unanimously resolved, that bonds to the extent of $16,000 per mile be issued by the company, to be a first lien or mortgage on the Florida Central Railroad, its equipments, franchise, &c., and thus reciting that George W. Swepson, the late president, had caused to be prepared bonds to be issued by the company, preparatory to an order of the board of directors to that effect, and which bonds were signed by said Swepson, as president, and countersigned by H. H. Thompson, treasurer. It was therefore unanimously resolved, that the said bonds be adopted as the bonds to be issued, and that when issued they be a first lien or mortgage on the Florida Central Railroad, its equipment, franchise, &c., (except the lots in Jacksonville not used for depot purposes.) It was further resolved that the bonds be placed in the hands of Edward Houston for the purpose agreed upon by an arrangement between himself and Milton S. Littlefield, who, it was declared, was 'owner of nearly all the stock in the company,' and the bonds or their proceeds to be held and applied according to said arrangement, except the proportion thereof applicable or apportionable to the stock owned by other parties; and upon the satisfaction otherwise of the terms of said arrangement with said Houston, the said bonds were to be by him transferred to Littlefield, or according to his direction, to the extent of the stock owned by him at the time. On the same day the directors adopted the same resolutions, and further, a resolution that the president be authorized to do all acts, and if necessary to execute and deliver any proper deed, under the seal of the company, that might be deemed needful to make the first lien or mortgage in favor of the bonds.

"In view of these resolutions, all talk about the irregular execution of the bonds, or of the application of the seal thereto, would seem to be irrelevant. It cannot be denied that the bonds were executed and placed in the hands of Littlefield for disposition according to the arrangement between him and Houston. That arrangement, as it stood at this time, was, that there should be placed in Houston's hands as collateral security for $163,000 due to him from Littlefield, one million of dollars of bonds of the State of Florida, to be exchanged for said bonds of the Florida Central Railroad Company. After paying himself, the balance of the proceeds of said bonds was to be distributed and paid as follows, to wit:

To Edward Houston	$163,000
" John P. Sanderson	57,000
" M. D. Papy	16,000
" T. W. Brevard, attorney for holders of Pensacola and Georgia bonds	50,000
" John P. Sanderson, President of the Florida Central Railroad Company	340,000
	$620,000

The balance, if any, to Littlefield.

"The arrangement further provided, that if Littlefield should pay his debt of $163,000 to Houston, the latter should place the bonds in the hands of S. W. Hopkins & Co. to be sold, and the proceeds to be held subject to the other claims above specified, and the balance to be paid to Littlefield.

"Houston, in January, 1871, placed the bonds in the hands of T. B. Coddington, on substantially the same trusts as he held them. On the 13th of April, 1871, at a stockholders' meeting of the Florida Central Railroad Company, he was authorized to place them in the hands of S. W. Hopkins & Co., subject to the same trusts as to the proceeds thereof.

"Now, the counsel for the North Carolina Company and for the Florida Central Railroad Company contend that the bonds executed by the company and exchanged for State bonds were executed for an unlawful purpose, namely, for the purpose of paying private debts or speculation, and not for that of aiding the Jacksonville, Pensacola and Mobile Railroad Company in the speedy construction of its road; nor for any corporate purpose of the Florida Central Railroad Company itself.

"Supposing this to be true, how can the corporation itself, or any one claiming under it, raise this objection after having actually executed its bonds and procured the State bonds in exchange therefor, and authorized them to be sold to the public? It seems to me that there is a clear estoppel in the case. It would be to allow the company to perpetrate a fraud upon the public to allow such a defense to prevail. If the stockholders have used the money produced by the State bonds for their own purposes, instead of using it in aid of the Jacksonville, Pensacola and Mobile Company, or for the corporate purposes of their own company, neither they nor the corporation can be permitted to allege their own dishonesty as a reason for avoiding the binding obligation of their bonds. The fact seems to have been, that the arrangement for making this issue of bonds had in view a distribution of their proceeds amongst the stockholders in proportion to their several interests. If there was not a fair deal; if some got more than their share, and others less, they must look to one another for an adjustment of their respective equities. They ought not to be permitted at this late day, after the State bonds procured in exchange have been sold to purchasers, to plead that their bonds were created for an unlawful purpose.

"The Florida Central Railroad Company itself is clearly estopped from making such a defense. The North Carolina Co. is also estopped, because in the agreements and proceedings which have been referred to, in which it was a party, it acquiesced in the issue of the bonds, and only claimed to share in the proceeds thereof. The agreement of April 16, 1870, before recited, expressly recognized the issue of bonds by the Florida Central Railroad Company, and provided that $150,000 of the proceeds thereof should be paid to the commissioners; and in a supplemental complaint of the said North Carolina Company, filed in August, 1871, in a suit instituted by said company against Sidney W. Hopkins and others, in the Supreme Court of New York, the said company alleged and insisted as follows, to wit: 'And the said plaintiffs further show that said S. W. Hopkins & Co. have in their hands, as plaintiffs are informed and believe, a very large amount of the proceeds of the sales of said 4,000 bonds, which belong to these plaintiffs and to other parties interested therein, and that they intend to conceal and fraudulently retain such proceeds to their own use, &c.; (Record, p. 1279;) and they then invoke the equitable interposition of the court in respect to the proceeds of said bonds. This is but a casual instance of the manner in which the North Carolina Company ever treated the transactions relating to said bonds. Here, it will be observed, the company speaks of the entire issue of 4,000 bonds in one category, thus including those issued in exchange of the Florida Central as well as others. As late as January, 1873, a consent decree was entered in the case of John Collinson *vs.* S. W. Hopkins and others, in the city of New York, to which the North Carolina Railroad Company was a party, whereby it was provided that $200,000 should be paid to said company out of the proceeds of the bonds which formed the subject of that litigation, being the last 1,200 bonds issued of the 4,000, and including the 1,000 bonds issued in exchange for those of the Florida Central Railroad Company. (Record, p. 1150.)

"It is useless to pursue this subject further, or to examine in detail all the voluminous testimony and documents which have been adduced in relation to it. It is too plain for doubt or question, that the North Carolina Company acquiesced as well in the issue of the Florida Central bonds as of those of the Jacksonville, Pensacola and Mobile Railroad Company.

"The truth is, that the agents of the North Carolina Company seem to have been very well satisfied with the issue of the bonds, thinking, by means thereof, to be able to snatch something out of the fire by way of indemnity for the losses sustained by that company through the malfeasance of Swepson and Littlefield, and I think that said company is concluded from disputing the validity of the bonds as against those who have, in good faith, purchased the State bonds issued in exchange therefor. They may have been unfortunate in their endeavors to get the proceeds of the bonds after they were sold, but that was not the fault of the purchasers, and is no reason for depriving them of their property.

"The question then arises, whether the complainants in the suit of J. Fred. Schutte and others are *bona-fide* holders of the bonds which they produce in this litigation.

"The possession of the bonds is strong *prima-facie* evidence of just title, and in ordinary cases throws upon the party questioning it the burden of showing that it is not *bona-fide*—that the holder had notice of some vice or defect which vitiates the title. No such notice is shown in this case. On the contrary, it appears from the evidence of

Collinson and Collins that the bonds were sent to Holland to be sold. Collinson says that the bonds were purchased by him of S. W. Hopkins & Co., in London; that they were put on the Dutch market, and were sold there, as he was informed; that the transactions were conducted by Messrs. Boissevain & Milders, and Mangay of Holland, who purchased the bonds from him for the purpose of putting them on the market and selling them. Collins corroborates this testimony, and says that Mr. Woodfin, the agent of the North Carolina Company, whilst in England, did all he could to promote their sale. Dr. Wertheim, who has been present at the hearing of these cases, was examined at the instance of the North Carolina Company after the cases were called, and testified to having been a purchaser of some of the bonds himself in Amsterdam, and to the fact that some of his friends were purchasers at prices which forbid the supposition that they were conscious of anything wrong in the sale of the bonds. He says that he was so stupid as to invest some of his money in these bonds at the rate of 80½ per cent, believing in the good faith of the State of Florida and the managers of the railroads; that he was bitterly deceived, and was unhappy enough to have more of the bonds out of the inheritance of his father; and not himself alone, but a great many widows, orphans, and charity institutions in Holland purchased them, believing them to be a good and safe investment. (R., p. 802.)

"In an affidavit made by him in May, 1877, which was exhibited to him by the counsel of the North Carolina Company on the examination, he says distinctly that after examination and such information could be obtained in Holland, the loan was issued there and the bonds were *bona fide* purchased in the market. He says the belief there was, that the whole line from Jacksonville to Chattahoochee was consolidated into one line, and that all the bonds had respect to the line as one property. This was undoubtedly the impression that was given abroad, and had some foundation in the representations which were made by Littlefield and others. (R., p. 1462.)

"In my judgment, upon the whole case as presented by the evidence and pleadings, the said bondholders are to be regarded as *bona-fide* purchasers and holders of these bonds, and are entitled by reason thereof to a first mortgage lien therefor upon the Florida Central Railroad, so far as any of the bonds held are to be deemed as exchanged for its bonds.

"This also seems to me to be in accordance with the justice of the case. These parties have parted with their money, relying on the good faith of the State and the companies. It is not their fault that this money did not reach the proper hands. Had it been properly applied, the Florida railroad companies and their stockholders and those having an interest in the stock, including the North Carolina Railroad Co., would have reaped the benefits. If the money has been squandered or misapplied, it is their misfortune, and should not be visited upon the purchasers of the bonds.

"It remains to determine what portion of the bonds raise a lien on the Jacksonville, Pensacola and Mobile Railroad, and what portion a lien on the Florida Central. This branch of the subject is invested with some difficulties. I think it is pretty clear from the evidence in the case that the first 3,000 State bonds were, in fact, issued in exchange for the bonds of the Jacksonville, Pensacola and Mobile Railroad Company, and that the last 1,000, numbered from 3,001 to 4,000 respectively, were issued in exchange for the Florida Central Railroad Company's bonds, the latter not being issued until April, 1871, when they were procured by Coddington. It is urged on the part of the bondholders that they had no knowledge of this distinction, and ought not to be affected by it. But I am not satisfied that their ignorance on the subject can affect the question. The lien of the bondholders is created by the statute. A resulting equity would have arisen without the aid of the statute, but the statute takes the place of this and regulates the right. Now, the eleventh section of the 'Act to perfect the public works of the State,' passed June 24th, 1869, as amended in January, 1870, declares that 'to secure the principal and interest of the said company's bonds the State of Florida shall by this act have a statutory lien, which shall be valid to all intents and purposes as a first mortgage duly registered, on *the part of the road for which the State bonds were delivered, &c.*,' when by the fourth section of the amended act, passed in January, 1870, authority was given to issue State bonds in exchange for first mortgage bonds on any portion of the road between Quincy and Jacksonville, it cannot be supposed that such bonds were to be security for any other

State bonds than those which should be given in exchange therefor. The question is not so much what the bondholders ought to have, as what the statute gives them. If they stood on grounds of mere equity, they might not be able to secure more than the amount paid by them for the bonds. I think, however, that the matter is to be governed by the statutes. I am of opinion, therefore, that the bondholders cannot claim to have a lien on the Florida Central Railroad for any bonds except those whose numbers exceed the number 3,000. Of these it appears they hold 197. For these bonds, therefore, and the interest due thereon, they are entitled to a first lien on the said railroad, its equipments, franchise, and property. For the remaining bonds held by them, whose numbers are 3,000 and under, of which they have produced 2,749, they will have a lien, as before expressed, on the Jacksonville, Pensacola and Mobile Railroad.

"This disposes of the most important questions in these causes, and a decree will be made in conformity to this opinion, with such qualifications as may be agreed upon by the Trustees of the Internal Improvement Fund and the holders of the old first-mortgage bonds of Pensacola and Georgia and Tallahassee Railroad Companies on one part, and the holders of the State bonds on the other, as expressed in the Memorandum Plan which has been referred to, or otherwise. A decree will also be made for a sale of the several railroads for the purpose of raising the amount due to the respective parties according to the respective liens. The bills of the Western Division of the Western North Carolina Railroad Company will be dismissed with cost.

"I have not deemed it necessary to advert to a great deal of the voluminous evidence taken in the causes. The ground taken in the opinion covers all the material points at issue between the parties, and I have stated the conclusions to which I have come from the most careful consideration which I have been able to give to the whole case."

POINTS AND AUTHORITIES.

I.

The suit No. 1 of the North Carolina Company is disposed of by the following considerations:

(1.) The company claims to be the equitable owner of about 5,000 shares of the capital stock of the Florida Central Company.

Conceding this to be so, it is in the same condition as any other stockholder of the Central Company.

A stockholder cannot maintain a suit for the benefit of the corporation, unless it be shown that the corporation itself is refusing or neglecting to protect its own interests, and thus acting in bad faith towards its stockholders.

Bronson v. *Railroad*, 2 Wall., 283, 301
Railroad Company v. *Alling*, 9 Otto, 463.

The bill of complaint shows no such case, nor any reason whatever why it is necessary for the North Carolina Company to proceed in its own name to protect its rights as a stockholder of the Florida Central Company.

It has, therefore, no right to maintain this suit as against the Dutch Bondholders to cancel obligations against the Central Company, even conceding that the Central Company itself might do so on the facts shown in this case.

(2.) The stock of the North Carolina Company is principally owned by the State of North Carolina.

If this company can recover the avails of her State bonds embezzled by her officers, it would be for the benefit of the State to the extent of her stock in the company. But the State has repudiated these bonds by act of her Legislature. It would, therefore, result that the State repudiates its bonds, and would still recover the avails for which they were sold.

Such a result would grate harshly upon the conscience of a chancellor.

(3.) The North Carolina Company made a settlement with Swepson for and on account of the very misappropriation of funds by Swepson by which it claims to have become the owner of the stock of the Central Company.

When the funds of a principal are misappropriated by his agent, the principal has his election either to recover such funds from the agent, or follow the funds into the property in which it was invested. But he cannot do both. The North Carolina Company, by its settlement with Swepson, is estopped to assert its ownership in the stock of the Central Company. (See settlement, Record, pp. 1223-1227.)

(4.) The North Carolina Company is also estopped to question the validity of the Central Company's bonds, having been a party to their issuance and sale, and having received a portion of the proceeds of such sale.

II.

Suit No. 2 of the North Carolina Company is subject to all the objections above stated.

In this case the North Carolina Company claims that by a misappropriation of its funds its president (Swepson) became the owner of certain bonds of the Pensacola and Georgia Company and of the Tallahassee Company; and that he used these bonds in the purchase of those roads, when they were sold by the Trustees of the Internal Improvement Fund.

But Swepson co-operated with Dibble and associates, purchasers at those sales, in forming a corporation, to wit, the new Tallahassee Railroad Company, and received the stock of that company to the amount of his contribution to the purchase-money of those roads; which stock was afterward exchanged for stock in the J. P. & M. R. R. Co. All this was done before the North Carolina Company took any steps to assert its rights to the fruit of Swepson's fraudulent transactions.

In other words, when the North Carolina Company determined to follow its perverted funds into their fruits, they found them invested in the stock of the Jacksonville, Pensacola and Mobile Company. Therefore if the N. C. Co. is entitled to any relief in suit No. 2, it is, that it shall be declared to be the equitable owner of the stock held by Swepson in the J. P. & M. Co.; and it is entitled to no relief as against the Dutch Bondholders, because it would have no other rights than those of a stockholder; and a stockholder cannot maintain such a suit.

III.

We come now to suit No. 3, the foreclosure suit of the the Dutch Bondholders.

The claim made by our opponents, that the J. P. & M. Co. is not the owner of the road, but that the legal title is in Swepson, is shown by Mr. Justice Bradley in his opinion to be unfounded in fact.

Again, in a foreclosure suit the mortgagor cannot set up in defense an outstanding title in a third person. The transaction set out in our bill of complaint is equivalent to a mortgage by the J. P. & M. Co. which we are seeking to foreclose. If they have no title, we shall acquire none by foreclosure sale.

Our purchaser will acquire all our rights and all the right and title of the J. P. & M. Co.

The N. C. Co. is not a party to our suit, and its rights will be in no way affected by our foreclosure and sale, except as a stockholder of the respective railroad companies.

IV.

The Dutch Bondholders are *bona-fide* holders of the State bonds.

Possession of negotiable paper is *prima-facie* evidence of *bona-fide* ownership; and the burden of proving *mala fides*, is on the party who asserts it. (*Murray* v. *Lardner*, 2 Wall., 110.) There is not a word in the evidence in this case tending to show that the Dutch Bondholders are *not* *bona-fide* holders.

At the hearing in the court below, the court on motion suppressed certain depositions taken in Amsterdam showing affirmatively that the Dutch Bondholders, complainants, are *bona-fide* holders.

These depositions are found in the Record, p. 1382.

The order suppressing them is found in the Record at p. 517.

The order itself does not state the ground upon which it was made; but the record does show the certificate of the commissioner as to the manner of taking the depositions. (Record, p. 1393.)

No other evidence was before the court to support the motion to suppress these depositions. This certificate shows that the witnesses, in giving their testimony, used memoranda prepared beforehand, as they stated, to enable them to give "their testimony more intelligently, in proper language and save time to them, a valuable consideration."

In *Commercial Bank* v. *Union Bank*, 1 Kernan, 210, the attorney had conversed with the witnesses, "and at their request wrote down for them the substance of the facts in answer to the several interrogatories."

The court refused to suppress the depositions, and said: "But I see no reason for suppressing the depositions, especially in the absence of any suggestion that the witnesses have been imposed upon, or that any fact has been misstated, unduly colored, or concealed." The report of this case in 3 *Woods*, 696, shows that the Circuit Judge was under the impression that the memoranda used by the witnesses was prepared by counsel. He says: "The fact, however, that the answers of the witnesses were prepared in writing by *their counsel* in advance, is fatal to the deposition."

But this was a misapprehension. The certificate states (Record, p. 1392) that the witnesses referred to memoranda "prepared beforehand," but it does not say by whom the memoranda were prepared; nor is it true in fact that they were prepared by counsel. We submit, therefore, that the learned justice erred in suppressing these depositions, and that we are entitled to use them on this hearing.

If so, they abundantly prove—what it is unnecessary for us to prove—that the complainants, the Dutch Bondholders, are *bona-fide* holders.

These depositions show in detail the circumstances under which these bonds were sold in Amsterdam; show the proclamation of the Governor; show that bankers refused to put the bonds on the stock market until the opinion of the Supreme Court of Florida was furnished to them, showing that the State bonds were constitutional and valid. (13 *Florida*, 699.) After which the bonds were placed upon the Stock Exchange in Amsterdam and the subject of daily sale and transfer, passing from hand to hand like other securities in the money market of the world; and that the complainants purchased the bonds in some instances at the rate of 84 cents in gold, and they were quoted and sold at about this rate until default was made in the payment of interest, July 1, 1873.

V.

This suit is between the Dutch Bondholders and the debtor companies only.

The lien of the Trustees of the Internal Improvement Fund is decided to be a first lien, and is protected in this decree, and the trustees do not appeal.

These debtor corporations who sold these bonds and received the avails of them are estopped to deny their validity, or to deny the lien upon their roads. What other creditors might do it is immaterial to consider here, as none such are made parties in this case, nor can be affected by the decree herein.

The North Carolina Company, as a stockholder in these respective corporations, is covered by the estoppel, which applies to the corporations of which it claims to be a stockholder.

VI.

The only remaining question is whether the transaction—the giving of bonds by the companies to the State and the exchange of the bonds of the State with the companies, and the subsequent sale of the State bonds by the company, and the receipt by them of the proceeds of the sales—entitles the *bona-fide* holders of the State bonds to a lien upon these railroads, which a court of equity will enforce, as between the creditor and the principal debtor.

This question depends upon the Constitution and statute laws of the State of Florida. It has been fully considered by the Supreme Court of that State, and decided in the affirmative. This court holds that where the Supreme Court of a State has given construction to a constitutional provision or statute of the State, such construction is as binding upon this court as the text of the Constitution or statute.

Leffingwell v. *Warren*, 2 Black, 599.
Fairfield v. *County of Gallatin*, 10 Otto, 47.

The Supreme Court of Florida has made three decisions upon this question.

Holland *v.* State of Florida, 15 Fla., 454.
The State *v.* Central Co., 15 Fla., 690.
Trustees Int. Imp. Fund *v.* J. P. & M. Co., 16 Fla., 708.

The decision in *Holland* v. *The State* was the subject of some misapprehension, and the court, in the case of the *The State* v. *The Central Co.*, 15 Fla., 723, restates its former decision. The court say:

> "This court did not hold that the relation and rights of the State as 'trustee' was the *result of any equity springing from the circumstances independent of the statute*, but that its relation as a trustee *was a creature of the statute*."

And the court held that the *bona-fide* holders of the State bonds were entitled to the benefit of the statutory lien to the full amount of the bonds held by them without regard to the amount paid therefor. It will thus be seen that what we claim in this case is declared by the Supreme Court of the State to be a right secured to us by the statute of that State. And this court says, in Leffingwell *v.* Warren, that such construction of that statute is conclusive upon this court.

In other words, after that court has decided that the statute gives us the right we claim, this court cannot say it does not.

But, aside from the conclusive effect of the State court's decisions upon this subject, there can be no doubt of the correctness of their determination. Equity looks not at the form, but at the substance of things. The substance of this transaction was, that the corporation, wishing to borrow money, desired the benefit of the State's indorsement.

It was not contemplated that the money borrowed was to be paid by the State. The company was the real debtor, and its property was the security upon which the indebtedness was ultimately to rest.

The company did receive the money it sought to borrow, and these bondholders loaned it. It would be grossly inequitable to hold that any technical infirmity in the evidences, or any part of them, given to the creditor, should prevent his recovering his money out of the property which was intended, and which the law of the State permitted, to be pledged therefor, as between the creditor who advanced the money and the debtor who received it.

Again, it is a universal principle that a creditor may pursue any security given by the real debtor to a surety or guarantor. Suppose such guarantor to be an infant or a *feme-covert*, so that the creditor could not enforce his claim against such guarantor: Can there be a doubt that a court of equity would enable the creditor to reach security given by the debtor to such guarantor? The right of the creditor to resort to such security does not depend upon the fact that he loaned the money on the strength of it; because the creditor may pursue it although he was ignorant of the existence at the time the debt was contracted. The reason of this principle is, that the debtor gave the security for the purpose of obtaining money, intending that the property pledged should be chargeable with the debt. This principle applies in full force.

Our opponents rely upon the case of *Chamberlain v. Railroad*, 2 Otto, 299. In that case the State had issued its bonds for the benefit of a railroad company, taking from the company a mortgage to indemnify the State against its bonds. Default was made by the company, and the State foreclosed the mortgage and sold the property. This sale discharged the land from the lien of the mortgage.

The State became the purchaser at the foreclosure sale, and subsequently disposed of the property to other railroad companies for value. The State made default on its bonds.

After twelve years' delay, which this court held to be fatal laches,—sufficient to defeat his suit,—he brought suit against the companies to which the State had conveyed the property subsequent to its purchase at the foreclosure sale.

This court held that there was no specific lien on the property in the bond of the grantees of the State.

There are some expressions in this opinion which have given great consolation to counsel opposed. But it is submitted that the case is distinguishable in several respects from the case at bar.

(1.) The bonds issued by the State were legal and valid obligations when Chamberlain brought his suit.

(2.) The lands which he sought to reach had been discharged from the lien by the foreclosure sale.

(3.) There was no State statute and
State court ~~disclosing~~ that Chamberlain
lien upon the property.

Again, the definition given by all the best authors of an *obiter dictum* is, that it is a ruling of the court upon some point not necessary to the decision of the cause; one which, if decided the other way, would not have changed the judgment in the case.

It is submitted, with great respect, that all which is said in the opinion in regard to the effect that no relations existed between the holder of the State bond and the company which made the mortgage to the State, falls within this definition; because if the court had held otherwise upon this point, and held, as is half-admitted in the opinion, that Chamberlain might originally have reached this property through a court of equity, still the court would have been compelled to decide the case as it did decide it—upon the ground that the foreclosure sale had discharged the property from the lien; and that Chamberlain had been guilty of such *laches* that he could not maintain his suit, as against a purchaser from the State for value.

was intended, and which the law of the State permitted, to be pledged therefor, as between the creditor who advanced the money and the debtor who received it.

Again, it is a universal principle that a creditor may pursue any security given by the real debtor to a surety or guarantor. Suppose such guarantor to be an infant or a *feme-covert*, so that the creditor could not enforce his claim against such guarantor; Can there be a doubt that a court of equity would enable the creditor to reach security given by the debtor to such guarantor? The right of the creditor to resort to such security does not depend upon the fact that he loaned the money on the strength of it; because the creditor may pursue it although he was ignorant of the existence at the time the debt was contracted. The reason of this principle is, that the debtor gave the security for the purpose of obtaining money, intending that the property pledged should be chargeable with the debt. This principle applies in full force.

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There are some expressions in this opinion which have given great consolation to counsel opposed. But it is submitted that the case is distinguishable in several respects from the case at bar.

(1.) The bonds issued by the State were legal and valid obligations when Chamberlain brought his suit.

(2.) The lands which he sought to reach had been discharged from the lien by the foreclosure sale.

(3.) There was no State statute and no decision of the State court ~~disclosing~~ determining that Chamberlain was entitled to any lien upon the property.

Again; the definition given by all the best authors of an *obiter dictum* is, that it is a ruling of the court upon some point not necessary to the decision of the cause; one which, if decided the other way, would not have changed the judgment in the case.

It is submitted, with great respect, that all which is said in the opinion in regard to the effect that no relations existed between the holder of the State bond and the company which made the mortgage to the State, falls within this definition; because if the court had held otherwise upon this point, and held, as is half-admitted in the opinion, that Chamberlain might originally have reached this property through a court of equity, still the court would have been compelled to decide the case as it did decide it—upon the ground that the foreclosure sale had discharged the property from the lien; and that Chamberlain had been guilty of such *laches* that he could not maintain his suit, as against a purchaser from the State for value.

SUPERSEDEAS.

Under the decree in No. 3, a sale, in fact, took place on the 25th September, 1879. It is practically of great importance to the parties that this court should decide whether any *supersedeas* of the decree was in force at that time, so that the sale is invalid. This question settled one way or the other, will make a year's difference in obtaining possession of the property.

At a former term of this court we made two motions, as follows:

"THE WESTERN NORTH CAROLINA RAILROAD CO., *Appellant*,

vs.

GEORGE F. DREW, *Governor*, *Trustee*, *&c.*, THE FLORIDA CENTRAL RAILROAD COMPANY, *et al.*

AND

THE WESTERN NORTH CAROLINA RAILROAD CO., *Appellant*,

vs.

THE JACKSONVILLE, PENSACOLA, AND MOBILE RAILROAD COMPANY, *et al.*

AND

THE JACKSONVILLE, PENSACOLA, AND MOBILE RAILROAD COMPANY, THE FLORIDA CENTRAL RAILROAD COMPANY *et al.*, *Appellants*,

vs.

J. FRED. SCHUTTE, JAN PRINS, *et al.*, *Appellees.*

Here in court comes the appellees, J. Fred. Schutte and others, by their counsel, Matt H. Carpenter, C. D. Willard, and Wayne Mac Veagh, and move the court to vacate the order heretofore made allowing the Western Division of the Western North Carolina Railroad Company to be made a party in this cause, and allowed to prosecute the appeal originally taken by the Western North Carolina Railroad Company, and in support of said motion we will present to the court a certified copy of the judgment of the Supreme Court of the State of North Carolina, whereby it was by said court determined that the Western Division of the

Western North Carolina Railroad Company ceased to have any corporate existence on the 13th day of March, 1879, by reason of the act of the General Assembly of the State of North Carolina passed on that day, abrogating the charter of the said Western Division of the Western North Carolina Railroad Company."

"THE WESTERN NORTH CAROLINA RAILROAD COMPANY, *Appellant*

vs.

GEORGE F. DREW, *Governor, Trustee, &c.*, THE FLORIDA CENTRAL RAILROAD COMPANY, *et al.*

AND

THE WESTERN NORTH CAROLINA RAILROAD CO., *Appellant*,

vs.

THE JACKSONVILLE, PENSACOLA, AND MOBILE RAILROAD COMPANY, *et al.*

AND

THE JACKSONVILLE, PENSACOLA, AND MOBILE RAILROAD COMPANY, THE FLORIDA CENTRAL RAILROAD COMPANY *et al.*, *Appellants*,

vs.

J. FRED. SCHUTTE, JAN PRINS, *et al.*, *Appellees.*

Here in court comes J. Fred. Schutte, Jan Prins, *et al.*, appellees in this cause, by their counsel, Matt H. Carpenter, C. D. Willard, and Wayne Mac Veagh, and move the court to vacate and set aside the supersedeas bond filed in this cause by the Western North Carolina Railroad Company, on the grounds that said bond is no security to said appellees, as intended by the order of this court approving said bond."

—which were not decided by the court, but were held, as we suppose, to be disposed of at the final hearing.

At the May Term, 1879, of the court below, there were three causes in equity pending in said court, as follows:

(1.) The Western Division of the Western North Carolina Railroad Company *v.* George F. Drew, Governor, &c.,

the Florida Central Railroad Company and others, to cancel said bonds issued by the Central Railroad Company. The Dutch Bondholders were named as defendants, but were not served.

(2.) The same complainant *v.* George F. Drew, Governor, &c., the J. P. & M. Railroad Company, and others. This suit was brought to cancel the bonds issued by the J. P. & M. Railroad Company. The Dutch Bondholders were named as defendants, but not served.

(3.) J. Fred. Schutte and others—the Dutch Bondholders—against both railroad companies and the Trustees of the Internal Improvement Fund. This suit was brought to have it declared that the holders of the State bonds had a lien on the roads to the amount of the bonds held by them, and to have the roads sold to satisfy the same.

The court (Record, p. 547) ordered that the Dutch Bondholders should enter appearance in the suits No. 1 and No. 2, as condition to obtaining the relief prayed by them in No. 3, and they did so.

These causes were *not consolidated*, but, relating to the same subject-matter, they were heard at the same time.

In No. 1 the court rendered final decree dismissing the bill, and the complainant—the Western N. C. Company—appealed.

Decree, *R.*, p. 550.
Appeal, *R.*, p. 549.

In No. 2 the court rendered final decree dismissing the bill, and the complainant—the Western N. C. Company—appealed.

Decree, *R.*, p. 550.
Appeal, *R.*, p. 549.

In No. 3 the court rendered final decree ordering a sale of the roads to satisfy the lien of the bonds, and the railroad companies, defendants, appealed.

In this cause the North Carolina Company was not a party, and of course could not and did not appeal. The only parties therefore who could appeal, or obtain a stay of proceedings, were the Central Company and the J. P. & M. Company.

Afterwards, June 6, 1879, at Chambers, at Savannah, Georgia, Mr. Justice Bradley made an order in No. 1 and No. 2 as follows:

"United States Circuit Court, Northern District of Florida.

"THE WESTERN NORTH CAROLINA RAILROAD COMPANY
vs.
"GEORGE F. DREW, Governor of the State of Florida; THE FLORIDA CENTRAL RAILROAD COMPANY; THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY, GIDEON MARIA BOISSEVAIN, ADRIAN J. MILDERS *et als.* } Two cases.

"And now comes the above-named complainant company, by its solicitor, and moves the court for an order permitting the supersedeas bond upon the appeal prayed and allowed in the above-entitled suits to be executed by sureties residing outside the State of Florida, should such course for any reason be desirable and necessary.

"Wherefore, it is now at Chambers, in the city of Savannah, Georgia, on this 6th day of June, 1879,

"*Ordered*, That the complainant and appellant in the above-entitled suits have leave to execute, or cause to be executed, a good and sufficient bond in the sum of one hundred thousand dollars, by sureties residing outside of the State of Florida, to be duly qualified as to the responsibility and sufficiency thereof; and that such bond, when so executed, approved, and filed with the clerk of the United States Circuit Court for the Northern District of Florida, at Jacksonville, shall operate as a supersedeas of all sales under the decrees rendered in the above-entitled causes pending the hearing and determination of the appeal taken herein.

"JOSEPH P. BRADLEY, C. J."

(Record, p. 551.)

It will be observed that no sale had been ordered in either of the two causes in which this order was entitled; and the order was not entitled in, nor does it refer or apply to the cause in which the decree of sale had been made.

July 31, 1879, the solicitor for complainants in No. 1 and No. 2 presented to Mr. Justice Bradley an affidavit as follows:

"United States Circuit Court for the Northern District of Florida.

THE WESTERN NORTH CAROLINA RAILROAD COMPANY
vs.
GEORGE F. DREW, Governor of the State of Florida, THE FLORIDA CENTRAL RAILROAD COMPANY *et al.*
AND
THE WESTERN NORTH CAROLINA RAILROAD COMPANY
vs.
GEORGE F. DREW, Governor of the State of Florida, THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY *et al.*

UNITED STATES OF AMERICA,
Southern District of New York:

Joseph B. Stewart, being duly sworn, deposes and says that he is solicitor for the plaintiff and appellant in the above-entitled suits; that since praying the appeals herein his unavoidable professional engagements in Kansas and elsewhere, at long distances from his home, have consumed much of his time that might and would otherwise have been devoted to perfecting said appeals and securing the bond to effect a supersedeas; that although, as matter of precaution, said appeals were prayed and allowed immediately upon the rendering of the judgments herein, the change of clientage which occurred upon the trial, transferring the suits to the jurisdiction of another corporation from that by which they were begun, necessitated the instructing of the officers of the new corporation as to the nature and merits of the litigation in order for them intelligently to determine whether or not it was their duty to prosecute said appeals; that the making of this investigation necessarily occupied much time; that said corporation has finally determined to prosecute said appeals, and called a meeting of its board of directors at as early a day as consistent with their by-laws to take into consideration the completion of the necessary supersedeas bonds, which meeting has not yet transpired.

Deponent further says, that by reason of the intermeddling of parties interested adversely to the appellant, the persons who had promised and agreed to become sureties on the necessary bonds have, at this late day, refused to execute the same, thus requiring further time to arrange for other parties to take their places; that the sixty days allowed by law in which to prepare and file supersedeas bonds will be insufficient in this case for the reasons stated; and that deponent therefore asks that the time be enlarged until September 1, 1879, in which to perfect and file supersedeas bonds herein.

Jos. B. Stewart.

Subscribed and sworn to before me this 30th day of July, 1879.

[SEAL.] Geo. C. Lloyd,
N. P., New York C. & C."

(Record, p. 552.)

Upon this affidavit Justice Bradley indorsed as follows:

"Inasmuch as these cases involve the rights of J. F. Schutte and others, bondholders, who have a suit pending to enforce said rights, the decree wherein has been appealed from, which suit was argued at the same time with these suits as one common litigation, the application to extend time to file a *supersedeas* bond herein will not be granted unless the appellants in that suit as well as the present suits will stipulate that the cases shall be decided on the merits only, all parties having gone to the final hearing by consent, and that said stipulation be made a part of the record.

Joseph P. Bradley,
July 31, 1879. *Asso. Justice Sup. Court of U. S.*"
(Record, p. 553.)

At Stowe, Vermont, August 16, 1879, the complainant and appellant in No. 1 and No. 2 presented to Justice Bradley the stipulation of the J. P. & M. Co. and the complainants in No. 1 and No. 2, and a bond, as follows:

"United States Circuit Court, Northern District of Florida.

The West. N. C. R. R. Co.
vs.
George F. Drew, Governor, Trustee, &c., The Florida Central R. R. Co. *et al.*,
The West. N. C. R. R. Co.
vs.
George F. Drew, Governor, Trustee, &c., The J. P. & M. R. R. Co. *et al.*
AND
J. Fred Schutte, Jan Prins, *et al.*
vs.
The J. P. & M. R. R. Co., George F. Drew, Governor, &c., *et al.*

It is hereby stipulated and agreed, by and on behalf of the J. P. & M. R. R. Co., that the appeal taken by said company in the above-entitled suits shall be submitted to the Supreme Court of the United States upon the merits only.

Dated New York, this 15th day of August, 1879.
The J. P. & M. R. R. Co.,
[seal.] By M. S. Littlefield, *President.*

It is hereby stipulated and agreed, by and in behalf of the Western N. C. R. R. Co., that the appeal taken in the above-entitled suits shall be submitted to the Supreme Court of the United States upon the merits only.

The Western North Carolina R. R. Co.,
By Jos. B. Stewart, *Solicitor.*
Dated August 16, A. D. 1879."
(Record, p. 554, 555.)

U. S. Circuit Court, Northern District of Florida.

THE WEST. N. C. R. R. CO., GEORGE F. DREW, Governor, Trustee, etc., THE FLA. CENT. R. R. CO., *et al.*, and THE WEST. N. C. R. R. CO.,

vs.

GEORGE F. DREW, Governor, Trustee, etc., and THE J. P. & M. R. R. CO., *et al.*

AND

J. FRED. SCHUTTE, JAN PRINS, *et al.*,

vs.

THE J. P. & M. R. R. CO., GEORGE F. DREW, Governor, etc., *et al.*

Know all men by these presents: That we, the Western N. C. R. R. Co., as principal, and James W. Wilson, Samuel McDowell Tate, and Samuel H. Wiley as sureties, all of the State of North Carolina, are held and firmly bound unto George F. Drew, Governor of the State of Florida, The J. P. & M. R. R. Co., The Florida Central R. R. Co., Gideon M. Boissevain, Adrian J. Mildens, Joseph Zaddocks, Adrian Stoop, Frank R. Sherwin, claiming to be agent for the four parties last named, John Collinson, Milton S. Littlefield, Walter Gwynn, Thomas B. Coddington, J. Fred. Schutte, Jan Prins, Adrian Prins, Heinrich Ulrice, Elias Fuld, Dr. Nicholas Jacob Den Tex, J. Borzo, Edward Isaac Asser, and Adolph Engler, trustees, in the sum of one hundred thousand dollars, to be paid to the said George F. Drew and others above named as obligees, to which payment, well and truly to be made, we bind ourselves and each of us, our heirs, executors and administrators firmly by these presents. Sealed with our seals; dated this 15th day of August, 1879.

Whereas the above-named Western N. C. R. R. Co. has taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suits by the Circuit Court of the United States for the Northern District of Florida:

Now, therefore, the condition of this obligation is such that if the above-named Western N. C. R. R. Co. shall prosecute its said appeal to effect and answer all costs and damages if it shall fail to make good its appeal, then this obligation shall be null and void; otherwise to remain in full force and virtue.

WESTERN N. C. RAILROAD CO.
By J. W. WILSON, *President.*
JAS. W. WILSON. [SEAL.]
SAMUEL McD. TATE. [SEAL.]
SAMUEL H. WILEY. [SEAL.]

In presence of GEO. C. LLOYD.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

Be it remembered that on this 15th day of August, A. D. 1879, personally appeared before me James W. Wilson, who subscribed the foregoing bond as president of the Western N. C. R. R. Co., who, being by me duly sworn, upon oath says that he is the president of said Western N. C. R. R. Co., appellant in the above-entitled suit, and the seal affixed to his signature on the part of said company is the corporate seal thereof, and that he affixed the same thereto by authority of the same, and the said bond is executed by him as the act and deed of said company.

JAS. W. WILSON.

Subscribed and sworn to before me this 15th day of August, 1879.

GEO. C. LLOYD,
[SEAL.] *Notary Public, N. Y. Co., N. Y.*

And be it further remembered that on this same 15th day of August, A. D. 1879, further appeared before me the said James W. Wilson, and also Samuel McDowell Tate and Samuel H. Wiley, the above-named bounden sureties, who, being by me severally duly sworn, upon oath states that he, the said James W. Wilson, is possessed of and is the fee-simple owner of real and personal property of the true and reasonable value of more than the sum of twenty-five thousand ($25,000) over and above all lawful incumbrances thereon, and that he, the said Samuel McDowell Tate, is well and truly worth more than the sum of twenty-five thousand ($25,000) dollars over and above all just and lawful incumbrances thereon, and that he, the said Samuel H. Wiley, is well and truly worth more than the sum of fifty thousand ($50,000) dollars over and above all just and lawful incumbrances thereon, and that the said joint and several obligors and sureties are jointly worth more than the sum of one hundred thousand ($100,000) dollars over and above all just and lawful incumbrances thereon, in their respective estates, and that the said James W. Wilson, Samuel McDowell Tate, and Samuel H. Wiley, being so under oath, did acknowledge the execution of the foregoing bond and obligation to be their joint and several act and deed, and that they executed, signed, and sealed and delivered the same for the uses and purposes therein mentioned, and that the said persons are personally known to me to be the same persons mentioned and described in said bond.

James W. Wilson.
Samuel McD. Tate.
Samuel H. Wiley.

Subscribed and sworn to before me this 15th day of August, 1879.

[SEAL.] Geo. C. Lloyd,
Notary Public, New York Co., N. Y.

Upon this bond Justice Bradley made the following indorsement:

"Application for extending the time to present a bond to operate as a *supersedeas* having been applied for before the expiration of the sixty days allowed by statute, and the delay being satisfactorily explained, and the parties having stipulated to argue the appeal on the merits only, the foregoing bond is approved and received for the purpose aforesaid.

"Joseph P. Bradley,
Asso. Justice of Sup. Ct. U. S.

"August 16th, 1879."
(Record, p. 554, 555, 556.)

It will be observed—

(1.) That the bond itself is a bond in No. 1 or No. 2, but not in No. 3, because the obligees in the bond are the parties defendant in No. 1 and No. 2, but are not the complainants in No. 3.

(2.) That the application for the extension of time in which to give the bond was made only in No. 1 and No. 2, and the order enlarging the time was only made in No. 1 and No. 2.

(3.) This bond was given by the North Carolina Company, not a party to cause No. 3.

Upon these facts it is contended that the bond and approval never created a *supersedeas* in No. 3, which was the only cause in which a sale of decree had been rendered.

Again, after this bond was approved as aforesaid the complainants settled with the North Carolina Company and paid it $25,000, in consideration of which that company stipulated to and did dismiss its appeal, under Rule 28 of this court. This court, subsequently, on the intervention of another corporation, reinstated the appeal for the benefit of the corporation last referred to, but no new bond was given to the complainants.

After the appeal was dismissed, and while it stood dismissed, the sale took place. And even conceding that the restoration of the appeal had the effect to restore the supersedeas, it could not make the supersedeas created by such restoration retroactive, so as to render void a sale which was made at a time when there was no *supersedeas* in force.

Especially is this the case, inasmuch as neither of these corporations was a party defendant in our case No. 3, nor had either a right to obtain a supersedeas in any way whatever.

II.

The Central Company, which was a defendant in cause No. 3, obtained an order for supersedeas from Justice Bradley upon a bond which was so fraudulent that this court has declared it no better than a *forged* bond; and this court refused to accept a new bond to operate as a supersedeas.

It is submitted that the defendants are estopped to claim any advantage of a supersedeas order thus *fraudulently* obtained; and that the supersedeas predicated of this bond and approval was void *ab initio;* and that the sale, though made before this court declared the bond a fraud, *was valid*.

MATT H. CARPENTER,
C. D. WILLARD,
WAYNE MAC VEAGH,
THEO. F. H. MEYER,
Of Counsel for Appellees Schutte et al.

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IN THE

SUPREME COURT OF THE UNITED STATES.

THE JACKSONVILLE, PENSACOLA & MOBILE RAILROAD COMPANY, APPELLANTS,
VS.
J. FRED. SCHUTTE, JAN PRINS, ADRIAN PRINS, AND OTHERS, APPELLEES;

THE FLORIDA CENTRAL RAILROAD COMPANY, APPELLANTS,
VS.
THE SAME;

THE WESTERN NORTH CAROLINA RAILROAD COMPANY, APPELLANTS,
VS.
THE SAME.

APPEALS IN EQUITY.

BRIEF OF W. G. M. DAVIS,

One of the Counsel for the Appellees.

FERNANDINA, FLA.:
MIRROR STEAM BOOK AND JOB PRINTING HOUSE.
1880.

In Supreme Court of the United States.

THE JACKSONVILLE, PENSACOLA & MOBILE RAILROAD COMPANY, Appellants, *vs.* J. FRED. SCHUTTE, JAN PRINS, ADRIAN PRINS, AND OTHERS, Appellees; THE FLORIDA CENTRAL RAILROAD COMPANY, Appellants, *vs.* THE SAME; THE WESTERN NORTH CAROLINA RAILROAD COMPANY, Appellants, *vs.* THE SAME.	***APPEALS IN EQUITY.***

BRIEF OF W. G. M. DAVIS,

One of the Counsel for the Appellees.

The case of the appellees against the Florida railroad companies is briefly stated in paragraphs 6, 7, 8, 9, 10, 11, 18, 19, 20, of the original bill. (See page 240 to 246 inclusive of Record.)

If the decree rendered in the Circuit Court is found to be correct as to said companies, the appeal of the North Carolina corporation must fail.

The Florida corporations appeared and made full and vigorous defence. A decree which concludes the corporations bars likewise the corporators, where no fraud appears.

The North Carolina Railroad Company was improperly admitted to litigate with the appellees. Both the Florida corporations, acting by their respective directions, employed counsel, filed answers which omitted no defence possible to be made, examined witnesses, and are now here appealing from the decrees rendered against them. It is manifest that no ground existed for allowing the individual corporator to intervene in the cause and make a distinct defence.

There are no such grounds for such interference as in Memphis *vs.* Dean were prescribed. If the decrees are right as against the corporations, they cannot be wrong as to the corporators, therefore no severance was proper. It was a wrong done to the appellees when they were compelled to litigate with the North Carolina Railroad Company. They were put to great and useless cost, a hearing of the case was delayed and opportunity for vexatious proceedings afforded.

The North Carolina Railroad Company *claimed title to stock* in the Florida corporations. (See paragraph 17 of its bill, found on page 44 of Record.) The following is an extract: "And that the capital stock and all the bond issues of the said Jacksonville, Pensacola & Mobile Railroad Company likewise became, was and is the property and estate of your orator."

In the 12th subdivision of the prayers of the same bill a decree is asked, so as to invest it with title to the same stock in the Jacksonville, Pensacola & Mobile Railroad Company.

In the bill filed by the North Carolina Company, touching the Florida Central Railroad Company, the same claim is made as to the stock in that company. (See paragraphs 4th and 8th on page 3 of Record.)

Similar assertions of title to such stock are made in the answer filed by the North Carolina Company to the original bill filed by the appellees in the Circuit Court. (See paragraph 14 of such answer, on page 274 of Record.)

The case of the appellees, against the Florida corporations, went to a hearing without the North Carolina corporation being a party. A decree was made in their favor against the Florida corporations, who appealed therefrom. We are here to meet them, the appellants who are alone entitled to be heard and ready to show cause why the decree in favor of J. Fred. Schutte, *et als.*, should be reversed. A decision on the appeal of the Florida corporations must conclude all whom the corporation represents; no other or further hearing can be had on the merits as made in the pleadings in the cause of Schutte *et als. vs.* The Jacksonville, Pensacola & Mobile Railroad Company and the Florida Central Railroad Company. The learned Judge, who heard the causes in the court below, saw fit to order Schutte and his co-complainants to appear and answer the bills which were filed by the Western Division of the Western North Carolina Railroad Company. When this order was complied with the identical issues appeared for trial which were presented in the Schutte case. His Honor, the Judge, in his opinion conclusively established from the evidence that the North Carolina Railroad Company was estopped by its participation in the issuance and sale of the bonds, from setting up any such objections to their validity as were set forth in the several original bills filed by it. He decreed the dismissal of both bills, but as there were no allegations of law or fact contained in them not sufficiently presented in the answers filed by the Florida corporations to the bill of Schutte, *et als.*, it may be well said that the bills of the North Carolina Railroad Company ought to have been dismissed, as of course, when the conclusion was arrived at in the case of Schutte, *et als.*, *vs.* The Florida corporations, on which the decrees, as to them, are based; there could be nothing more to try after such judgment was pronounced.

We grant, that if the North Carolina Railroad Company had filed bills solely for the purpose of fixing the railroad and property purchased by Swepson, with trusts in favor of such company arising out of the investments of its funds by Swepson, questions peculiar to such an equity might have been considered, such as priority of equities, notice to the bondholders' acquiesence and participation in sale of the bonds by the North Carolina Railroad Company. But when it set up title as a stockholder in the Florida companies, such questions could not be considered after the full hearing and determination of the case between the bondholders and the Florida corporations. They were foreign and incompatible with the case made by Schutte, *et als.*

It is proper to notice that the bill filed by the Western Division of the Western North Carolina Railroad Company alleges that the proceeding was taken because the complainant could not procure any one authorized as officers to act for the Florida Central to interfere to prevent the sale of the road by the Governor. (See 45th paragraph of bill, page 14 of Record.) But in paragraph 38 of the bill (page 11 of Record) it is alleged that the company, *through counsel, appeared before the Governor and protested against the sale.* There was no evidence adduced by the North Carolina Railroad Company to prove any unwillingness or incapacity, on the part of the Florida Central, to act. It appeared and answered the bill of the North Carolina Railroad Company. (Record, page 125.) The answer admits the allegation in the 45th paragraph of the bill, as to the conflict of title as to the Directors' office. But it fully appeared by the record that Edward M. L'Engle was acting as President of the Florida Central when the bill was filed, and has acted as such through the whole litigation. L'Engle, in his answer to the Schutte bill, alleges he was elected President of the Florida Central on the 30th of October, 1873, and other persons Directors; that they remained in office until March 15th, 1877, when he and others were elected, etc. So the allegation in the 45th paragraph of the bill of the North Carolina Railroad Company, on which it made out a right to sue in behalf of its interest as a stockholder, was not only not proved at the hearing but is disproved.

In the 45th paragraph before referred to, the claim of title as stockholder is asserted as giving the right, and asserted for the purpose of maintaining the suit.

With this bill there was filed a copy of a complaint in a suit in a New York court, instituted by the North Carolina Railroad Company, in which it asserted title to a large amount of the stock in the Florida Central Railroad Company. (Pages 18, 19, 20 of Record.)

There was a demurrer filed by Governor Drew to the bills of the North Carolina Railroad Company. They were overruled. They should have been sustained, especially that which related to the Jacksonville, Pensacola & Mobile Railroad Company.

It clearly appears that the North Carolina Railroad Company occupied, at best, but the same position which the individuals did who owned stock. It was not a proper or necessary party to the Schutte Bill. It was made a party, but the bill, as to it, was dismissed before the cause was heard; not being a party it could not appeal from the decree in favor of Schutte, *et als*. It could not prosecute an appeal under the law regulating appeals and writs of error. No order could be made by a Justice of this Court providing for the North Carolina Railroad Company such a remedy. *A fortiori*, a *supersedeas* could not be awarded. The appeals taken by the North Carolina Railroad Company bring up only the records and proceedings in the suits instituted originally by the Western Division of the Western North Carolina Railroad Company.

The case of the appellees, Schutte, *et als.*, is simple. The decree declares their bonds valid obligations of the several corporations who issued them, and that liens on the railroads and properties of such companies were created by the statutes of Florida enacted in 1869 and 1870, which provided for the issuance of such securities. It further declared, that Schutte *et als.* were *bona fide* holders of a large amount of the bonds, and entitled to an enforcement of the liens.

Whether the bonds were valid and binding on the respective corporations, whether there were liens created by the statute to secure their payment, whether *bona fide* holders of the bonds were entitled to have the aid of the courts to subject the property of said corporations to sale for their payment, are not open questions in this court, nor were they in the Circuit Court.

The learned Judge, who tried the cause in the Circuit Court, adopted the decisions made by the Supreme Court of Florida in the cases referred to by him in his opinion, wherein the legal questions above stated were settled. (See opinion of Mr. Justice Bradley, page 570 of Record.) His Honor the Judge did not decide that decisions of the State Court were absolutely binding on the Federal Courts. He indicated a doubt as to that, but this court at its present term settled the question. The decisions of the Supreme Court of the State of Florida, in Holland *vs.* The State of Florida, and State *vs.* The Florida Central Railroad Company, and Trustees, etc. *vs.* The Jacksonville, Pensacola & Mobile Railroad Company, are binding on this court as constructions of the Constitution and statutes of the State. Those decisions support the decree.

I repeat, the questions as to the right of the bondholders to subject the property of the defendant Florida corporations are settled by the decisions referred to.

This Court, in the case (original) of The State of Florida *vs.* E. C. Anderson *et als.*, adopted and acted on those decisions. The decree by which the railroad of the Jacksonville, Pensacola & Mobile Company was directed to be delivered to the State of Florida was expressly put on the ground that the statutes of Florida, before quoted, created a trust in favor of the bondholders. (Vol. 91 U. S. S. C. Rep., Otto.)

This Court treated the property as though a final decree had been rendered in the State Court against the Jacksonville, Pensacola & Mobile Company, settling the rights of the bondholders. The application of the railroad company, for delivery to it of the railroad and property, was refused in such terms as showed that the Court considered the questions as to the lien on the property to have been adjudicated. It is impossible to uphold the disposition made by this Court of the property then in its possession upon any other hypothesis. This Court could not have tried and decided the question originally.

I refrain from making any argument on the evidence in the record touching the issuance and sale of the bonds, as the opinion filed by his Honor the Justice, who tried the cause in the Circuit Court, fully disposes of all the questions made by the defendant corporations as to the validity of the issue, the sale and the title of the appellees.

The bill filed by the appellees stated the proceedings in the State Courts in which the State sued, on behalf of the bondholders, to establish the lien on the several railroads and appurtenant property. The Jacksonville, Pensacola & Mobile and the Florida Central Companies appeared and answered. The issues in the suit required the courts to determine the questions as to the validity of the bonds and the existence of liens for their payment.

The appellees, in their bill, insist on the decisions made by the Supreme Court of the State in Holland *vs.* The State, and the State *vs.* The Florida Central, and claim that they are decisive and final adjudications in their favor, and conclude the Florida corporations; the parties were the same, if the State be treated as trustee for the bondholders, sueing in their behalf. The subject-matter was the same, and the same defendants. The Florida corporations were defendants. If what the appellees so claimed in their original bill be allowed to be well founded in law, there would be nothing remaining for decision but the integrity of the title of the appellees to the securities which they produced at the hearing, as to which nothing will be added beyond what is before stated.

W. G. M. DAVIS,
Of Counsel for Appellees.

Supreme Court of the United States.

THE FLORIDA CENTRAL RAILROAD COMPANY,
Appellant,
vs.
J. FRED. SCHUTTE, *et al.*,
Appellees.
} No. 667.

THE JACKSONVILLE, PENSACOLA, and MOBILE RAILROAD COMPANY,
Appellant,
vs.
J. FRED. SCHUTTE, *et al.*,
Appellees.
} No. 668.

THE WESTERN NORTH CAROLINA RAILROAD COMPANY,
Appellant,
vs.
GEORGE F. DREW, GOVERNOR, TRUSTEE, &c.; THE JACKSONVILLE, PENSACOLA, & MOBILE RAILROAD COMPANY; *et al.*,
Appellees.
} No. 669.

Motion to suppress Depositions of S. W. Hopkins and Frank H. Collins, taken at New York City, on behalf of Schutte, *et al.*

POINTS.

I.

"*A deposition not taken according to the rules of law* MUST *be excluded if objection is made.* No practice, HOWEVER CONVENIENT, can give validity to depositions which are not taken according to law, unless the parties expressly waive the objection, or by previous consent agree to the mode in which they are taken."

Evans *v.* Eaton, 7 Wheat., 356, 426.
3 Green. Ev., sec. 351.

In the Case at bar there is no Waiver.

As stated in our general argument, motions were made below, on behalf of this appellant, to suppress the depositions on behalf of Schutte, *et al.*, at Amsterdam and New York City. The motion as to the Amsterdam depositions was heard and granted "on the ground that the answers were prepared beforehand" (Judge's minutes, fol. 3056).

The New York depositions having only been published on the trial, and no printed copies of them being available at the time, the motion, as to those depositions, was not disposed of *in limine*, but reserved for the Court, on reading the testimony, whether to consider these depositions or suppress them.

No intimation is given in the opinion of any disposition of this motion.

"The witness having been duly sworn, the Com-
"missioner or Examiner is to put the interroga-
"tories SINGLY and SERIATIM, in the order in which
"they are written; and may explain to the witness
"their import and meaning; *but should not permit*
"*him to read or hear any other interrogatory*

"*until the one already propounded be fully* "*answered;* nor unnecessarily depart until the ex- "amination is concluded."

3 Green. Ev., Sec. 324.
Shaw *v.* Lindsey, 15 Vesey, 380.

In the case of the Amsterdam depositions which were suppressed below, but brought up with the record, notwithstanding, the Examiner certified (fol. 3824) "*that the said witnesses made use of written* "*memoranda, prepared beforehand, to which they* "*referred in giving their testimony.*"

Several of the witnesses themselves swear in answer to the 20th cross-interrogatory that "Dr. "Wertheim has *read over to me both the direct-* "*interrogatories and the cross-interrogatories pro-* "*posed to me*" (fol. 3798); "Dr. Wertheim re- "quested me to give testimony in this cause, *and* "*read the interrogatories and cross-interogatories* "*to me*" (fol. 3821); "Dr. Wertheim * * * * "*read to me the interrogatories*" (fol. 3832); and so on.

Upon the infirmity thus disclosed in the Amsterdam depositions they were suppressed.

To show that these depositions are obnoxious to the same vice of *preparation in advance*, which destroyed the Amsterdam depositions, and that they, therefore, should have been, and still be, disregarded, we place the answers of Collins and Hopkins to the same interrogatory, in several instances, in parallel columns.

Interrogatory Fifth.—State what induced S. W. Hopkins & Co. to undertake to act as agents of said company to effect the sale of the bonds specified in the power of attorney given to you by said railway company; what led your said firm to believe that such bonds could be sold, either in the United States or in Europe?

Fol. 2324.

FRANK H. COLLINS.

(Fol. 2675.)

S. W. Hopkins and Company were induced to act as agent of said Company to sell said bonds, because they believed said bonds to be a good security, that they would have no difficulty in selling them, being as they were bonds of a State *whom* they believed held first mortgage bonds of said company for an amount equal to the amount issued by the State of Florida in exchange therefor; and that the purchaser of said bonds would really hold a double security: First, the State of Florida, and secondly, the Railroad itself, two hundred and fifty miles in length, built and in operation from Jacksonville to Quincy, with branches at Monticello and Tallahassee. Said bonds bore a high rate of interest, namely, eight per cent. per annum, payable in gold, and it was represented to the said firm by the president of said company that the Jacksonville, Pensacola, and Mobile Railroad Company owned the line of railroad I have just named, and that under the the Act of the Legislature of the State of Florida the said railway company were to deliver to the said State first mortgage bonds of said railroad company to the extent of sixteen thousand dollars per mile before the said state should deliver a like amount of state bonds as security for the bonds of the State so to be issued to said company."

S. W. HOPKINS.

(Fol. 2722.)

The firm of S. W. Hopkins & Co. were induced to act as agents of said Company to sell said bonds, because they believed said bonds were a good security; that they would have no difficulty in selling them; that they were bonds of a State *whom* we believed held first mortgage bonds of the said company for an amount equal to the amount issued by the State of Florida in exchange therefor; and that the purchaser of said bonds would really hold a double security, namely, the State of Florida, and also the Railroad itself, which we were informed was then built and in operation from Jacksonville to Quincy, with branches at Monticello and Tallahassee, two hundred and fifty miles in length; said bonds bore a high rate of interest, namely, (8) eight per cent. per annum, payable in gold, and it was represented to our firm by the president of the said company that the Jacksonville, Pensacola, and Mobile Railroad Company owned the line of railroad I have just named, and that under the Act of the Legislation of the State of Florida, the said company were obliged to deliver to the said State first mortgage bonds of the said company to the extent of $16,000 per mile before the authorities of the State could or would deliver a like amount of its State Bonds as security for the bonds of the State so to be issued to said company.

Interrogatory Seventh.—What was represented to you by the officer of said company who employed you and gave you information, or made statements to you, as to the locality of the railroad of said company, the number of completed miles, its eastern terminus, and projected route and west-

ern terminus; what documents, map, papers, or laws of the State of Florida, if any, were produced to you by such officer of said company; what reliance did you place on such statements, and how was your firm affected by them or by any documents, maps, and laws of the State of Florida?

Fol. 2325.

It was represented to the said firm at and for their appointment of agents of said company by its president, that there were no prior liens upon any part of said line of railroad from Jacksonville to Quincy, with the branches at Monticello and Tallahassee. Each of said bonds has on its back an endorsement signed by the then Governor of the State of Florida, setting forth that there had been deposited by said company with the State of Florida first mortgage bonds of said company to the extent of sixteen thousand dollars per mile of completed road.

The locality and line of railroad from Jacksonville westward, consisting of two hundred and fifty miles, was learned from statements made to said firm by the president of said company. From the then existing terminus at Quincy, the said railroad was to be built to the city of Mobile, in the State of Alabama, and the bonds issued to said company by said State were to be sold, and a sufficient amount of the proceeds used in the completion of the line of railroad of said company to said city of Mobile, an authenticated copy of the Act of the Legislature authorizing the issuing of said bonds; a map of the line of said railroad already constructed, and proposed to be constructed, and statements of the

It was represented to our firm, at and before their appointment as agents of said company by its president, that there were no prior liens upon any part of said line of railroad from Jacksonville to Quincy, with the branches at Monticello and Tallahassee. That each of said bonds had on its back an endorsement signed by the then Governor of Florida, setting forth that there had been deposited by said company, with the State of Florida, first mortgage bonds of said company, at the extent of $16,000 per mile of completed road. That the locality and line of railroad from Jacksonville westward consisted of two hundred and fifty miles; that from the then existing terminus at Quincy the said line of railroad was to be built to the city of Mobile, in the State of Alabama, and that the bonds issued to the said company by the said State were to be sold, and a sufficient amount of the proceeds thereof were to be used in the completion of the line of railroad of said company to said city of Mobile. An authenticated copy of the Act of the Legislature authorizing the issue of said bonds, a map of the line of said railroad already constructed and proposed to be constructed, and statements of the then Governor of the State of Florida, and other officers of said

Governor of the then State of Florida and of the president or other officers of said railway company that said line of railroad was unencumbered by any prior lien, were delivered to said firm by the president of said company at or before the appointment of said firm as agent of said company. All of which statements and representations were relied upon by said firm, and were repeated in Europe. I certainly believed that the enterprise was a good and sound one and would commend itself to the public. The most perfect reliance was placed upon the representations made to said firm that the line of railroad was two hundred and fifty miles in length, from Jacksonville to Quincy, with branches at Monticello and Tallahassee, and that no part of said railroad was encumbered by any prior lien.

That first mortgage bonds had been executed upon said line of railroad and delivered in accordance with the Act of the Legislature of the State of Florida to the proper officers of said State as security for the payment of said bonds of the State of Florida and for a like amount, in order to aid in completing said line of railroad to the City of Mobile, thus perfecting, as I then believed, a great public work in the State of Florida, as well as a leading trunk line of railroad in the South which would be a valuable property, abundantly able to pay the interest on its bonds.

Fol. 2,677-8-9.

company, that said line of railroad was unencumbered by any prior lien, were delivered to our firm by the President of said company, at or before the appointment of our firm as agents of said company, all of which statements and representations were relied upon and believed by our firm, and were repeated in Europe. I personally believed that the enterprise was a good and sound one, and would commend itself to the investing public. The most perfect reliance was placed on the representations made to our firm that the line of railroad was two hundred and fifty miles in length, extending from Jacksonville to Quincy, with branches to Monticello and Tallahassee, and that no part of said railroad was encumbered by any prior lien. That first mortgage bonds had been executed upon said line of railroad, and delivered in accordance with the provisions of the several Acts of the Legislature of the State of Florida to the proper officers of said State as security for the payment of said bonds of the State of Florida, and for a like amount, in order to aid in completing said line of railroad to the City of Mobile, thus perfecting, as I then believed, a great public work in the State of Florida, as well as creating a leading trunk line of railroad in the South, which would be a valuable property, abundantly able to pay the interests on its bonds.

Fols. 2,725-6-7.

Cross-interrogatory Sixth.—Before you sold any of said bonds were they not denounced as being fraudulent and illegal in their issue, and was it not also alleged that the statute under which they were issued was unconstitutional and void, and that said bonds would never be paid by the people of Florida; and were not these charges of illegality published, and the publications copied in various public journals and newspapers throughout the United States, England, and Holland where said bonds were offered for sale? State fully all the knowledge and information you have on the subject.

Fol. 2,457.

Before, or at the time we were selling said bonds, I believe, a question arose as to their legality, and it is my impression that it was alleged that the statute under which they were issued was unconstitutional, and I believe these charges were published, and the publications in some public journals in the United States, but I do not remember that any such charges were published in England or Holland. I did not credit the statements made and circulated with respect to the validity of the issue, because our lawyers had examined all the laws under which they had been issued, and they advised our firm that the bonds were legally issued and constitutional, and therefore a good and valid security. I cannot state more definitely as to the publications with respect to the character of the bonds.

Fol. 2,704.

Before we sold any of said bonds, I remember that they were by some parties denounced as being fraudulent and illegal in their issue, and I remember that some party alleged that the statute under which they were issued was unconstitutional and void, and that said bonds would never be paid by the people of Florida, and I remember that these charges of illegality were published, and the publications copied in some public journals and newspapers in the United States, but I do not remember whether any such charges or allegations were published at the time in England or Holland. I never believed in the truthfulness of any of the damaging statements made and circulated about the validity of the issue of the bonds, because I had personally examined all the laws under which they had been issued, and I came to the conclusion at the time that said bonds were properly and legally issued under a constitutional enactment, and therefore they were good and valid securities.

Fol. 2,758.

Nothing, it seems to us, could be more mathematically certain than that the two depositions from which we have quoted the foregoing, were prepared in writing in advance, by counsel, or some other party for the Dutch bondholders. It is physically impossible that any two witnesses, knowing the same facts, and desiring to tell the whole truth, even, in relation to any matter, could, without preconcert or preparation, make answers so peculiarly identical as the Exhibit we have made, shows these two witnesses to have done.

That they were *read from papers prepared for* the witnesses is rendered more certain, if possible, by the accident of their both copying the grammatical errors of their prompter, as witness the expression, "state whom," in the former part of the first answer quoted. Any school boy, far enough advanced in mathematics to have learned the problems of probabilities, will be able, from the data found in these depositions, to *demonstrate* that so many coincidences in language could not possibly have occurred in the answers of any two witnesses in any legitimate and *bona fide* answers to the same interrogatory propounded to each.

The Court having found upon the oath of the Dutchmen, and the certificate of the Examiner, that the Amsterdam depositions were "prepared beforehand" by counsel, or some one else, and therefore suppressed them, we have a right to suspect that the same parties would prepare other depositions in advance, if necessary, *and that in this case they did do so.*

No human intelligence can examine these two depositions, of which we have reproduced samples, and not conclude that they were manufactured, and read or memorized, from one manuscript.

II.

The witness Hopkins had been previously examined by this appellant, on notice to all parties (fol. 1746, *et seq.*), and should have been examined at that time by Schutte *et al.* Under the coaching he received before his last examination he is made to contradict his first deposition, which was fully corroborated by other witnesses.

It was irregular to permit this second examination upon interrogatories, after the appellant had given notice that it desired the testimony taken orally, under rule 67 of Equity Procedure.

III.

For the foregoing, among other reasons, the depositions of Hopkins and Collins should have been suppressed below, and also should be disregarded here.

JOS. B. STEWART,
Counsel for W. D. W. N. C. R. R. CO.,
Appellant.

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SUPREME COURT OF THE UNITED STATES.

Nos. 667, 668 and 669.

OCTOBER TERM, 1880.

THE FLORIDA CENTRAL RAILROAD COMPANY,
Appellant,
No. 667. *vs.*
J. FRED. SCHUTTE, *et al.*

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY,
Appellant,
No. 668. *vs.*
J. FRED. SCHUTTE, *et al.*

THE WESTERN NORTH CAROLINA RAILROAD COMPANY,
Appellant,
No. 669. *vs.*
GEORGE F. DREW, *Governor, &c.,*
THE JACKSONVILLE, PENSCOLA AND MOBILE RAILROAD COMPANY, *et al.*

Appeals from the Circuit Court of the United States for the Northern District of Florida.

And now come the appellants by their counsel, and, opposing the motion for an immediate issue of a mandate in the causes above entitled, submit:

1. That appellants have under careful consideration the question of applying to this Honorable Court for a rehearing of the decision recently made therein, and will in a short time come to some determination thereof.

2. That it is only within the last day or two that they have been able to obtain copies of the opinion delivered therein, whereby to examine the same with such care as to state specifically and advisedly the ground of such proposed rehearing.

3. That by expediting the issuance of a mandate, great and irreparable injury may result to the appellants, as respects important matters which will be presented to this Honorable Court in such proposed application for a rehearing; while no harm, whatever, can result to the appellees if the issue of the mandate may take its orderly course at the end of the term.

Samuel F. Phillips,
Jos. B. Stewart,
Of Counsel for Appellants.

As I was retained specially to argue this cause, and have done so, I do not feel authorized at present to sign the foregoing as counsel, but if it is proper to say so, I will say that I was surprised at the judgment, and believe it due to justice that the judgment ought not to be carried into execution by special order, until the parties in interest may have reasonable time to consider what course they may be advised by counsel to take.

Geo. F. Edmunds.